

Crime (International Co-operation) Act 2003

2003 CHAPTER 32

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An Act to make provision for furthering co-operation with other countries in respect of criminal proceedings and investigations; to extend jurisdiction to deal with terrorist acts or threats outside the United Kingdom; to amend section 5 of the Forgery and Counterfeiting Act 1981 and make corresponding provision in relation to Scotland; and for connected purposes.

[30th October 2003]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

MUTUAL ASSISTANCE IN CRIMINAL MATTERS

CHAPTER 1

MUTUAL SERVICE OF PROCESS ETC.

Service of overseas process in the UK

1 Service of overseas process

(1) The power conferred by subsection (3) is exercisable where the Secretary of State receives any process or other document to which this section applies from the government of, or other authority in, a country outside the United Kingdom, together with a request for the process or document to be served on a person in the United Kingdom.

(2) This section applies—

- (a) to any process issued or made in that country for the purposes of criminal proceedings,
- (b) to any document issued or made by an administrative authority in that country in administrative proceedings,
- (c) to any process issued or made for the purposes of any proceedings on an appeal before a court in that country against a decision in administrative proceedings,
- (d) to any document issued or made by an authority in that country for the purposes of clemency proceedings.

(3) The Secretary of State may cause the process or document to be served by post or, if the request is for personal service, direct the chief officer of police for the area in which that person appears to be to cause it to be personally served on him.

(4) In relation to any process or document to be served in Scotland, references in this section to the Secretary of State are to be read as references to the Lord Advocate.

2 Service of overseas process: supplementary

(1) Subsections (2) and (3) apply to any process served in a part of the United Kingdom by virtue of section 1 requiring a person to appear as a party or attend as a witness.

(2) No obligation under the law of that part to comply with the process is imposed by virtue of its service.

(3) The process must be accompanied by a notice—

- (a) stating the effect of subsection (2),
- (b) indicating that the person on whom it is served may wish to seek advice as to the possible consequences of his failing to comply with the process under the law of the country where it was issued or made, and
- (c) indicating that under that law he may not be accorded the same rights and privileges as a party or as a witness as would be accorded to him in proceedings in the part of the United Kingdom in which the process is served.

(4) Where a chief officer of police causes any process or document to be served under section 1, he must at once—

- (a) tell the Secretary of State (or, as the case may be, the Lord Advocate) when and how it was served, and
- (b) (if possible) provide him with a receipt signed by the person on whom it was served.

(5) Where the chief officer of police is unable to cause any process or document to be served as directed, he must at once inform the Secretary of State (or, as the case may be, the Lord Advocate) of that fact and of the reason.

Service of UK process abroad

3 General requirements for service of process

(1) This section applies to any process issued or made for the purposes of criminal proceedings by a court in England and Wales or Northern Ireland.

(2) The process may be issued or made in spite of the fact that the person on whom it is to be served is outside the United Kingdom.

(3) Where the process is to be served outside the United Kingdom and the person at whose request it is issued or made believes that the person on whom it is to be served does not understand English, he must—

- (a) inform the court of that fact, and
- (b) provide the court with a copy of the process, or of so much of it as is material, translated into an appropriate language.

(4) Process served outside the United Kingdom requiring a person to appear as a party or attend as a witness—

- (a) must not include notice of a penalty,

(b) must be accompanied by a notice giving any information required to be given by rules of court.

(5) If process requiring a person to appear as a party or attend as a witness is served outside the United Kingdom, no obligation to comply with the process under the law of the part of the United Kingdom in which the process is issued or made is imposed by virtue of the service.

(6) Accordingly, failure to comply with the process does not constitute contempt of court and is not a ground for issuing a warrant to secure the attendance of the person in question.

(7) But the process may subsequently be served on the person in question in the United Kingdom (with the usual consequences for non-compliance).

4 Service of process otherwise than by post

(1) Process to which section 3 applies may, instead of being served by post, be served on a person outside the United Kingdom in accordance with arrangements made by the Secretary of State.

(2) But where the person is in a participating country, the process may be served in accordance with those arrangements only if one of the following conditions is met.

(3) The conditions are—

- (a) that the correct address of the person is unknown,
- (b) that it has not been possible to serve the process by post,
- (c) that there are good reasons for thinking that service by post will not be effective or is inappropriate.

5 General requirements for effecting Scottish citation etc.

(1) This section applies to any citation for the purposes of criminal proceedings in Scotland and to any document issued there for such purposes by the prosecutor or by the court.

(2) The citation may proceed or document be issued in spite of the fact that the person against whom it is to be effected or on whom it is to be served is outside the United Kingdom.

(3) Where—

- (a) citation or issue is by the prosecutor,
- (b) the citation is to be effected or the document issued is to be served outside the United Kingdom, and
- (c) the prosecutor believes that the person against whom it is to be effected or on whom it is to be served does not understand English,

the citation or document must be accompanied by a translation of it (or, in the case of a document, by a translation of so much of it as is material) in an appropriate language.

(4) Where—

- (a) citation or issue is by the court,
- (b) the citation is to be effected or the document issued is to be served outside the United Kingdom, and
- (c) the person at whose request that is to happen believes that the person against whom it is to be effected or on whom it is to be served does not understand English,

he must inform the court of that fact, and provide the court with a copy of the citation or document (or, in the case of a document, so much of it as is material) translated into an appropriate language.

- (5) A citation effected outside the United Kingdom—
- (a) must not include notice of a penalty,
 - (b) must be accompanied by a notice giving any information required to be given by rules of court.
- (6) If a citation is effected outside the United Kingdom, no obligation under the law of Scotland to comply with the citation is imposed by virtue of its being so effected.
- (7) Accordingly, failure to comply with the citation does not constitute contempt of court and is not a ground for issuing a warrant to secure the attendance of the person in question or for imposing any penalty.
- (8) But the citation may subsequently be effected against the person in question in the United Kingdom (with the usual consequences for non-compliance).

6 Effecting Scottish citation etc. otherwise than by post

- (1) A citation or document to which section 5 applies may, instead of being effected or served by post, be effected against or served on a person outside the United Kingdom in accordance with arrangements made by the Lord Advocate.
- (2) But where the person is in a participating country, the citation may be effected or document served in accordance with those arrangements only if one of the following conditions is met.
- (3) The conditions are—
- (a) that the correct address of the person is unknown,
 - (b) that it has not been possible to effect the citation or serve the document by post,
 - (c) that there are good reasons for thinking that citation or (as the case may be) service by post will not be effective or is inappropriate.

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,

- (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.

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).

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.

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.

(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.

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.

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.

Assisting overseas authorities to obtain evidence in the UK

13 Requests for assistance from overseas authorities

(1) Where a request for assistance in obtaining evidence in a part of the United Kingdom is received by the territorial authority for that part, the authority may—

- (a) if the conditions in section 14 are met, arrange for the evidence to be obtained under section 15, or
- (b) direct that a search warrant be applied for under or by virtue of section 16 or 17 or, in relation to evidence in Scotland, 18.

- (2) The request for assistance may be made only by—
- (a) a court exercising criminal jurisdiction, or a prosecuting authority, in a country outside the United Kingdom,
 - (b) any other authority in such a country which appears to the territorial authority to have the function of making such requests for assistance,
 - (c) any international authority mentioned in subsection (3).
- (3) The international authorities are—
- (a) the International Criminal Police Organisation,
 - (b) any other body or person competent to make a request of the kind to which this section applies under any provisions adopted under the Treaty on European Union.

14 Powers to arrange for evidence to be obtained

- (1) The territorial authority may arrange for evidence to be obtained under section 15 if the request for assistance in obtaining the evidence is made in connection with—
- (a) criminal proceedings or a criminal investigation, being carried on outside the United Kingdom,
 - (b) administrative proceedings, or an investigation into an act punishable in such proceedings, being carried on there,
 - (c) clemency proceedings, or proceedings on an appeal before a court against a decision in administrative proceedings, being carried on, or intended to be carried on, there.
- (2) In a case within subsection (1)(a) or (b), the authority may arrange for the evidence to be so obtained only if the authority is satisfied—
- (a) that an offence under the law of the country in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed, and
 - (b) that proceedings in respect of the offence have been instituted in that country or that an investigation into the offence is being carried on there.

An offence includes an act punishable in administrative proceedings.

- (3) The territorial authority is to regard as conclusive a certificate as to the matters mentioned in subsection (2)(a) and (b) issued by any authority in the country in question which appears to him to be the appropriate authority to do so.
- (4) If it appears to the territorial authority that the request for assistance relates to a fiscal offence in respect of which proceedings have not yet been instituted, the authority may not arrange for the evidence to be so obtained unless—
- (a) the request is from a country which is a member of the Commonwealth or is made pursuant to a treaty to which the United Kingdom is a party, or
 - (b) the authority is satisfied that if the conduct constituting the offence were to occur in a part of the United Kingdom, it would constitute an offence in that part.

15 Nominating a court etc. to receive evidence

- (1) Where the evidence is in England and Wales or Northern Ireland, the Secretary of State may by a notice nominate a court to receive any evidence to which the request relates which appears to the court to be appropriate for the purpose of giving effect to the request.

- (2) But if it appears to the Secretary of State that the request relates to an offence involving serious or complex fraud, he may refer the request (or any part of it) to the Director of the Serious Fraud Office for the Director to obtain any evidence to which the request or part relates which appears to him to be appropriate for the purpose of giving effect to the request or part.
- (3) Where the evidence is in Scotland, the Lord Advocate may by a notice nominate a court to receive any evidence to which the request relates which appears to the court to be appropriate for the purpose of giving effect to the request.
- (4) But if it appears to the Lord Advocate that the request relates to an offence involving serious or complex fraud, he may give a direction under section 27 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) (directions applying investigatory provisions).
- (5) Schedule 1 is to have effect in relation to proceedings before a court nominated under this section.

16 Extension of statutory search powers in England and Wales and Northern Ireland

- (1) Part 2 of the Police and Criminal Evidence Act 1984 (c. 60) (powers of entry, search and seizure) is to have effect as if references to serious arrestable offences in section 8 of, and Schedule 1 to, that Act included any conduct which—
- (a) constitutes an offence under the law of a country outside the United Kingdom, and
 - (b) would, if it occurred in England and Wales, constitute a serious arrestable offence.
- (2) But an application for a warrant or order by virtue of subsection (1) may be made only—
- (a) in pursuance of a direction given under section 13, or
 - (b) if it is an application for a warrant or order under section 8 of, or Schedule 1 to, that Act by a constable for the purposes of an investigation by an international joint investigation team of which he is a member.
- (3) Part 3 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)) (powers of entry, search and seizure) is to have effect as if references to serious arrestable offences in Article 10 of, and Schedule 1 to, that Order included any conduct which—
- (a) constitutes an offence under the law of a country outside the United Kingdom, and
 - (b) would, if it occurred in Northern Ireland, constitute a serious arrestable offence.
- (4) But an application for a warrant or order by virtue of subsection (3) may be made only—
- (a) in pursuance of a direction given under section 13, or
 - (b) if it is an application for a warrant or order under Article 10 of, or Schedule 1 to, that Order, by a constable for the purposes of an investigation by an international joint investigation team of which he is a member.
- (5) In this section, “international joint investigation team” has the meaning given by section 88(7) of the Police Act 1996 (c. 16).

17 Warrants in England and Wales or Northern Ireland

- (1) A justice of the peace may issue a warrant under this section if he is satisfied, on an application made by a constable, that the following conditions are met.
- (2) But an application for a warrant under subsection (1) may be made only in pursuance of a direction given under section 13.

(3) The conditions are that—

- (a) criminal proceedings have been instituted against a person in a country outside the United Kingdom or a person has been arrested in the course of a criminal investigation carried on there,
- (b) the conduct constituting the offence which is the subject of the proceedings or investigation would, if it occurred in England and Wales or (as the case may be) Northern Ireland, constitute an arrestable offence, and
- (c) there are reasonable grounds for suspecting that there is on premises in England and Wales or (as the case may be) Northern Ireland occupied or controlled by that person evidence relating to the offence.

“Arrestable offence” has the same meaning as in the Police and Criminal Evidence Act 1984 (c. 60) or (as the case may be) the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/ 1341 (N.I.12)).

(4) A warrant under this section may authorise a constable—

- (a) to enter the premises in question and search the premises to the extent reasonably required for the purpose of discovering any evidence relating to the offence,
- (b) to seize and retain any evidence for which he is authorised to search.

18 Warrants in Scotland

(1) If, on an application made by the procurator fiscal, it appears to the sheriff—

- (a) that there are reasonable grounds for suspecting that an offence under the law of a country outside the United Kingdom has been committed, and
- (b) that the conduct constituting the offence would, if it occurred in Scotland, constitute an offence punishable by imprisonment,

the sheriff has the like power to grant warrant authorising entry, search and seizure by any constable or customs officer as he has under section 134 of the Criminal Procedure (Scotland) Act 1995 (c. 46) in respect of any offence punishable at common law in Scotland.

(2) But an application for a warrant by virtue of subsection (1) may be made only—

- (a) in pursuance of a direction given under section 13, or
- (b) if it is an application made at the request of an international joint investigation team for the purposes of their investigation.

“International joint investigation team” has the meaning given by section 39(6) of the Police (Scotland) Act 1967 (c. 77).

19 Seized evidence

(1) Any evidence seized by a constable under or by virtue of section 16, 17 or 18 is to be sent to the court or authority which made the request for assistance or to the territorial authority for forwarding to that court or authority.

(2) So far as may be necessary in order to comply with the request for assistance—

- (a) where the evidence consists of a document, the original or a copy is to be sent, and
- (b) where the evidence consists of any other article, the article itself or a description, photograph or other representation of it is to be sent.

(3) This section does not apply to evidence seized under or by virtue of section 16(2)(b) or (4)(b) or 18(2)(b).

Overseas freezing orders

20 Overseas freezing orders

(1) Section 21 applies where an overseas freezing order made by a court or authority in a participating country is received from the court or authority which made or confirmed the order by the territorial authority for the part of the United Kingdom in which the evidence to which the order relates is situated.

(2) An overseas freezing order is an order—

- (a) for protecting, pending its transfer to the participating country, evidence which is in the United Kingdom and may be used in any proceedings or investigation in the participating country, and
- (b) in respect of which the following requirements of this section are met.

(3) The order must have been made by—

- (a) a court exercising criminal jurisdiction in the country,
- (b) a prosecuting authority in the country,
- (c) any other authority in the country which appears to the territorial authority to have the function of making such orders.

(4) The order must relate to—

- (a) criminal proceedings instituted in the participating country in respect of a listed offence, or
- (b) a criminal investigation being carried on there into such an offence.

(5) The order must be accompanied by a certificate which gives the specified information; but a certificate may be treated as giving any specified information which is not given in it if the territorial authority has the information in question.

(6) The certificate must—

- (a) be signed by or on behalf of the court or authority which made or confirmed the order,
- (b) include a statement as to the accuracy of the information given in it,
- (c) if it is not in English, include a translation of it into English (or, if appropriate, Welsh).

The signature may be an electronic signature.

(7) The order must be accompanied by a request for the evidence to be sent to a court or authority mentioned in section 13(2), unless the certificate indicates when such a request is expected to be made.

(8) References below in this Chapter to an overseas freezing order include its accompanying certificate.

21 Considering the order

(1) In relation to England and Wales and Northern Ireland, where this section applies the Secretary of State must—

- (a) by a notice nominate a court in England and Wales or (as the case may be) Northern Ireland to give effect to the overseas freezing order,
- (b) send a copy of the overseas freezing order to the nominated court and to the chief officer of police for the area in which the evidence is situated,
- (c) tell the chief officer which court has been nominated.

(2) In relation to Scotland, where this section applies the Lord Advocate must—

- (a) by a notice nominate a sheriff to give effect to the overseas freezing order,
- (b) send a copy of the overseas freezing order to the sheriff and to the procurator fiscal.

In relation to Scotland, references below in this section and in sections 22 to 25 to the nominated court are to be read as references to the nominated sheriff.

(3) The nominated court is to consider the overseas freezing order on its own initiative within a period prescribed by rules of court.

(4) Before giving effect to the overseas freezing order, the nominated court must give the chief officer of police or (as the case may be) the procurator fiscal an opportunity to be heard.

(5) The court may decide not to give effect to the overseas freezing order only if, in its opinion, one of the following conditions is met.

(6) The first condition is that, if the person whose conduct is in question were charged in the participating country with the offence to which the overseas freezing order relates or in the United Kingdom with a corresponding offence, he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction.

(7) The second condition is that giving effect to the overseas freezing order would be incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998 (c. 42)).

22 Giving effect to the order

(1) The nominated court is to give effect to the overseas freezing order by issuing a warrant authorising a constable—

- (a) to enter the premises to which the overseas freezing order relates and search the premises to the extent reasonably required for the purpose of discovering any evidence to which the order relates, and
- (b) to seize and retain any evidence for which he is authorised to search.

(2) But, in relation to England and Wales and Northern Ireland, so far as the overseas freezing order relates to excluded material or special procedure material the court is to give effect to the order by making a production order.

(3) A production order is an order for the person who appears to the court to be in possession of the material to produce it to a constable before the end of the period of seven days beginning with the date of the production order or such longer period as the production order may specify.

(4) The constable may take away any material produced to him under a production order; and the material is to be treated for the purposes of section 21 of the Police and Criminal Evidence Act 1984 (c. 60) or (as the case may be) Article 23 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/ 1341 (N.I.12)) (access and copying) as if it had been seized by the constable.

(5) If a person fails to comply with a production order, the court may (whether or not it deals with the matter as a contempt of court) issue a warrant under subsection (1) in respect of the material to which the production order relates.

(6) Section 409 of the Proceeds of Crime Act 2002 (c. 29) (jurisdiction of sheriff) has effect for the purposes of subsection (1) as if that subsection were included in Chapter 3 of Part 8 of that Act.

23 Postponed effect

The nominated court may postpone giving effect to an overseas freezing order in respect of any evidence—

- (a) in order to avoid prejudicing a criminal investigation which is taking place in the United Kingdom, or
- (b) if, under an order made by a court in criminal proceedings in the United Kingdom, the evidence may not be removed from the United Kingdom.

24 Evidence seized under the order

(1) Any evidence seized by or produced to the constable under section 22 is to be retained by him until he is given a notice under subsection (2) or authorised to release it under section 25.

(2) If—

- (a) the overseas freezing order was accompanied by a request for the evidence to be sent to a court or authority mentioned in section 13(2), or
- (b) the territorial authority subsequently receives such a request,

the territorial authority may by notice require the constable to send the evidence to the court or authority that made the request.

25 Release of evidence held under the order

(1) On an application made by a person mentioned below, the nominated court may authorise the release of any evidence retained by a constable under section 24 if, in its opinion—

- (a) the condition in section 21(6) or (7) is met, or
- (b) the overseas freezing order has ceased to have effect in the participating country.

(2) In relation to England and Wales and Northern Ireland, the persons are—

- (a) the chief officer of police to whom a copy of the order was sent,
- (b) the constable,
- (c) any other person affected by the order.

(3) In relation to Scotland, the persons are—

- (a) the procurator fiscal to whom a copy of the order was sent,
- (b) any other person affected by the order.

(4) If the territorial authority decides not to give a notice under section 24(2) in respect of any evidence retained by a constable under that section, the authority must give the constable a notice authorising him to release the evidence.

General

26 Powers under warrants

- (1) A court in England and Wales or Northern Ireland, or a justice of the peace, may not issue a warrant under section 17 or 22 in respect of any evidence unless the court or justice has reasonable grounds for believing that it does not consist of or include items subject to legal privilege, excluded material or special procedure material.
- (2) Subsection (1) does not prevent a warrant being issued by virtue of section 22(5) in respect of excluded material or special procedure material.
- (3) In Schedule 1 to the Criminal Justice and Police Act 2001 (c. 16) (powers of seizure), in Part 1 (powers to which the additional powers in section 50 apply)–
- (a) paragraph 49 is omitted,
 - (b) after paragraph 73B there is inserted–

“73C Crime (International Co-operation) Act 2003

The power of seizure conferred by sections 17 and 22 of the Crime (International Co-operation) Act 2003 (seizure of evidence relevant to overseas investigation or offence).”

- (4) References in this Chapter to evidence seized by a person by virtue of or under any provision of this Chapter include evidence seized by a person by virtue of section 50 of the Criminal Justice and Police Act 2001 (additional powers of seizure), if it is seized in the course of a search authorised by a warrant issued by virtue of or under the provision in question.
- (5) Subsection (4) does not require any evidence to be sent to the territorial authority or to any court or authority–
- (a) before it has been found, on the completion of any examination required to be made by arrangements under section 53(2) of the Criminal Justice and Police Act 2001, to be property within subsection (3) of that section (property which may be retained after examination), or
 - (b) at a time when it constitutes property in respect of which a person is required to ensure that arrangements such as are mentioned in section 61(1) of that Act (duty to secure) are in force.

27 Exercise of powers by others

- (1) The Treasury may by order provide, in relation to England and Wales or Northern Ireland–
- (a) for any function conferred on the Secretary of State (whether or not in terms) under sections 10, 11 and 13 to 26 to be exercisable instead in prescribed circumstances by the Commissioners of Customs and Excise,
 - (b) for any function conferred on a constable under those sections to be exercisable instead in prescribed circumstances by a customs officer or a person acting under the direction of such an officer.

“Prescribed” means prescribed by the order.

- (2) The Secretary of State may by order provide, in relation to England and Wales or Northern Ireland–

- (a) for any function conferred on him under sections 13 to 26 to be exercisable instead in prescribed circumstances by a prescribed person,
- (b) for any function conferred on a constable under those sections to be exercisable instead in prescribed circumstances by a prescribed person.

“Prescribed” means prescribed by the order.

(3) Subsection (2)(b) does not apply to any powers exercisable by virtue of section 16(2)(b) or (4)(b).

28 Interpretation of Chapter 2

(1) In this Chapter—

“domestic freezing order” has the meaning given by section 10(2),

“notice” means a notice in writing,

“overseas freezing order” has the meaning given by section 20,

“premises” has the same meaning as in the Police and Criminal Evidence Act 1984 (c. 60), Chapter 3 of Part 8 of the Proceeds of Crime Act 2002 (c. 29) or the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)) (as the case may be),

“the relevant Framework Decision” means the Framework Decision on the execution in the European Union of orders freezing property or evidence adopted by the Council of the European Union on 22nd July 2003.

(2) The following provisions have effect for the purposes of this Chapter.

(3) In relation to England and Wales and Northern Ireland, “items subject to legal privilege”, “excluded material” and “special procedure material” have the same meaning as in the Police and Criminal Evidence Act 1984 or (as the case may be) the Police and Criminal Evidence (Northern Ireland) Order 1989.

(4) In relation to Scotland, “items subject to legal privilege” has the same meaning as in Chapter 3 of Part 8 of the Proceeds of Crime Act 2002.

(5) A listed offence means—

(a) an offence described in Article 3(2) of the relevant Framework Decision, or

(b) an offence prescribed or of a description prescribed by an order made by the Secretary of State.

(6) An order prescribing an offence or a description of offences under subsection (5)(b) may require, in the case of an overseas freezing order, that the conduct which constitutes the offence or offences would, if it occurred in a part of the United Kingdom, constitute an offence in that part.

(7) Specified information, in relation to a certificate required by section 11(4) or 20(5), means—

(a) any information required to be given by the form of certificate annexed to the relevant Framework Decision, or

(b) any information prescribed by an order made by the Secretary of State.

(8) In relation to Scotland, references above in this section to the Secretary of State are to be read as references to the Scottish Ministers.

(9) The territorial authority—

(a) in relation to evidence in England and Wales or Northern Ireland, is the Secretary of State,

- (b) in relation to evidence in Scotland, is the Lord Advocate.

CHAPTER 3

HEARING EVIDENCE THROUGH TELEVISION LINKS OR BY TELEPHONE

29 Hearing witnesses abroad through television links

(1) The Secretary of State may by order provide for section 32(1A) of the Criminal Justice Act 1988 (c. 33) or Article 81(1A) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)) (proceedings in which evidence may be given through television link) to apply to any further description of criminal proceedings, or to all criminal proceedings.

(2) The Scottish Ministers may by order provide for section 273(1) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (proceedings in which evidence may be given through television link) to apply to any further description of criminal proceedings, or to all criminal proceedings.

30 Hearing witnesses in the UK through television links

(1) This section applies where the Secretary of State receives a request, from an authority mentioned in subsection (2) (“the external authority”), for a person in the United Kingdom to give evidence through a live television link in criminal proceedings before a court in a country outside the United Kingdom.

Criminal proceedings include any proceedings on an appeal before a court against a decision in administrative proceedings.

(2) The authority referred to in subsection (1) is the authority in that country which appears to the Secretary of State to have the function of making requests of the kind to which this section applies.

(3) Unless he considers it inappropriate to do so, the Secretary of State must by notice in writing nominate a court in the United Kingdom where the witness may be heard in the proceedings in question through a live television link.

(4) Anything done by the witness in the presence of the nominated court which, if it were done in proceedings before the court, would constitute contempt of court is to be treated for that purpose as done in proceedings before the court.

(5) Any statement made on oath by a witness giving evidence in pursuance of this section is to be treated for the purposes of—

(a) section 1 of the Perjury Act 1911 (c. 6),

(b) Article 3 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/ 1714 (N.I. 19)),

(c) sections 44 to 46 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) or, in relation to Scotland, any matter pertaining to the common law crime of perjury,

as made in proceedings before the nominated court.

(6) Part 1 of Schedule 2 (evidence given by television link) is to have effect.

(7) Subject to subsections (4) and (5) and the provisions of that Schedule, evidence given pursuant to this section is not to be treated for any purpose as evidence given in proceedings in the United Kingdom.

(8) In relation to Scotland, references in this section and Part 1 of Schedule 2 to the Secretary of State are to be read as references to the Lord Advocate.

31 Hearing witnesses in the UK by telephone

(1) This section applies where the Secretary of State receives a request, from an authority mentioned in subsection (2) (“the external authority”) in a participating country, for a person in the United Kingdom to give evidence by telephone in criminal proceedings before a court in that country. Criminal proceedings include any proceedings on an appeal before a court against a decision in administrative proceedings.

(2) The authority referred to in subsection (1) is the authority in that country which appears to the Secretary of State to have the function of making requests of the kind to which this section applies.

(3) A request under subsection (1) must—

- (a) specify the court in the participating country,
- (b) give the name and address of the witness,
- (c) state that the witness is willing to give evidence by telephone in the proceedings before that court.

(4) Unless he considers it inappropriate to do so, the Secretary of State must by notice in writing nominate a court in the United Kingdom where the witness may be heard in the proceedings in question by telephone.

(5) Anything done by the witness in the presence of the nominated court which, if it were done in proceedings before the court, would constitute contempt of court is to be treated for that purpose as done in proceedings before the court.

(6) Any statement made on oath by a witness giving evidence in pursuance of this section is to be treated for the purposes of—

- (a) section 1 of the Perjury Act 1911 (c. 6),
- (b) Article 3 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/ 1714 (N.I. 19)),
- (c) sections 44 to 46 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) or,

in relation to Scotland, any matter pertaining to the common law crime of perjury, as made in proceedings before the nominated court.

(7) Part 2 of Schedule 2 (evidence given by telephone link) is to have effect.

(8) Subject to subsections (5) and (6) and the provisions of that Schedule, evidence given in pursuance of this section is not to be treated for any purpose as evidence given in proceedings in the United Kingdom.

(9) In relation to Scotland, references in this section to the Secretary of State are to be read as references to the Lord Advocate.

CHAPTER 4

INFORMATION ABOUT BANKING TRANSACTIONS

Requests for information about banking transactions in England and Wales and Northern Ireland for use abroad

32 Customer information

(1) This section applies where the Secretary of State receives a request from an authority mentioned in subsection (2) for customer information to be obtained in relation to a person who appears to him to be subject to an investigation in a participating country into serious criminal conduct.

(2) The authority referred to in subsection (1) is the authority in that country which appears to the Secretary of State to have the function of making requests of the kind to which this section applies.

(3) The Secretary of State may—

- (a) direct a senior police officer to apply, or arrange for a constable to apply, for a customer information order,
- (b) direct a senior customs officer to apply, or arrange for a customs officer to apply, for such an order.

(4) A customer information order is an order made by a judge that a financial institution specified in the application for the order must, on being required to do so by notice in writing given by the applicant for the order, provide any such customer information as it has relating to the person specified in the application.

(5) A financial institution which is required to provide information under a customer information order must provide the information to the applicant for the order in such manner, and at or by such time, as the applicant requires.

(6) Section 364 of the Proceeds of Crime Act 2002 (c. 29) (meaning of customer information), except subsections (2)(f) and (3)(i), has effect for the purposes of this section as if this section were included in Chapter 2 of Part 8 of that Act.

(7) A customer information order has effect in spite of any restriction on the disclosure of information (however imposed).

(8) Customer information obtained in pursuance of a customer information order is to be given to the Secretary of State and sent by him to the authority which made the request.

33 Making, varying or discharging customer information orders

(1) A judge may make a customer information order, on an application made to him pursuant to a direction under section 32(3), if he is satisfied that—

- (a) the person specified in the application is subject to an investigation in the country in question,
- (b) the investigation concerns conduct which is serious criminal conduct,
- (c) the conduct constitutes an offence in England and Wales or (as the case may be) Northern Ireland, or would do were it to occur there, and
- (d) the order is sought for the purposes of the investigation.

- (2) The application may be made ex parte to a judge in chambers.
- (3) The application may specify—
 - (a) all financial institutions,
 - (b) a particular description, or particular descriptions, of financial institutions, or
 - (c) a particular financial institution or particular financial institutions.
- (4) The court may discharge or vary a customer information order on an application made by—
 - (a) the person who applied for the order,
 - (b) a senior police officer,
 - (c) a constable authorised by a senior police officer to make the application,
 - (d) a senior customs officer,
 - (e) a customs officer authorised by a senior customs officer to make the application.

34 Offences

- (1) A financial institution is guilty of an offence if without reasonable excuse it fails to comply with a requirement imposed on it under a customer information order.
- (2) A financial institution guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) A financial institution is guilty of an offence if, in purported compliance with a customer information order, it—
 - (a) makes a statement which it knows to be false or misleading in a material particular, or
 - (b) recklessly makes a statement which is false or misleading in a material particular.
- (4) A financial institution guilty of an offence under subsection (3) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine.

35 Account information

- (1) This section applies where the Secretary of State receives a request from an authority mentioned in subsection (2) for account information to be obtained in relation to an investigation in a participating country into criminal conduct.
- (2) The authority referred to in subsection (1) is the authority in that country which appears to the Secretary of State to have the function of making requests of the kind to which this section applies.
- (3) The Secretary of State may—
 - (a) direct a senior police officer to apply, or arrange for a constable to apply, for an account monitoring order,
 - (b) direct a senior customs officer to apply, or arrange for a customs officer to apply, for such an order.
- (4) An account monitoring order is an order made by a judge that a financial institution specified in the application for the order must, for the period stated in the order, provide account information of the description specified in the order to the applicant in the manner, and at or by the time or times, stated in the order.

- (5) Account information is information relating to an account or accounts held at the financial institution specified in the application by the person so specified (whether solely or jointly with another).
- (6) An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).
- (7) Account information obtained in pursuance of an account monitoring order is to be given to the Secretary of State and sent by him to the authority which made the request.

36 Making, varying or discharging account monitoring orders

- (1) A judge may make an account monitoring order, on an application made to him in pursuance of a direction under section 35(3), if he is satisfied that—
- (a) there is an investigation in the country in question into criminal conduct, and
 - (b) the order is sought for the purposes of the investigation.
- (2) The application may be made ex parte to a judge in chambers.
- (3) The application may specify information relating to—
- (a) all accounts held by the person specified in the application for the order at the financial institution so specified,
 - (b) a particular description, or particular descriptions, of accounts so held, or
 - (c) a particular account, or particular accounts, so held.
- (4) The court may discharge or vary an account monitoring order on an application made by—
- (a) the person who applied for the order,
 - (b) a senior police officer,
 - (c) a constable authorised by a senior police officer to make the application,
 - (d) a senior customs officer,
 - (e) a customs officer authorised by a senior customs officer to make the application.
- (5) Account monitoring orders have effect as if they were orders of the court.

Requests for information about banking transactions in Scotland for use abroad

37 Customer information

- (1) This section applies where the Lord Advocate receives a request from an authority mentioned in subsection (2) for customer information to be obtained in relation to a person who appears to him to be subject to an investigation in a participating country into serious criminal conduct.
- (2) The authority referred to in subsection (1) is the authority in that country which appears to the Lord Advocate to have the function of making requests of the kind to which this section applies.
- (3) The Lord Advocate may direct a procurator fiscal to apply for a customer information order.
- (4) A customer information order is an order made by a sheriff that a financial institution specified in the application for the order must, on being required to do so by notice in writing given by the applicant for the order, provide any such customer information as it has relating to the person specified in the application.

(5) A financial institution which is required to provide information under a customer information order must provide the information to the applicant for the order in such manner, and at or by such time, as the applicant requires.

(6) Section 398 of the Proceeds of Crime Act 2002 (c. 29) (meaning of customer information), except subsections (2)(f) and (3)(i), has effect for the purposes of this section as if this section were included in Chapter 3 of Part 8 of that Act.

(7) A customer information order has effect in spite of any restriction on the disclosure of information (however imposed).

(8) Customer information obtained in pursuance of a customer information order is to be given to the Lord Advocate and sent by him to the authority which made the request.

38 Making, varying or discharging customer information orders

(1) A sheriff may make a customer information order, on an application made to him pursuant to a direction under section 37(3), if he is satisfied that—

- (a) the person specified in the application is subject to an investigation in the country in question,
- (b) the investigation concerns conduct which is serious criminal conduct,
- (c) the conduct constitutes an offence in Scotland, or would do were it to occur in Scotland, and
- (d) the order is sought for the purposes of the investigation.

(2) The application may be made ex parte to a sheriff in chambers.

(3) The application may specify—

- (a) all financial institutions,
- (b) a particular description, or particular descriptions, of financial institutions, or
- (c) a particular financial institution or particular financial institutions.

(4) The court may discharge or vary a customer information order on an application made by the procurator fiscal.

(5) Section 409 of the Proceeds of Crime Act 2002 (jurisdiction of sheriff) has effect for the purposes of this section as if this section were included in Chapter 3 of Part 8 of that Act.

39 Offences

(1) A financial institution is guilty of an offence if without reasonable excuse it fails to comply with a requirement imposed on it under a customer information order.

(2) A financial institution guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) A financial institution is guilty of an offence if, in purported compliance with a customer information order, it—

- (a) makes a statement which it knows to be false or misleading in a material particular, or
- (b) recklessly makes a statement which is false or misleading in a material particular.

(4) A financial institution guilty of an offence under subsection (3) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, or

- (b) on conviction on indictment, to a fine.

40 Account information

- (1) This section applies where the Lord Advocate receives a request from an authority mentioned in subsection (2) for account information to be obtained in relation to an investigation in a participating country into criminal conduct.
- (2) The authority referred to in subsection (1) is the authority in that country which appears to the Lord Advocate to have the function of making requests of the kind to which this section applies.
- (3) The Lord Advocate may direct a procurator fiscal to apply for an account monitoring order.
- (4) An account monitoring order is an order made by a sheriff that a financial institution specified in the application for the order must, for the period stated in the order, provide account information of the description specified in the order to the applicant in the manner, and at or by the time or times, stated in the order.
- (5) Account information is information relating to an account or accounts held at the financial institution specified in the application by the person so specified (whether solely or jointly with another).
- (6) An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).
- (7) Account information obtained in pursuance of an account monitoring order is to be given to the Lord Advocate and sent by him to the authority which made the request.

41 Making, varying or discharging account monitoring orders

- (1) A sheriff may make an account monitoring order, on an application made to him in pursuance of a direction under section 40(3), if he is satisfied that—
 - (a) there is an investigation in the country in question into criminal conduct, and
 - (b) the order is sought for the purposes of the investigation.
- (2) The application may be made ex parte to a sheriff in chambers.
- (3) The application may specify information relating to—
 - (a) all accounts held by the person specified in the application for the order at the financial institution so specified,
 - (b) a particular description, or particular descriptions, of accounts so held, or
 - (c) a particular account, or particular accounts, so held.
- (4) The court may discharge or vary an account monitoring order on an application made by the procurator fiscal.
- (5) Section 409 of the Proceeds of Crime Act 2002 (c. 29) (jurisdiction of sheriff) has effect for the purposes of this section as if this section were included in Chapter 3 of Part 8 of that Act.

*Disclosure of information***42 Offence of disclosure**

- (1) This section applies where—
 - (a) a financial institution is specified in a customer information order or account monitoring order made in any part of the United Kingdom, or
 - (b) the Secretary of State or the Lord Advocate receives a request under section 13 for evidence to be obtained from a financial institution in connection with the investigation of an offence in reliance on Article 2 (requests for information on banking transactions) of the 2001 Protocol.
- (2) If the institution, or an employee of the institution, discloses any of the following information, the institution or (as the case may be) the employee is guilty of an offence.
- (3) That information is—
 - (a) that the request to obtain customer information or account information, or the request mentioned in subsection (1)(b), has been received,
 - (b) that the investigation to which the request relates is being carried out, or
 - (c) that, in pursuance of the request, information has been given to the authority which made the request.
- (4) An institution guilty of an offence under this section is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum,
 - (b) on conviction on indictment, to a fine.
- (5) Any other person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both,
 - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.

*Requests for information about banking transactions for use in UK***43 Information about a person's bank account**

- (1) If it appears to a judicial authority in the United Kingdom, on an application made by a prosecuting authority, that—
 - (a) a person is subject to an investigation in the United Kingdom into serious criminal conduct,
 - (b) the person holds, or may hold, an account at a bank which is situated in a participating country, and
 - (c) the information which the applicant seeks to obtain is likely to be of substantial value for the purposes of the investigation,the judicial authority may request assistance under this section.
- (2) The judicial authorities are—
 - (a) in relation to England and Wales, any judge or justice of the peace,
 - (b) in relation to Scotland, any sheriff,

- (c) in relation to Northern Ireland, any judge or resident magistrate.
- (3) If it appears to a prosecuting authority mentioned in subsection (4) that paragraphs (a) to (c) of subsection (1) are met, the authority may itself request assistance under this section.
- (4) The prosecuting authorities are—
- (a) in relation to England and Wales and Northern Ireland, a prosecuting authority designated by an order made by the Secretary of State,
 - (b) in relation to Scotland, the Lord Advocate or a procurator fiscal.
- (5) The assistance that may be requested under this section is any assistance in obtaining from a participating country one or more of the following—
- (a) information as to whether the person in question holds any accounts at any banks situated in the participating country,
 - (b) details of any such accounts,
 - (c) details of transactions carried out in any period specified in the request in respect of any such accounts.
- (6) A request for assistance under this section must—
- (a) state the grounds on which the authority making the request thinks that the person in question may hold any account at a bank which is situated in a participating country and (if possible) specify the bank or banks in question,
 - (b) state the grounds on which the authority making the request considers that the information sought to be obtained is likely to be of substantial value for the purposes of the investigation, and
 - (c) include any information which may facilitate compliance with the request.
- (7) For the purposes of this section, a person holds an account if—
- (a) the account is in his name or is held for his benefit, or
 - (b) he has a power of attorney in respect of the account.

In relation to Scotland, a power of attorney includes a factory and commission.

44 Monitoring banking transactions

- (1) If it appears to a judicial authority in the United Kingdom, on an application made by a prosecuting authority, that the information which the applicant seeks to obtain is relevant to an investigation in the United Kingdom into criminal conduct, the judicial authority may request assistance under this section.
- (2) The judicial authorities are—
- (a) in relation to England and Wales, any judge or justice of the peace,
 - (b) in relation to Scotland, any sheriff,
 - (c) in relation to Northern Ireland, any judge or resident magistrate.
- (3) If it appears to a prosecuting authority mentioned in subsection (4) that the information which it seeks to obtain is relevant to an investigation into criminal conduct, the authority may itself request assistance under this section.
- (4) The prosecuting authorities are—
- (a) in relation to England and Wales and Northern Ireland, a prosecuting authority designated by an order made by the Secretary of State,
 - (b) in relation to Scotland, the Lord Advocate or a procurator fiscal.

(5) The assistance that may be requested under this section is any assistance in obtaining from a participating country details of transactions to be carried out in any period specified in the request in respect of any accounts at banks situated in that country.

45 Sending requests for assistance

(1) A request for assistance under section 43 or 44, other than one to which subsection (3) or (4) applies, is to be sent to the Secretary of State for forwarding–

(a) to a court specified in the request and exercising jurisdiction in the place where the information is to be obtained, or

(b) to any authority recognised by the participating country in question as the appropriate authority for receiving requests for assistance of the kind to which this section applies.

(2) But in cases of urgency the request may be sent to a court referred to in subsection (1)(a).

(3) Such a request for assistance by the Lord Advocate is to be sent to a court or authority mentioned in subsection (1)(a) or (b).

(4) Such a request for assistance by a sheriff or a procurator fiscal is to be sent to such a court or authority, or to the Lord Advocate for forwarding to such a court or authority.

General

46 Interpretation of Chapter 4

(1) In this Chapter–

“the court” means the Crown Court or, in Scotland, the sheriff,

“senior police officer” means a police officer who is not below the rank of superintendent and “senior customs officer” means a customs officer who is not below the grade designated by the Commissioners of Customs and Excise as equivalent to that rank.

(2) The following provisions apply for the purposes of this Chapter.

(3) Serious criminal conduct means conduct which constitutes–

(a) an offence to which paragraph 3 of Article 1 (request for information on bank accounts) of the 2001 Protocol applies, or

(b) an offence specified in an order made by the Secretary of State or, in relation to Scotland, the Scottish Ministers for the purpose of giving effect to any decision of the Council of the European Union under paragraph 6 of that Article.

(4) A financial institution–

(a) means a person who is carrying on business in the regulated sector, and

(b) in relation to a customer information order or an account monitoring order, includes a person who was carrying on business in the regulated sector at a time which is the time to which any requirement for him to provide information under the order is to relate.

“Business in the regulated sector” is to be interpreted in accordance with Schedule 9 to the Proceeds of Crime Act 2002 (c. 29).

(5) A judge means–

- (a) in relation to England and Wales, a judge entitled to exercise the jurisdiction of the Crown Court,
- (b) in relation to Northern Ireland, a Crown Court judge.

CHAPTER 5

TRANSFER OF PRISONERS

47 Transfer of UK prisoner to assist investigation abroad

(1) The Secretary of State may pursuant to an agreement with the competent authority of a participating country issue a warrant providing for any person to whom this section applies (“a prisoner”) to be transferred to that country for the purpose of assisting there in the investigation of an offence.

The offence must be one which was or may have been committed in the United Kingdom.

(2) This section applies to a person—

- (a) serving a sentence in a prison,
- (b) in custody awaiting trial or sentence, or
- (c) committed to prison for default in paying a fine.

(3) But, in relation to transfer from Scotland—

- (a) this section applies to any person detained in custody,
- (b) references in this section to the Secretary of State are to be read as references to the Scottish Ministers.

(4) A warrant may be issued in respect of a prisoner under subsection (1) only if—

- (a) the prisoner, or
- (b) in the circumstances mentioned in subsection (5), a person appearing to the Secretary of State to be an appropriate person to act on the prisoner's behalf,

has made a written statement consenting to his being transferred for the purpose mentioned in subsection (1).

(5) The circumstances are those in which it appears to the Secretary of State to be inappropriate for the prisoner to act for himself, by reason of his physical or mental condition or his youth.

(6) Such consent cannot be withdrawn after the issue of the warrant.

(7) A warrant under this section authorises—

- (a) the taking of the prisoner to a place in the United Kingdom and his delivery at a place of departure from the United Kingdom into the custody of a person representing the appropriate authority of the participating country to which the prisoner is to be transferred, and
- (b) the bringing of the prisoner back to the United Kingdom and his transfer in custody to the place where he is liable to be detained under the sentence or order to which he is subject.

(8) References to a prison in this section include any other institution to which the Prison Act 1952 (c. 52), the Prison Act (Northern Ireland) 1953 (c. 18 (N.I.)) or Article 45(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/ 1504 (N.I.9)) applies.

(9) Subsections (3A) to (8) of section 5 of the 1990 Act (transfer of UK prisoner to give evidence or assist investigation overseas) have effect in relation to a warrant issued under this section as they have effect in relation to a warrant issued under that section.

48 Transfer of EU etc. prisoner to assist UK investigation

(1) The Secretary of State may pursuant to an agreement with the competent authority of a participating country issue a warrant providing for any person to whom this section applies (“the overseas prisoner”) to be transferred to the United Kingdom for the purpose of assisting in the investigation of an offence.

The offence must be one which was or may have been committed in the participating country.

(2) This section applies to a person who is detained in custody in a participating country—
(a) by virtue of a sentence or order of a court exercising criminal jurisdiction there, or
(b) in consequence of having been transferred there from the United Kingdom under the Repatriation of Prisoners Act 1984 (c. 47) or under any similar provision or arrangement from any other country.

(3) But, in relation to transfer to Scotland—
(a) this section applies to any person who is detained in custody in a participating country,
(b) the reference in subsection (1) to the Secretary of State is to be read as a reference to the Scottish Ministers.

(4) A warrant may be issued in respect of an overseas prisoner under subsection (1) only if the competent authority provides a written statement made by the prisoner consenting to his being transferred for the purpose mentioned in that subsection.

(5) Such consent cannot be withdrawn after the issue of the warrant.

(6) A warrant under this section authorises—
(a) the bringing of the prisoner to the United Kingdom,
(b) the taking of the prisoner to, and his detention in custody at, any place or places in the United Kingdom specified in the warrant,
(c) the returning of the prisoner to the country from which he has come.

(7) Subsections (4) to (8) of section 5 of the 1990 Act have effect in relation to a warrant issued under this section as they have effect in relation to a warrant issued under that section.

(8) A person is not subject to the Immigration Act 1971 (c. 77) in respect of his entry into or presence in the United Kingdom pursuant to a warrant under this section; but if the warrant ceases to have effect while he is still in the United Kingdom—

- (a) he is to be treated for the purposes of that Act as if he has then illegally entered the United Kingdom, and
- (b) the provisions of Schedule 2 to that Act have effect accordingly except that paragraph 20(1) (liability of carrier for expenses of custody etc. of illegal entrant) does not have effect in relation to directions for his removal given by virtue of this subsection.

CHAPTER 6

SUPPLEMENTARY

49 Rules of court

- (1) Provision may be made by rules of court as to the practice and procedure to be followed in connection with proceedings under this Part.
- (2) Rules of court made under this section by the High Court in Scotland are to be made by Act of Adjournal.
- (3) The power to make rules of court under this section does not prejudice any existing power to make rules.

50 Subordinate legislation

- (1) Any power to make an order conferred by this Part on the Secretary of State, the Treasury or the Scottish Ministers is exercisable by statutory instrument.
- (2) Such an order may make different provision for different purposes.
- (3) A statutory instrument (other than an instrument to which subsection (5) applies) containing an order made by the Secretary of State or the Treasury is to be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A statutory instrument (other than an instrument to which subsection (5) applies) containing an order made by the Scottish Ministers is to be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) A statutory instrument containing an order under section 51(2)(b) designating a country other than a member State is not to be made unless—
 - (a) in the case of an order to be made by the Secretary of State, a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament,
 - (b) in the case of an order to be made by the Scottish Ministers, a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

51 General interpretation

- (1) In this Part—
 - “the 1990 Act” means the Criminal Justice (International Co-operation) Act 1990 (c. 5),
 - “the 2001 Protocol” means the Protocol to the Mutual Legal Assistance Convention, established by Council Act of 16th October 2001 (2001/C326/01),
 - “administrative proceedings” means proceedings outside the United Kingdom to which Article 3(1) of the Mutual Legal Assistance Convention applies (proceedings brought by administrative authorities in respect of administrative offences where a decision in the proceedings may be the subject of an appeal before a court),
 - “chief officer of police”—
 - (a) in relation to any area in Scotland, means the chief constable for the police force maintained for that area,

- (b) in relation to any area in Northern Ireland, means the Chief Constable of the Police Service of Northern Ireland,
- “clemency proceedings” means proceedings in a country outside the United Kingdom, not being proceedings before a court exercising criminal jurisdiction, for the removal or reduction of a penalty imposed on conviction of an offence,
- “country” includes territory,
- “court” includes a tribunal,
- “criminal proceedings” include criminal proceedings outside the United Kingdom in which a civil order may be made,
- “customs officer” means an officer commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979 (c. 2),
- “evidence” includes information in any form and articles, and giving evidence includes answering a question or producing any information or article,
- “the Mutual Legal Assistance Convention” means the Convention on Mutual Assistance in Criminal Matters established by Council Act of 29th May 2000 (2000/C197/01),
- “the Schengen Convention” means the Convention implementing the Schengen Agreement of 14th June 1985.
- (2) A participating country, in relation to any provision of this Part, means—
- (a) a country other than the United Kingdom which is a member State on a day appointed for the commencement of that provision, and
 - (b) any other country designated by an order made by the Secretary of State or, in relation to Scotland, the Scottish Ministers.
- (3) In this Part, “process”, in relation to England and Wales and Northern Ireland, means any summons or order issued or made by a court and includes—
- (a) any other document issued or made by a court for service on parties or witnesses,
 - (b) any document issued by a prosecuting authority outside the United Kingdom for the purposes of criminal proceedings.
- (4) In this Part, “process”, in relation to service in Scotland, means a citation by a court or by a prosecuting authority, or an order made by a court, and includes any other document issued or made as mentioned in subsection (3)(a) or (b).

PART 2

TERRORIST ACTS AND THREATS: JURISDICTION

52 Jurisdiction for terrorist offences

After section 63 of the Terrorism Act 2000 (c. 11) there is inserted—

“Extra-territorial jurisdiction for other terrorist offences etc.

63A Other terrorist offences under this Act: jurisdiction

(1) If—

(a) a United Kingdom national or a United Kingdom resident does anything outside the United Kingdom, and
 (b) his action, if done in any part of the United Kingdom, would have constituted an offence under section 54 or any of sections 56 to 61,
 he shall be guilty in that part of the United Kingdom of the offence.

(2) For the purposes of this section and sections 63B and 63C a “United Kingdom national” means an individual who is—

- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
- (b) a person who under the British Nationality Act 1981 is a British subject, or
- (c) a British protected person within the meaning of that Act.

(3) For the purposes of this section and sections 63B and 63C a “United Kingdom resident” means an individual who is resident in the United Kingdom.

63B Terrorist attacks abroad by UK nationals or residents: jurisdiction

(1) If—

- (a) a United Kingdom national or a United Kingdom resident does anything outside the United Kingdom as an act of terrorism or for the purposes of terrorism, and
- (b) his action, if done in any part of the United Kingdom, would have constituted an offence listed in subsection (2),

he shall be guilty in that part of the United Kingdom of the offence.

(2) These are the offences—

- (a) murder, manslaughter, culpable homicide, rape, assault causing injury, assault to injury, kidnapping, abduction or false imprisonment,
- (b) an offence under section 4, 16, 18, 20, 21, 22, 23, 24, 28, 29, 30 or 64 of the Offences against the Person Act 1861,
- (c) an offence under any of sections 1 to 5 of the Forgery and Counterfeiting Act 1981,
- (d) the uttering of a forged document or an offence under section 46A of the Criminal Law (Consolidation) (Scotland) Act 1995,
- (e) an offence under section 1 or 2 of the Criminal Damage Act 1971,
- (f) an offence under Article 3 or 4 of the Criminal Damage (Northern Ireland) Order 1977,
- (g) malicious mischief,
- (h) wilful fire-raising.

63C Terrorist attacks abroad on UK nationals, residents and diplomatic staff etc: jurisdiction

(1) If—

- (a) a person does anything outside the United Kingdom as an act of terrorism or for the purposes of terrorism,
- (b) his action is done to, or in relation to, a United Kingdom national, a United Kingdom resident or a protected person, and

(c) his action, if done in any part of the United Kingdom, would have constituted an offence listed in subsection (2),
 he shall be guilty in that part of the United Kingdom of the offence.

(2) These are the offences–

- (a) murder, manslaughter, culpable homicide, rape, assault causing injury, assault to injury, kidnapping, abduction or false imprisonment,
- (b) an offence under section 4, 16, 18, 20, 21, 22, 23, 24, 28, 29, 30 or 64 of the Offences against the Person Act 1861,
- (c) an offence under section 1, 2, 3, 4 or 5(1) or (3) of the Forgery and Counterfeiting Act 1981,
- (d) the uttering of a forged document or an offence under section 46A(1) of the Criminal Law (Consolidation) (Scotland) Act 1995.

(3) For the purposes of this section and section 63D a person is a protected person if–

- (a) he is a member of a United Kingdom diplomatic mission within the meaning of Article 1(b) of the Vienna Convention on Diplomatic Relations signed in 1961 (as that Article has effect in the United Kingdom by virtue of section 2 of and Schedule 1 to the Diplomatic Privileges Act 1964),
- (b) he is a member of a United Kingdom consular post within the meaning of Article 1(g) of the Vienna Convention on Consular Relations signed in 1963 (as that Article has effect in the United Kingdom by virtue of section 1 of and Schedule 1 to the Consular Relations Act 1968),
- (c) he carries out any functions for the purposes of the European Agency for the Evaluation of Medicinal Products, or
- (d) he carries out any functions for the purposes of a body specified in an order made by the Secretary of State.

(4) The Secretary of State may specify a body under subsection (3)(d) only if–

- (a) it is established by or under the Treaty establishing the European Community or the Treaty on European Union, and
- (b) the principal place in which its functions are carried out is a place in the United Kingdom.

(5) If in any proceedings a question arises as to whether a person is or was a protected person, a certificate–

- (a) issued by or under the authority of the Secretary of State, and
- (b) stating any fact relating to the question,

is to be conclusive evidence of that fact.

63D Terrorist attacks or threats abroad in connection with UK diplomatic premises etc: jurisdiction

(1) If–

- (a) a person does anything outside the United Kingdom as an act of terrorism or for the purposes of terrorism,
- (b) his action is done in connection with an attack on relevant premises or on a vehicle ordinarily used by a protected person,

(c) the attack is made when a protected person is on or in the premises or vehicle, and

(d) his action, if done in any part of the United Kingdom, would have constituted an offence listed in subsection (2),

he shall be guilty in that part of the United Kingdom of the offence.

(2) These are the offences–

(a) an offence under section 1 of the Criminal Damage Act 1971,

(b) an offence under Article 3 of the Criminal Damage (Northern Ireland) Order 1977,

(c) malicious mischief,

(d) wilful fire-raising.

(3) If–

(a) a person does anything outside the United Kingdom as an act of terrorism or for the purposes of terrorism,

(b) his action consists of a threat of an attack on relevant premises or on a vehicle ordinarily used by a protected person,

(c) the attack is threatened to be made when a protected person is, or is likely to be, on or in the premises or vehicle, and

(d) his action, if done in any part of the United Kingdom, would have constituted an offence listed in subsection (4),

he shall be guilty in that part of the United Kingdom of the offence.

(4) These are the offences–

(a) an offence under section 2 of the Criminal Damage Act 1971,

(b) an offence under Article 4 of the Criminal Damage (Northern Ireland) Order 1977,

(c) breach of the peace (in relation to Scotland only).

(5) “Relevant premises” means–

(a) premises at which a protected person resides or is staying, or

(b) premises which a protected person uses for the purpose of carrying out his functions as such a person.

63E Sections 63B to 63D: supplementary

(1) Proceedings for an offence which (disregarding the Acts listed in subsection (2)) would not be an offence apart from section 63B, 63C or 63D are not to be started–

(a) in England and Wales, except by or with the consent of the Attorney General,

(b) in Northern Ireland, except by or with the consent of the Advocate General for Northern Ireland.

(2) These are the Acts–

(a) the Internationally Protected Persons Act 1978,

(b) the Suppression of Terrorism Act 1978,

(c) the Nuclear Material (Offences) Act 1983,

(d) the United Nations Personnel Act 1997.

(3) For the purposes of sections 63C and 63D it is immaterial whether a person knows that another person is a United Kingdom national, a United Kingdom resident or a protected person.

(4) In relation to any time before the coming into force of section 27(1) of the Justice (Northern Ireland) Act 2002, the reference in subsection (1)(b) to the Advocate General for Northern Ireland is to be read as a reference to the Attorney General for Northern Ireland.”

53 Jurisdiction for offence under section 113 of the Anti-terrorism, Crime and Security Act 2001

After section 113 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (use of noxious substances or things to cause harm and intimidate) there is inserted–

“113A Application of section 113

- (1) Section 113 applies to conduct done–
 - (a) in the United Kingdom; or
 - (b) outside the United Kingdom which satisfies the following two conditions.
- (2) The first condition is that the conduct is done for the purpose of advancing a political, religious or ideological cause.
- (3) The second condition is that the conduct is–
 - (a) by a United Kingdom national or a United Kingdom resident;
 - (b) by any person done to, or in relation to, a United Kingdom national, a United Kingdom resident or a protected person; or
 - (c) by any person done in circumstances which fall within section 63D(1)(b) and (c) or (3)(b) and (c) of the Terrorism Act 2000.
- (4) The following expressions have the same meaning as they have for the purposes of sections 63C and 63D of that Act–
 - (a) “United Kingdom national”;
 - (b) “United Kingdom resident”;
 - (c) “protected person”.
- (5) For the purposes of this section it is immaterial whether a person knows that another is a United Kingdom national, a United Kingdom resident or a protected person.

113B Consent to prosecution for offence under section 113

- (1) Proceedings for an offence committed under section 113 outside the United Kingdom are not to be started–
 - (a) in England and Wales, except by or with the consent of the Attorney General;
 - (b) in Northern Ireland, except by or with the consent of the Advocate General for Northern Ireland.
- (2) Proceedings for an offence committed under section 113 outside the United Kingdom may be taken, and the offence may for incidental purposes be treated as having been committed, in any part of the United Kingdom.

(3) In relation to any time before the coming into force of section 27(1) of the Justice (Northern Ireland) Act 2002, the reference in subsection (1)(b) to the Advocate General for Northern Ireland is to be read as a reference to the Attorney General for Northern Ireland.”

PART 3

ROAD TRAFFIC

CHAPTER 1

CONVENTION ON DRIVING DISQUALIFICATIONS

Road traffic offences in UK

54 Application of section 55

- (1) Section 55 applies where—
 - (a) an individual (“the offender”) who is normally resident in a member State other than the United Kingdom is convicted of an offence mentioned in Schedule 3,
 - (b) no appeal is outstanding in relation to the offence, and
 - (c) the driving disqualification condition is met in relation to the offence.
- (2) The driving disqualification condition is met—
 - (a) in relation to an offence mentioned in Part 1 of Schedule 3, if an order of disqualification is made in respect of the offence,
 - (b) in relation to an offence mentioned in Part 2 of that Schedule, if an order of disqualification for a period not less than the minimum period is made in respect of the offence.
- (3) The minimum period is—
 - (a) a period of six months, or
 - (b) where the State in which the offender normally resides is a prescribed State, a shorter period equal to the period prescribed in relation to the State.
- (4) Section 55 does not apply in prescribed circumstances.
- (5) For the purposes of this section no appeal is outstanding in relation to an offence if—
 - (a) no appeal is brought against an offender's conviction of the offence, or any order made on his conviction, within the time allowed for making such appeals, or
 - (b) such an appeal is brought and the proceedings on appeal are finally concluded.

55 Duty to give notice to foreign authorities of driving disqualification of a non-UK resident

- (1) Where this section applies, the appropriate Minister must give the central authority of the State in which the offender is normally resident a notice under this section.
- (2) A notice under this section must—
 - (a) give the name, address and date of birth of the offender,
 - (b) give particulars of the offence,
 - (c) state that no appeal is outstanding in relation to it,

- (d) give particulars of the disqualification,
 - (e) state whether or not the offender took part in the proceedings in which the disqualification was imposed,
 - (f) state that the offender has been informed that any decision made for the purposes of the convention on driving disqualifications will have no effect on the disqualification.
- (3) A notice under this section may contain such other information as the appropriate Minister considers appropriate.
- (4) A notice under this section must be accompanied by the original or a certified copy of the order of disqualification.
- (5) Where the offender did not take part in the proceedings mentioned in subsection (2)(e), a notice under this section must also be accompanied by evidence that the offender was duly notified of those proceedings.
- (6) Where the offender is the holder of a Community licence, a notice under this section must also be accompanied by the licence unless it has been returned to the driver—
- (a) under section 91A(7)(b)(ii) of the Road Traffic Offenders Act 1988 (c. 53), or
 - (b) under Article 92A(7)(b)(ii) of the Road Traffic Offenders (Northern Ireland) Order 1996 (S.I. 1996/ 1320 (N.I.10)).
- (7) Where the period of disqualification is reduced by virtue of section 34A of that Act or Article 36 of that Order, the appropriate Minister must give the central authority particulars of the reduction.
- (8) Where the disqualification is removed by an order under section 42 of that Act or Article 47 of that Order, the appropriate Minister must give the central authority particulars of the removal.
- (9) The appropriate Minister must provide—
- (a) the central authority, or
 - (b) the competent authority of the State mentioned in subsection (1),
- with any further information which it requires for the purposes of the convention on driving disqualifications.

Disqualification in respect of road traffic offences outside UK

56 Application of section 57

- (1) Section 57 applies where—
- (a) an individual (“the offender”) who is normally resident in the United Kingdom is convicted in another member State of an offence falling within subsection (5),
 - (b) no appeal is outstanding in relation to the offence,
 - (c) the driving disqualification condition is met in relation to the offence, and
 - (d) the offender was duly notified of the proceedings (“the relevant proceedings”) in which the disqualification was imposed and was entitled to take part in them.
- (2) The driving disqualification condition is met—
- (a) in relation to an offence falling within subsection (5)(a), if, as a result of the offence, the offender is disqualified in the State in which the conviction is made,
 - (b) in relation to an offence falling within subsection (5)(b), if, as a result of the offence, the offender is disqualified in that State for a period not less than the minimum period.

- (3) For the purposes of this section an offender is disqualified in a State if he is disqualified in that State for holding or obtaining a licence to drive a motor vehicle granted under the law of that State (however the disqualification is described under that law).
- (4) The minimum period is—
- (a) a period of six months, or
 - (b) where the State in which the conviction is made is a prescribed State, a shorter period equal to the period prescribed in relation to that State.
- (5) An offence falls within this subsection if it is constituted by—
- (a) conduct falling within any of paragraphs 1 to 5 of the Annex to the convention on driving disqualifications, or
 - (b) other conduct which constitutes a road traffic offence for the purposes of that convention.
- (6) Section 57 does not apply if the relevant proceedings were brought later than the time at which summary proceedings for any corresponding offence under the law of the part of the United Kingdom in which the offender is normally resident could have been brought.
- (7) An offence is a corresponding offence if—
- (a) the conduct constituting the offence outside the United Kingdom took place in any part of the United Kingdom, and
 - (b) that conduct is, or corresponds to, conduct which would constitute an offence under the law of that part.
- (8) The appropriate Minister may make regulations treating offences under the law of a part of the United Kingdom as corresponding to offences under the law of a member State other than the United Kingdom.
- (9) For the purposes of this section no appeal is outstanding in relation to an offence if—
- (a) no appeal is brought against an offender's conviction of the offence, or any decision made as a result of his conviction, within the time allowed for making such appeals, or
 - (b) such an appeal is brought and the proceedings on appeal are finally concluded.

57 Recognition in United Kingdom of foreign driving disqualification

- (1) Where this section applies, the appropriate Minister—
- (a) must give the offender a notice under this section if the unexpired period of the foreign disqualification is not less than one month, and
 - (b) may give him a notice under this section if that period is less than one month.
- (2) The unexpired period of the foreign disqualification is—
- (a) the period of the foreign disqualification, less
 - (b) any period of that disqualification which is treated by regulations made by the appropriate Minister as having been served in the State in which the offender was convicted.
- (3) The provision which may be made by regulations under subsection (2)(b) includes provision for treating any period during which a central authority or competent authority of a State has seized a licence without returning it as a period which has been served in that State.
- (4) If the appropriate Minister gives the offender a notice under this section, the offender is disqualified in each part of the United Kingdom—
- (a) for the relevant period, and

- (b) if the foreign disqualification is also effective until a condition is satisfied, until the condition or a corresponding prescribed condition is satisfied.
- (5) The relevant period is the period which–
 - (a) begins at the end of the period of 21 days beginning with the day on which the notice is given, and
 - (b) is equal to the unexpired period of the foreign disqualification.
- (6) But if the foreign disqualification is at any time removed otherwise than in prescribed circumstances, the offender ceases to be disqualified in each part of the United Kingdom from that time.
- (7) The appropriate Minister may make regulations substituting a longer period for the period for the time being mentioned in subsection (5)(a).
- (8) Where the foreign disqualification is for life–
 - (a) the condition in subsection (1)(a) is to be treated as satisfied, and
 - (b) the other references in this section and section 58 to the unexpired period of the foreign disqualification are to be read as references to a disqualification for life.

58 Notice under section 57

- (1) A notice under section 57 must–
 - (a) give particulars of the offence in respect of which the foreign disqualification was imposed and the period of that disqualification,
 - (b) state that the offender is disqualified in each part of the United Kingdom for a period equal to the unexpired period of the foreign disqualification,
 - (c) state the date from which, and period for which, he is disqualified,
 - (d) give particulars of any relevant condition mentioned in section 57(4)(b),
 - (e) give details of his right to appeal under section 59.
- (2) A notice under section 57 must be in writing.
- (3) A notice under section 57 may contain such other information as the appropriate Minister considers appropriate.

Appeals

59 Appeal against disqualification

- (1) A person who is disqualified by virtue of section 57 may, after giving notice to the appropriate Minister of his intention to do so, appeal to the appropriate court against the disqualification.
- (2) The appropriate court is–
 - (a) in relation to England and Wales, a magistrates' court acting for the petty sessions area in which the applicant resides,
 - (b) in relation to Scotland, the sheriff within whose jurisdiction the applicant resides,
 - (c) in relation to Northern Ireland, a court of summary jurisdiction acting for the petty sessions district in which the applicant resides.

- (3) The appeal must be made before the end of the period of 21 days beginning with the day on which the notice under section 57 is given to the applicant.
- (4) But the appropriate Minister may make regulations substituting a longer period for the period for the time being mentioned in subsection (3).
- (5) If the appropriate court is satisfied that section 57 does not apply to the applicant's case, it must allow the appeal.
- (6) Otherwise it must dismiss the appeal.
- (7) Where on an appeal against the disqualification the appeal is allowed, the court by which the appeal is allowed must send notice of that fact to the appropriate Minister.
- (8) The notice must—
 - (a) be sent in such manner and to such address, and
 - (b) contain such particulars,as the appropriate Minister may determine.

60 Power of appellate courts in England and Wales to suspend disqualification

- (1) This section applies where a person is disqualified by virtue of section 57.
- (2) Where the person appeals to a magistrates' court against the disqualification, the court may, if it thinks fit, suspend the disqualification.
- (3) Where the person makes an application in respect of the decision of the court under section 111 of the Magistrates' Courts Act 1980 (c. 43) (statement of case), the High Court may, if it thinks fit, suspend the disqualification.
- (4) Where the person has appealed, or applied for leave to appeal, to the House of Lords under section 1 of the Administration of Justice Act 1960 (c. 65) from any decision of the High Court which is material to the disqualification, the High Court may, if it thinks fit, suspend the disqualification.
- (5) Any power of a court under this section to suspend the disqualification is a power to do so on such terms as the court thinks fit.
- (6) Where, by virtue of this section, a court suspends the disqualification, it must send notice of the suspension to the Secretary of State.
- (7) The notice must—
 - (a) be sent in such manner and to such address, and
 - (b) contain such particulars,as the Secretary of State may determine.

61 Power of appellate courts in Scotland to suspend disqualification

- (1) This section applies where a person is disqualified by virtue of section 57.
- (2) Where the person appeals to the sheriff against the disqualification, the sheriff may, if he thinks fit, suspend the disqualification on such terms as he thinks fit.
- (3) Where the person appeals to the High Court of Justiciary from any decision of the sheriff, the court may, if it thinks fit, suspend the disqualification on such terms as it thinks fit.

The power conferred by this subsection may be exercised by a single judge of the court.

(4) Where, by virtue of this section, a court suspends the disqualification, it must send notice of the suspension to the Secretary of State.

(5) The notice must—

(a) be sent in such manner and to such address, and

(b) contain such particulars,

as the Secretary of State may determine.

62 Power of appellate courts in Northern Ireland to suspend disqualification

(1) This section applies where a person is disqualified by virtue of section 57.

(2) Where the person appeals to a court of summary jurisdiction against the disqualification, the court may, if it thinks fit, suspend the disqualification.

(3) Where the person makes an application in respect of the decision of the court under Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/ 1675 (N.I. 26)) (statement of case), the Court of Appeal may, if it thinks fit, suspend the disqualification.

(4) Where the person has appealed, or applied for leave to appeal, to the House of Lords under section 41 of the Judicature (Northern Ireland) Act 1978 (c. 23) from any decision of the Court of Appeal which is material to the disqualification, the Court of Appeal may, if it thinks fit, suspend the disqualification.

(5) Any power of a court under this section to suspend the disqualification is a power to do so on such terms as the court thinks fit.

(6) Where, by virtue of this section, a court suspends the disqualification, it must send notice of the suspension to the Department.

(7) The notice must—

(a) be sent in such manner and to such address, and

(b) contain such particulars,

as the Department may determine.

Production of licence

63 Production of licence: Great Britain

(1) A person who—

(a) is given a notice under section 57 by the Secretary of State, and

(b) is the holder of a licence,

must deliver his licence and its counterpart to the Secretary of State before the end of the period of 21 days beginning with the day on which the notice is given.

(2) The Secretary of State may make regulations substituting a longer period for the period for the time being mentioned in subsection (1).

(3) If—

- (a) a person delivers a current receipt for his licence and its counterpart to the Secretary of State within the period for the time being mentioned in subsection (1), and
- (b) on the return of his licence and its counterpart immediately delivers them to the Secretary of State,

the duty under subsection (1) is to be taken as satisfied.

“Receipt” means a receipt issued under section 56 of the Road Traffic Offenders Act 1988 (c. 53).

- (4) Subsection (1) does not apply if the competent authority of the relevant State—
 - (a) has the licence and its counterpart, or
 - (b) has delivered them to the Secretary of State.
- (5) The relevant State is the State in which the offence in relation to which the notice was given was committed.
- (6) If the holder of a licence does not deliver his licence and its counterpart to the Secretary of State as required by subsection (1), he is guilty of an offence.
- (7) A person is not guilty of an offence under subsection (6) if he satisfies the court that he has applied for a new licence and has not received it.
In relation to the holder of a Northern Ireland licence or Community licence, a new licence includes the counterpart of such a licence.
- (8) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) “Licence” means a Great Britain licence, a Northern Ireland licence or a Community licence.

64 Production of licence: Northern Ireland

- (1) A person who—
 - (a) is given a notice under section 57 by the Department, and
 - (b) is the holder of a licence,
 must deliver his licence and its counterpart to the Department before the end of the period of 21 days beginning with the day on which the notice is given.
- (2) The Department may make regulations substituting a longer period for the period for the time being mentioned in subsection (1).
- (3) If—
 - (a) a person delivers a current receipt for his licence and its counterpart to the Department within the period for the time being mentioned in subsection (1), and
 - (b) on the return of his licence and its counterpart immediately delivers them to the Department,
 the duty under subsection (1) is to be taken as satisfied.
 “Receipt” means a receipt issued under Article 62 of the Road Traffic Offenders (Northern Ireland) Order 1996 (S.I. 1996/ 1320 (N.I.10)).
- (4) Subsection (1) does not apply if the competent authority of the relevant State—
 - (a) has the licence and its counterpart, or
 - (b) has delivered them to the Department.

(5) The relevant State is the State in which the offence in relation to which the notice was given was committed.

(6) If the holder of a licence does not deliver his licence and its counterpart to the Department as required by subsection (1), he is guilty of an offence.

(7) A person is not guilty of an offence under subsection (6) if he satisfies the court that he has applied for a new licence and has not received it.

In relation to the holder of a Great Britain licence or Community licence, a new licence includes the counterpart of such a licence.

(8) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) "Licence" means a Northern Ireland licence, a Great Britain licence or a Community licence.

65 Production of licence: Community licence holders

(1) This section applies where—

- (a) the holder of a Community licence is disqualified by virtue of section 57, and
- (b) the licence is sent to the Secretary of State or the Department under section 63 or 64.

(2) The Secretary of State or (as the case may be) the Department must send—

- (a) the holder's name and address, and
- (b) particulars of the disqualification,

to the licensing authority in the EEA State in respect of which the licence was issued.

(3) But subsection (2) does not apply if the EEA State is the same as the State in which the offence in relation to which the holder is disqualified was committed.

(4) The Secretary of State or (as the case may be) the Department must return the licence to the holder—

- (a) on the expiry of the relevant period of the disqualification (within the meaning of section 57), or
- (b) if earlier, on being satisfied that the holder has left Great Britain or (as the case may be) Northern Ireland and is no longer normally resident there.

(5) But subsection (4) does not apply at any time where—

- (a) the Secretary of State or the Department would otherwise be under a duty under paragraph (a) of that subsection to return the licence, and
- (b) the holder would not at that time be authorised by virtue of section 99A(1) of the Road Traffic Act 1988 (c. 52) or Article 15A(1) of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/ 154 (N.I.1)) to drive in Great Britain or Northern Ireland a motor vehicle of any class.

(6) In that case the Secretary of State or (as the case may be) the Department must—

- (a) send the licence to the licensing authority in the EEA State in respect of which it was issued, and
- (b) explain to that authority the reasons for so doing.

(7) "EEA State" has the same meaning as in Part 3 of the Road Traffic Act 1988.

Disqualification

66 Effect of disqualification by virtue of section 57

Where the holder of a Great Britain licence or Northern Ireland licence is disqualified by virtue of section 57, the licence is to be treated as revoked with effect from the beginning of the period of disqualification.

67 Rule for determining end of period of disqualification

In determining the expiration of the period for which a person is disqualified by virtue of section 57, any time during which—

- (a) the disqualification is suspended, or
- (b) he is not disqualified,

is to be disregarded.

Endorsement

68 Endorsement of licence: Great Britain

(1) This section applies where a person who is normally resident in Great Britain is disqualified by virtue of section 57.

(2) The Secretary of State must secure that particulars of the disqualification are endorsed on the counterpart of any Great Britain licence or of any Northern Ireland licence or Community licence which the person—

- (a) may then hold, or
- (b) may subsequently obtain,

until he becomes entitled under subsection (4) or (5) to have a Great Britain licence and its counterpart, or a counterpart of his Northern Ireland licence or Community licence, issued to him free from those particulars.

(3) On the issue to the person of—

- (a) a new Great Britain licence, or
- (b) a new counterpart of a Northern Ireland licence or Community licence,

those particulars must be entered on the counterpart of the new licence or the new counterpart unless he has become so entitled.

(4) The person is entitled to have issued to him with effect from the end of the period for which the endorsement remains effective a new Great Britain licence with a counterpart free from the endorsement if he—

- (a) applies for a new licence under section 97(1) of the Road Traffic Act 1988 (c. 52),
- (b) surrenders any subsisting licence and its counterpart,
- (c) pays the fee prescribed by regulations under Part 3 of that Act, and
- (d) satisfies the other requirements of section 97(1).

(5) The person is entitled to have issued to him with effect from the end of that period a new counterpart of any Northern Ireland licence or Community licence then held by him free from the

endorsement if he makes an application to the Secretary of State for that purpose in such manner as the Secretary of State may determine.

(6) The endorsement remains effective until four years have elapsed since he was convicted of the offence in relation to which he is disqualified by virtue of section 57.

(7) Where the person ceases to be disqualified by virtue of section 57(6), the Secretary of State must secure that the relevant particulars are endorsed on the counterpart of the Great Britain licence or of any Northern Ireland licence or Community licence previously held by him.

69 Endorsement of licence: Northern Ireland

(1) This section applies where a person who is normally resident in Northern Ireland is disqualified by virtue of section 57.

(2) The Department must secure that particulars of the disqualification are endorsed on the counterpart of any Northern Ireland licence or the counterpart of any Great Britain licence or Community licence which the person—

- (a) may then hold, or
- (b) may subsequently obtain,

until he becomes entitled under subsection (4) or (5) to have a Northern Ireland licence and its counterpart, or a counterpart of his Great Britain licence or Community licence, issued to him free from those particulars.

(3) On the issue to the person of—

- (a) a new Northern Ireland licence, or
- (b) a new counterpart of a Great Britain licence or Community licence,

those particulars must be entered on the counterpart of the new licence or the new counterpart unless he has become so entitled.

(4) The person is entitled to have issued to him with effect from the end of the period for which the endorsement remains effective a new Northern Ireland licence with a counterpart free from the endorsement if he—

- (a) applies for a new licence under Article 13(1) of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/ 154 (N.I.1)),
- (b) surrenders any subsisting licence and its counterpart,
- (c) pays the fee prescribed by regulations under Part 2 of that Order, and
- (d) satisfies the other requirements of Article 13(1).

(5) The person is entitled to have issued to him with effect from the end of that period a new counterpart of any Great Britain licence or Community licence then held by him free from the endorsement if he makes an application to the Department for that purpose in such manner as it may determine.

(6) The endorsement remains effective until four years have elapsed since he was convicted of the offence in relation to which he is disqualified by virtue of section 57.

(7) Where the person ceases to be disqualified by virtue of section 57(6), the Department must secure that the relevant particulars are endorsed on the counterpart of the Northern Ireland licence or the counterpart of any Great Britain licence or Community licence previously held by him.

General

70 Duty of appropriate Minister to inform competent authority

- (1) This section applies where a competent authority of any State gives the appropriate Minister a notice under the convention on driving disqualifications in respect of any person.
- (2) If the appropriate Minister gives a notice under section 57 to that person, he must give the competent authority particulars of the disqualification which arises by virtue of that section.
- (3) If the appropriate Minister does not give such a notice, he must give his reasons to the competent authority.

71 Notices

- (1) A notice authorised or required under this Chapter to be given by the appropriate Minister to an individual, or a Community licence required to be returned to its holder by section 65, may be given or returned to him by—
 - (a) delivering it to him,
 - (b) leaving it at his proper address, or
 - (c) sending it to him by post.
- (2) For the purposes of—
 - (a) subsection (1), and
 - (b) section 7 of the Interpretation Act 1978 (c. 30) in its application to that subsection,the proper address of any individual is his latest address as known to the appropriate Minister.

72 Regulations: Great Britain

- (1) Any power to make regulations conferred by this Chapter on the Secretary of State is exercisable by statutory instrument.
- (2) A statutory instrument containing any such regulations is subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) The regulations may make different provision for different purposes.

73 Regulations: Northern Ireland

- (1) Any power to make regulations conferred by this Chapter on the Department is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (2) Any such regulations are subject to negative resolution (within the meaning of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.))).
- (3) The regulations may make different provision for different purposes.

74 Interpretation

- (1) In this Chapter—

“appropriate Minister” means–

- (a) in relation to Great Britain, the Secretary of State,
- (b) in relation to Northern Ireland, the Department,

“central authority”, in relation to a State, means an authority designated by the State as a central authority for the purposes of the convention on driving disqualifications,

“Community licence”–

- (a) in relation to Great Britain, has the same meaning as in Part 3 of the Road Traffic Act 1988 (c. 52),
- (b) in relation to Northern Ireland, has the same meaning as in Part 2 of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/ 154 (N.I.1)),

“competent authority”, in relation to a State, means an authority which is a competent authority in relation to the State for the purposes of the convention on driving disqualifications,

“the convention on driving disqualifications” means the Convention drawn up on the basis of Article K.3 of the Treaty on European Union on Driving Disqualifications signed on 17th June 1998,

“counterpart”–

- (a) in relation to Great Britain, has the same meaning as in Part 3 of the Road Traffic Act 1988 (c. 52),
- (b) in relation to Northern Ireland, has the same meaning as in Part 2 of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/ 154 (N.I.1)),

“the Department” means the Department of the Environment,

“disqualified”, except in section 56, means–

- (a) in relation to Great Britain, disqualified for holding or obtaining a Great Britain licence,
- (b) in relation to Northern Ireland, disqualified for holding or obtaining a Northern Ireland licence,

and “disqualification” is to be interpreted accordingly,

“foreign disqualification” means the disqualification mentioned in section 56,

“Great Britain licence” means a licence to drive a motor vehicle granted under Part 3 of the Road Traffic Act 1988,

“motor vehicle”–

- (a) in relation to Great Britain, has the same meaning as in the Road Traffic Act 1988,
- (b) in relation to Northern Ireland, has the same meaning as in the Road Traffic (Northern Ireland) Order 1995 (S.I. 1995/ 2994 (N.I.18)),

“Northern Ireland licence” means a licence to drive a motor vehicle granted under Part 2 of the Road Traffic (Northern Ireland) Order 1981,

“prescribed” means prescribed by regulations made by the appropriate Minister.

(2) In this Chapter a disqualification, or foreign disqualification, for life is to be treated as being for a period of not less than six months.

75 Application to Crown

This Chapter applies to vehicles and persons in the public service of the Crown.

CHAPTER 2

MUTUAL RECOGNITION WITHIN THE UNITED KINGDOM ETC.

76 Recognition in Great Britain of disqualifications in Northern Ireland etc.

After section 102 of the Road Traffic Act 1988 there is inserted—

“Disqualification if disqualified in Northern Ireland etc.

102A Disqualification while disqualified in Northern Ireland, Isle of Man, Channel Islands or Gibraltar

(1) A person is disqualified for holding or obtaining a licence to drive a motor vehicle of any class so long as he is subject to a relevant disqualification imposed outside Great Britain.

(2) For the purposes of this section a person is subject to a relevant disqualification imposed outside Great Britain if, in respect of any offence—

- (a) a court in Northern Ireland disqualifies him for holding or obtaining a Northern Ireland licence,
- (b) a court in the Isle of Man or any of the Channel Islands disqualifies him for holding or obtaining a British external licence, or
- (c) a court in Gibraltar disqualifies him for holding or obtaining a licence to drive a motor vehicle granted under the law of Gibraltar.

(3) A certificate signed by the Secretary of State which states, in respect of a person, any matter relating to the question whether he is subject to a relevant disqualification imposed outside Great Britain shall be evidence (in Scotland, sufficient evidence) of the matter so stated.

(4) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.”

77 Endorsement of counterparts issued to Northern Ireland licence holders

(1) After section 109 of the Road Traffic Act 1988 (c. 52) there is inserted—

“109A Counterparts issued to Northern Ireland licence holders

(1) The Secretary of State may issue to any Northern Ireland licence holder who—

- (a) has delivered his Northern Ireland licence to the Secretary of State, and
- (b) has provided him with the information specified in, or required under, subsection (3) below (whether or not in pursuance of this section),

a document (referred to in this Part of this Act in relation to a Northern Ireland licence as a “counterpart”).

(2) The counterpart must—

- (a) be in such form, and
- (b) contain such information,

designed for the endorsement of particulars relating to the Northern Ireland licence as the Secretary of State may determine.

- (3) The information referred to in subsection (1) above is—
- (a) the name and address (whether in Great Britain or Northern Ireland) of the Northern Ireland licence holder;
 - (b) his date of birth;
 - (c) the classes of vehicle which he is authorised by his Northern Ireland licence to drive;
 - (d) the period of validity of the licence;
 - (e) whether it was granted in exchange for a licence issued by a state other than an EEA State; and
 - (f) such other information as the Secretary of State may require for the purposes of the proper exercise of any of his functions under this Part or Part 4 of this Act.
- (4) The Secretary of State—
- (a) may endorse a Northern Ireland licence delivered to him (whether or not in pursuance of this section) in such manner as he may determine—
 - (i) with any part of the information specified in, or required under, subsection (3) above; or
 - (ii) with information providing a means of ascertaining that information or any part of it; and
 - (b) must return the Northern Ireland licence to the holder.
- (5) Subsections (6) to (9), (11) (with the omission of paragraph (a)) and (12) of section 99B of this Act apply for the purposes of this section as if the references to a Community licence were references to a Northern Ireland licence.”
- (2) After section 91 of the Road Traffic Offenders Act 1988 (c. 53) there is inserted—

“91ZA Application to Northern Ireland licence holders

- (1) The references to a licence in the following provisions of this Act include references to a Northern Ireland licence—
- (a) section 7,
 - (b) section 26(7) and (8) and (9)(b),
 - (c) section 27,
 - (d) section 29(1),
 - (e) section 30,
 - (f) section 31(1),
 - (g) section 32,
 - (h) section 42(5),
 - (i) section 44(1),
 - (j) section 46(2),
 - (k) section 47(2) and (3),
 - (l) section 48(1) and (2).
- (2) Accordingly, the reference in section 27(3)(b) of this Act to the suspension of a licence is to be construed in relation to a Northern Ireland licence holder as a reference to his ceasing

to be authorised by virtue of section 109(1) of the Road Traffic Act 1988 to drive in Great Britain a motor vehicle of any class.

(3) The references in sections 26(9)(a) and 27(3) of this Act to a new licence include references to a counterpart of a Northern Ireland licence.

(4) In relation to a Northern Ireland licence holder to whom a counterpart is issued under section 109A of the Road Traffic Act 1988, the references in Part 3 of this Act (except sections 75(12), 76(8) and 77(9)) to a licence include references to a Northern Ireland licence.

(5) Where a court orders the endorsement of the counterpart of any Northern Ireland licence held by a person, it must send notice of the endorsement to the Secretary of State.

(6) The notice must—

- (a) be sent in such manner and to such address, and
- (b) contain such particulars,

as the Secretary of State may determine.

(7) Where a court orders the holder of a Northern Ireland licence to be disqualified, it must send the Northern Ireland licence and its counterpart (if any), on their being produced to the court, to the Secretary of State.

(8) The licence and its counterpart must be sent to such address as the Secretary of State may determine.

(9) Where—

- (a) a notice is sent to the Secretary of State under subsection (5) above, and
- (b) the particulars contained in the notice include—

- (i) particulars of an offence in respect of which the holder of a Northern Ireland licence is disqualified by an order of a court, and
- (ii) particulars of the disqualification,

the Secretary of State must send a notice containing the particulars mentioned in paragraph (b)(i) and (ii) to the licensing authority in Northern Ireland.

91ZB Effect of endorsement on Northern Ireland licence holders

Section 91B applies in relation to Northern Ireland licences as it applies in relation to Community licences.”

78 Prohibition on holding or obtaining Great Britain and Northern Ireland licences

(1) The Road Traffic Act 1988 (c. 52) is amended as follows.

(2) In section 97 (grant of licences)—

(a) in subsection (1)(c), after sub-paragraph (i) there is inserted—

“(ia) any Northern Ireland licence held by him together with its Northern Ireland counterpart and its counterpart (if any) issued to him under this Part of this Act,”,

(b) after subsection (1A) there is inserted—

“(1AA) Where a licence under this Part of this Act is granted to a person who surrenders under sub-paragraph (ia) of subsection (1)(c) above his Northern Ireland licence together with the counterparts mentioned in that sub-paragraph to the Secretary of State–

- (a) that person ceases to be authorised by virtue of section 109(1) of this Act to drive in Great Britain a motor vehicle of any class, and
- (b) the Secretary of State must send the Northern Ireland licence and its Northern Ireland counterpart to the licensing authority in Northern Ireland together with particulars of the class of motor vehicles to which the licence granted under this Part of this Act relates.”

(3) In section 99 (duration of licences), after subsection (3) there is inserted–

“(3A) Where–

- (a) the Secretary of State is sent under a provision of Northern Ireland law corresponding to section 97(1AA) of this Act a licence granted under this Part of this Act to a person to drive a motor vehicle of any class, and
 - (b) the Secretary of State is satisfied that a Northern Ireland licence to drive a motor vehicle of that or a corresponding class has been granted to that person,
- the Secretary of State must serve notice in writing on that person revoking the licence granted under this Part of this Act.”

(4) In section 102 (disqualification to prevent duplication of licences), at the end there is inserted–

“(2) A person is also disqualified for holding or obtaining a licence authorising him to drive a motor vehicle of any class so long as he is authorised by virtue of section 109(1) of this Act to drive a motor vehicle of that or a corresponding class.”

79 Disability and prospective disability

(1) The Road Traffic Act 1988 (c. 52) is amended as follows.

(2) After section 109A (as inserted by section 77 of this Act) there is inserted–

“109B Revocation of authorisation conferred by Northern Ireland licence because of disability or prospective disability

(1) If the Secretary of State is at any time satisfied on inquiry–

- (a) that a Northern Ireland licence holder is suffering from a relevant disability, and
- (b) that he would be required by virtue of section 92(3) of this Act to refuse an application made by the holder at that time for a licence authorising him to drive a vehicle of the class in respect of which his Northern Ireland licence was issued or a class corresponding to that class,

he may serve notice in writing requiring the licence holder to deliver immediately to the Secretary of State his Northern Ireland licence together with its Northern Ireland counterpart and its counterpart (if any) issued to him under this Part of this Act (“the relevant counterparts”).

- (2) If the Secretary of State is satisfied on inquiry that a Northern Ireland licence holder is suffering from a prospective disability, he may—
- (a) serve notice in writing on the Northern Ireland licence holder requiring him to deliver immediately to the Secretary of State his Northern Ireland licence together with the relevant counterparts, and
 - (b) on receipt of the Northern Ireland licence and those counterparts and of an application made for the purposes of this subsection, grant to the Northern Ireland licence holder, free of charge, a licence for a period determined by the Secretary of State under section 99(1)(b) of this Act.
- (3) The Secretary of State may require a person to provide—
- (a) evidence of his name, address, sex and date and place of birth, and
 - (b) a photograph which is a current likeness of him,
- before granting a licence to him on an application for the purposes of subsection (2) above.
- (4) A person who—
- (a) is required under, or by virtue of, this section to deliver to the Secretary of State his Northern Ireland licence and the relevant counterparts, but
 - (b) without reasonable excuse, fails to do so,
- is guilty of an offence.
- (5) Where a Northern Ireland licence holder to whom a counterpart is issued under section 109A of this Act—
- (a) is required under, or by virtue of, this section to deliver his Northern Ireland licence and that counterpart to the Secretary of State, and
 - (b) is not in possession of them in consequence of the fact that he has surrendered them to a constable or authorised person (within the meaning of Part 3 of the Road Traffic Offenders Act 1988) on receiving a fixed penalty notice given to him under section 54 of that Act,
- he does not fail to comply with any such requirement if he delivers them to the Secretary of State immediately on their return.
- (6) Where a Northern Ireland licence holder is served with a notice in pursuance of this section, he shall cease to be authorised by virtue of section 109(1) of this Act to drive in Great Britain a motor vehicle of any class from such date as may be specified in the notice, not being earlier than the date of service of the notice.
- (7) Where a Northern Ireland licence is delivered to the Secretary of State in pursuance of this section, he must—
- (a) send the licence and its Northern Ireland counterpart to the licensing authority in Northern Ireland, and
 - (b) explain to them his reasons for so doing.

109C Information relating to disabilities etc

Section 94 of this Act shall apply to a Northern Ireland licence holder who is normally resident in Great Britain as if—

- (a) in subsection (1), for the words from the beginning to “aware” there were substituted “If a Northern Ireland licence holder who is authorised by virtue of

section 109(1) of this Act to drive in Great Britain a motor vehicle of any class, is aware immediately before the relevant date, or becomes aware on or after that date”,
 (b) after that subsection there were inserted–

“(1A) For the purposes of subsection (1) “relevant date” means–

- (a) in the case where the licence holder first became normally resident in Great Britain on or before the date on which section 79 of the Crime (International Co-operation) Act 2003 comes into force, that date; and
- (b) in any other case, the date on which he first became so resident.”,

(c) for subsection (3A) there were substituted–

“(3A) A person who–

- (a) is authorised by virtue of section 109(1) of this Act to drive in Great Britain a motor vehicle of any class, and
- (b) drives on a road a motor vehicle of that class,

is guilty of an offence if at any earlier time while he was so authorised he was required by subsection (1) above to notify the Secretary of State but has failed without reasonable excuse to do so.”,

- (d) in subsection (4), the words “an applicant for, or” (in both places) were omitted,
- (e) in subsection (5), the words “applicant or” and the words from the beginning of paragraph (c) to “provisional licence” were omitted,
- (f) in subsection (6)(b), the words “applicant or” (in both places) were omitted,
- (g) in subsection (7), the words “applicant or” were omitted, and
- (h) in subsection (8)–
 - (i) for “93” there were substituted “109B”, and
 - (ii) the words “applicant or” (in both places) were omitted.”

(3) In section 93 (revocation of licence because of disability or prospective disability)–

- (a) in subsection (2A), at the end there is inserted “or subsection (6) below”,
- (b) at the end there is inserted–

“(5) Where the Secretary of State–

- (a) is at any time sent by the licensing authority in Northern Ireland a licence under a provision of Northern Ireland law corresponding to section 109B of this Act, and
- (b) by virtue of the reasons given by that authority for sending the licence is at that time satisfied as mentioned in subsection (1)(a) and (b) above or that the licence holder is suffering from a prospective disability,

the Secretary of State may serve notice in writing on the licence holder revoking the licence with effect from such date as may be specified in the notice, not being earlier than the date of service of the notice.

(6) Where the reasons given by the licensing authority in Northern Ireland for sending the licence relate to a prospective disability of the holder, the Secretary of State may, on an application made for the purposes of this subsection, grant to the holder, free of charge, a new licence for a period determined by the Secretary of State under section 99(1)(b) of this Act.”

PART 4

MISCELLANEOUS

Information

80 Disclosure of information by SFO

In section 3 of the Criminal Justice Act 1987 (c. 38) (disclosure of information)–

(a) in subsection (5), for paragraph (c) there is substituted–

“(c) for the purposes of any criminal investigation or criminal proceedings, whether in the United Kingdom or elsewhere”,

(b) at the end of subsection (6) there is inserted–

“(n) any person or body having, under the Treaty on European Union or any other treaty to which the United Kingdom is a party, the function of receiving information of the kind in question,

(o) any person or body having, under the law of any country or territory outside the United Kingdom, the function of receiving information relating to the proceeds of crime”,

and the “and” preceding paragraph (m) is omitted.

81 Inspection of overseas information systems

After section 54 of the Data Protection Act 1998 (c. 29) there is inserted–

“54A Inspection of overseas information systems

(1) The Commissioner may inspect any personal data recorded in–

- (a) the Schengen information system,
- (b) the Europol information system,
- (c) the Customs information system.

(2) The power conferred by subsection (1) is exercisable only for the purpose of assessing whether or not any processing of the data has been or is being carried out in compliance with this Act.

(3) The power includes power to inspect, operate and test equipment which is used for the processing of personal data.

(4) Before exercising the power, the Commissioner must give notice in writing of his intention to do so to the data controller.

(5) But subsection (4) does not apply if the Commissioner considers that the case is one of urgency.

(6) Any person who–

- (a) intentionally obstructs a person exercising the power conferred by subsection (1), or

(b) fails without reasonable excuse to give any person exercising the power any assistance he may reasonably require,
is guilty of an offence.

(7) In this section–

“the Customs information system” means the information system established under Chapter II of the Convention on the Use of Information Technology for Customs Purposes,

“the Europol information system” means the information system established under Title II of the Convention on the Establishment of a European Police Office,

“the Schengen information system” means the information system established under Title IV of the Convention implementing the Schengen Agreement of 14th June 1985, or any system established in its place in pursuance of any Community obligation.”

82 Driver licensing information

Information held in any form–

(a) by the Secretary of State under Part 3 of the Road Traffic Act 1988 (c. 52), or

(b) by the Department of the Environment under Part 2 of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I.1)),

(licensing of drivers of vehicles) may be disclosed for the purposes of the Schengen information system (within the meaning of section 81).

Cross-border surveillance

83 Foreign surveillance operations

After section 76 of the Regulation of Investigatory Powers Act 2000 (c. 23) there is inserted–

“76A Foreign surveillance operations

(1) This section applies where–

(a) a foreign police or customs officer is carrying out relevant surveillance outside the United Kingdom which is lawful under the law of the country or territory in which it is being carried out;

(b) circumstances arise by virtue of which the surveillance can for the time being be carried out only in the United Kingdom; and

(c) it is not reasonably practicable in those circumstances for a United Kingdom officer to carry out the surveillance in the United Kingdom in accordance with an authorisation under Part 2 or the Regulation of Investigatory Powers (Scotland) Act 2000.

(2) “Relevant surveillance” means surveillance which–

(a) is carried out in relation to a person who is suspected of having committed a relevant crime; and

(b) is, for the purposes of Part 2, directed surveillance or intrusive surveillance.

(3) “Relevant crime” means crime which–

- (a) falls within Article 40(7) of the Schengen Convention; or
 - (b) is crime for the purposes of any other international agreement to which the United Kingdom is a party and which is specified for the purposes of this section in an order made by the Secretary of State with the consent of the Scottish Ministers.
- (4) Relevant surveillance carried out by the foreign police or customs officer in the United Kingdom during the permitted period is to be lawful for all purposes if–
- (a) the condition mentioned in subsection (6) is satisfied;
 - (b) the officer carries out the surveillance only in places to which members of the public have or are permitted to have access, whether on payment or otherwise; and
 - (c) conditions specified in any order made by the Secretary of State with the consent of the Scottish Ministers are satisfied in relation to its carrying out;
- but no surveillance is lawful by virtue of this subsection if the officer subsequently seeks to stop and question the person in the United Kingdom in relation to the relevant crime.
- (5) The officer is not to be subject to any civil liability in respect of any conduct of his which is incidental to any surveillance that is lawful by virtue of subsection (4).
- (6) The condition in this subsection is satisfied if, immediately after the officer enters the United Kingdom–
- (a) he notifies a person designated by the Director General of the National Criminal Intelligence Service of that fact; and
 - (b) (if the officer has not done so before) he requests an application to be made for an authorisation under Part 2, or the Regulation of Investigatory Powers (Scotland) Act 2000, for the carrying out of the surveillance.
- (7) “The permitted period” means the period of five hours beginning with the time when the officer enters the United Kingdom.
- (8) But a person designated by an order made by the Secretary of State may notify the officer that the surveillance is to cease being lawful by virtue of subsection (4) when he gives the notification.
- (9) The Secretary of State is not to make an order under subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (10) In this section references to a foreign police or customs officer are to a police or customs officer who, in relation to a country or territory other than the United Kingdom, is an officer for the purposes of–
- (a) Article 40 of the Schengen Convention; or
 - (b) any other international agreement to which the United Kingdom is a party and which is specified for the purposes of this section in an order made by the Secretary of State with the consent of the Scottish Ministers.
- (11) In this section–
- “the Schengen Convention” means the Convention implementing the Schengen Agreement of 14th June 1985;
 - “United Kingdom officer” means–
 - (a) a member of a police force;
 - (b) a member of the National Criminal Intelligence Service;

- (c) a member of the National Crime Squad or of the Scottish Crime Squad (within the meaning of the Regulation of Investigatory Powers (Scotland) Act 2000);
- (d) a customs officer.”

84 Assaults on foreign officers

- (1) For the purposes of section 89 of the Police Act 1996 (c. 16) (assaults on constables) any person who is carrying out surveillance in England and Wales under section 76A of the Regulation of Investigatory Powers Act 2000 (c. 23) is to be treated as if he were acting as a constable in the execution of his duty.
- (2) For the purposes of section 41 of the Police (Scotland) Act 1967 (c. 77) (assaults on constables) any person who is carrying out surveillance in Scotland under section 76A of that Act of 2000 is to be so treated.
- (3) For the purposes of section 66 of the Police (Northern Ireland) Act 1998 (c. 32) (assaults on constables) any person who is carrying out surveillance in Northern Ireland under section 76A of that Act of 2000 is to be so treated.

85 Liability in respect of foreign officers

- (1) Section 42 of the Police Act 1997 (liability of Director General of NCIS for wrongful acts of constables etc.) is amended as follows.
- (2) After subsection (5A) there is inserted–
 - “(5AA) This section shall have effect where a person is carrying out surveillance under section 76A of the Regulation of Investigatory Powers Act 2000 (foreign surveillance operations) as if–
 - (a) any unlawful conduct by that person in the course of carrying out the surveillance were unlawful conduct of a constable in the performance of his functions under the direction and control of the Director General of NCIS; and
 - (b) subsection (4) applied to the person carrying out the surveillance.”
- (3) Where–
 - (a) a sum is paid by virtue of this section out of the NCIS service fund, and
 - (b) the Secretary of State receives under any international agreement a sum by way of reimbursement (in whole or in part) of the sum paid out of that fund,
 he must pay into that fund the sum received by him by way of reimbursement.

Extradition

86 [...] ¹

87 [...] ²

¹ repealed, never in force, by Extradition Act 2003 (Repeals) Order 2004/1897 art. 2

² repealed, never in force, by Extradition Act 2003 (Repeals) Order 2004/1897 art. 2

*False monetary instruments***88 False monetary instruments: England and Wales and Northern Ireland**

(1) Section 5 of the Forgery and Counterfeiting Act 1981 (c. 45) (offences relating to money orders, share certificates, passports, etc.) is amended as follows.

(2) In subsection (5)–

- (a) in paragraph (g), at the end there is inserted “and other bills of exchange”,
- (b) after paragraph (h) there is inserted–

“(ha) bankers' drafts;
(hb) promissory notes;”,

- (c) after paragraph (j) there is inserted–

“(ja) debit cards;”.

(3) After subsection (6) there is inserted–

“(7) An instrument is also an instrument to which this section applies if it is a monetary instrument specified for the purposes of this section by an order made by the Secretary of State.

(8) The power under subsection (7) above is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

89 False monetary instruments: Scotland

After section 46 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) there is inserted–

“False monetary instruments

46A False monetary instruments

(1) A person who counterfeits or falsifies a specified monetary instrument with the intention that it be uttered as genuine is guilty of an offence.

(2) A person who has in his custody or under his control, without lawful authority or excuse–

- (a) anything which is, and which he knows or believes to be, a counterfeited or falsified specified monetary instrument; or
- (b) any machine, implement or computer programme, or any paper or other material, which to his knowledge is specially designed or adapted for the making of a specified monetary instrument,

is guilty of an offence.

(3) For the purposes of subsections (1) and (2)(a) above, it is immaterial that the specified monetary instrument (or purported specified monetary instrument) is not in a fit state to be uttered or that the counterfeiting or falsifying of it has not been finished or perfected.

(4) A person guilty of an offence under this section is liable on summary conviction–

- (a) to a fine not exceeding the statutory maximum;

- (b) to imprisonment for a term not exceeding six months; or
 - (c) both to a fine and to such imprisonment.
- (5) A person guilty of an offence—
- (a) under subsection (1) above is liable on conviction on indictment—
 - (i) to a fine;
 - (ii) to imprisonment for a term not exceeding ten years; or
 - (iii) both to a fine and to such imprisonment;
 - (b) under subsection (2) above is liable on conviction on indictment—
 - (i) to a fine;
 - (ii) if it is proved that the offence was committed with the intention that the specified monetary instrument in question be uttered (or as the case may be that a specified monetary instrument be uttered), to imprisonment for a term not exceeding ten years and if it is not so proved, to imprisonment for a term not exceeding two years; or
 - (iii) both to a fine and to imprisonment for a term not exceeding ten years, if it is proved as mentioned in sub-paragraph (ii) above, or both to a fine and to imprisonment for a term not exceeding two years if it is not so proved.
- (6) Where an offence under this section which has been committed—
- (a) by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of that body; or
 - (b) by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a member of that partnership,
- or by any person who was purporting to act in any such capacity, he as well as the body corporate, or as the case may be the partnership, is guilty of that offence and is liable to be proceeded against and punished accordingly.
- (7) Where the affairs of a body corporate are managed by its members, subsection (6) above applies in relation to the actings and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (8) In subsections (1) to (5) above, “specified” means for the time being specified for the purposes of this section, by order made by the Scottish Ministers.
- (9) The power to make an order under subsection (8) above—
- (a) includes power to make such incidental, supplemental, transitional or transitory provision as the Scottish Ministers think necessary or expedient; and
 - (b) is exercisable by statutory instrument.
- (10) A statutory instrument containing such an order is subject to annulment in pursuance of a resolution of the Scottish Parliament.”

Freezing of terrorist property

90 Freezing of terrorist property

Schedule 4 is to have effect.

PART 5

FINAL PROVISIONS

CHAPTER 1

AMENDMENTS AND REPEALS

91 Amendments and repeals

- (1) Schedule 5 (minor and consequential amendments) is to have effect.
- (2) The enactments set out in Schedule 6 are repealed to the extent specified.

CHAPTER 2

MISCELLANEOUS

92 Northern Ireland

An Order in Council under paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) (legislation for Northern Ireland during suspension of devolved government) which contains a statement that it is made only for purposes corresponding to those of Chapter 2 of Part 3 of this Act—

- (a) is not to be subject to paragraph 2 of that Schedule (affirmative resolution of both Houses of Parliament), but
- (b) is to be subject to annulment in pursuance of a resolution of either House of Parliament.

93 Supplementary and consequential provision

- (1) The appropriate Minister may by order made by statutory instrument make—
 - (a) any supplementary, incidental or consequential provision,
 - (b) any transitory, transitional or saving provision,which he considers necessary or expedient for the purposes of, in consequence of or for giving full effect to any provision of this Act.
- (2) The appropriate Minister means—
 - (a) in relation to any provision that would, if included in an Act of the Scottish Parliament, be within the legislative competence of that Parliament, the Scottish Ministers,
 - (b) in relation to any other provision, the Secretary of State.
- (3) The provision which may be made under subsection (1) includes provision amending or repealing any enactment or instrument.
- (4) An order under this section may make different provision for different purposes.
- (5) A statutory instrument (other than an instrument to which subsection (6) applies) containing an order under this section made by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament.

(6) A statutory instrument containing such an order which adds to, replaces or omits any part of the text of an Act is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(7) A statutory instrument (other than an instrument to which subsection (8) applies) containing an order under this section made by the Scottish Ministers is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(8) A statutory instrument containing such an order which adds to, replaces or omits any part of the text of an Act or of an Act of the Scottish Parliament is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.

94 Commencement

(1) This Act (except this Chapter and the provisions mentioned in subsection (3)) is to come into force on such day as the Secretary of State may by order made by statutory instrument appoint.

(2) Any day appointed for the purposes of Part 1 (other than sections 32 to 41), and the related amendments and repeals, is to be one decided by the Secretary of State and the Scottish Ministers.

(3) The following are to come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint—

- (a) sections 37 to 41,
- (b) section 89.

(4) An order under this section may make different provision for different purposes.

95 Extent

(1) Sections 32 to 36 extend only to England and Wales and Northern Ireland.

(2) Sections 37 to 41 extend only to Scotland.

96 Short title

This Act may be cited as the Crime (International Co-operation) Act 2003.

SCHEDULE 1

PROCEEDINGS OF A NOMINATED COURT UNDER SECTION 15

Section 15

Securing attendance of witnesses

1

The court has the like powers for securing the attendance of a witness as it has for the purposes of other proceedings before the court.

2

In Scotland the court has power to issue a warrant to officers of law to cite witnesses, and section 156 of the Criminal Procedure (Scotland) Act 1995 (c. 46) applies in relation to a witness so cited.

Power to administer oaths

3

The court may take evidence on oath.

Proceedings

4

Rules of court under section 49 may, in particular, make provision in respect of the persons entitled to appear or take part in the proceedings and for excluding the public from the proceedings.

Privilege of witnesses

5

- (1) A person cannot be compelled to give any evidence which he could not be compelled to give—
 - (a) in criminal proceedings in the part of the United Kingdom in which the nominated court exercises jurisdiction, or
 - (b) subject to sub-paragraph (2), in criminal proceedings in the country from which the request for the evidence has come.
- (2) Sub-paragraph (1)(b) does not apply unless the claim of the person questioned to be exempt from giving the evidence is conceded by the court or authority which made the request.
- (3) Where the person's claim is not conceded, he may be required to give the evidence to which the claim relates (subject to the other provisions of this paragraph); but the evidence may not be forwarded to the court or authority which requested it if a court in the country in question, on the matter being referred to it, upholds the claim.
- (4) A person cannot be compelled to give any evidence if his doing so would be prejudicial to the security of the United Kingdom.
- (5) A certificate signed by or on behalf of the Secretary of State or, where the court is in Scotland, the Lord Advocate to the effect that it would be so prejudicial for that person to do so is conclusive evidence of that fact.
- (6) A person cannot be compelled to give any evidence in his capacity as an officer or servant of the Crown.
- (7) Sub-paragraphs (4) and (6) are without prejudice to the generality of sub-paragraph (1).

Forwarding evidence

6

(1) The evidence received by the court is to be given to the court or authority that made the request or to the territorial authority for forwarding to the court or authority that made the request.

(2) So far as may be necessary in order to comply with the request—

- (a) where the evidence consists of a document, the original or a copy is to be provided,
- (b) where it consists of any other article, the article itself, or a description, photograph or other representation of it, is to be provided.

Supplementary

7

The Bankers' Books Evidence Act 1879 (c. 11) applies to the proceedings as it applies to other proceedings before the court.

8

No order for costs may be made.

SCHEDULE 2

EVIDENCE GIVEN BY TELEVISION LINK OR TELEPHONE

Sections 30 and 31

PART 1

EVIDENCE GIVEN BY TELEVISION LINK

Securing attendance of witnesses

1

The nominated court has the like powers for securing the attendance of the witness to give evidence through the link as it has for the purpose of proceedings before the court.

2

In Scotland the nominated court has power to issue a warrant to officers of law to cite the witness for the purpose of securing his attendance to give evidence through the link, and section 156 of the Criminal Procedure (Scotland) Act 1995 (c. 46) applies in relation to the witness if so cited.

Conduct of hearing

3

The witness is to give evidence in the presence of the nominated court.

4

The nominated court is to establish the identity of the witness.

5

The nominated court is to intervene where it considers it necessary to do so to safeguard the rights of the witness.

6

The evidence is to be given under the supervision of the court of the country concerned.

7

The evidence is to be given in accordance with the laws of that country and with any measures for the protection of the witness agreed between the Secretary of State and the authority in that country which appears to him to have the function of entering into agreements of that kind.

8

Rules of court under section 49 must make provision for the use of interpreters.

Privilege of witness

9

(1) The witness cannot be compelled to give any evidence which he could not be compelled to give in criminal proceedings in the part of the United Kingdom in which the nominated court exercises jurisdiction.

(2) The witness cannot be compelled to give any evidence if his doing so would be prejudicial to the security of the United Kingdom.

(3) A certificate signed by or on behalf of the Secretary of State or, where the court is in Scotland, the Lord Advocate to the effect that it would be so prejudicial for that person to do so is to be conclusive evidence of that fact.

(4) The witness cannot be compelled to give any evidence in his capacity as an officer or servant of the Crown.

(5) Sub-paragraphs (2) and (4) are without prejudice to the generality of sub-paragraph (1).

Record of hearing

10

Rules of court under section 49 must make provision—

- (a) for the drawing up of a record of the hearing,
- (b) for sending the record to the external authority.

PART 2

EVIDENCE GIVEN BY TELEPHONE

Notification of witness

11

The nominated court must notify the witness of the time when and the place at which he is to give evidence by telephone.

Conduct of hearing

12

The nominated court must be satisfied that the witness is willingly giving evidence by telephone.

13

The witness is to give evidence in the presence of the nominated court.

14

The nominated court is to establish the identity of the witness.

15

The evidence is to be given under the supervision of the court of the participating country.

16

The evidence is to be given in accordance with the laws of that country.

17

Rules of court under section 49 must make provision for the use of interpreters.

SCHEDULE 3

OFFENCES FOR THE PURPOSES OF SECTION 54

Section 54

PART 1

OFFENCES WHERE ORDER OF DISQUALIFICATION FOR A MINIMUM PERIOD UNNECESSARY

1

(1) Manslaughter or culpable homicide by the driver of a motor vehicle.

(2) “Driver”–

(a) in relation to Great Britain, has the same meaning as in the Road Traffic Act 1988 (c. 52),

(b) in relation to Northern Ireland, has the same meaning as in Article 2(2) of the Road Traffic (Northern Ireland) Order 1995 (S.I. 1995/ 2994 (N.I.18)).

2

An offence under section 89(1) of the Road Traffic Regulation Act 1984 (c. 27) or Article 43(1) of the Road Traffic Regulation (Northern Ireland) Order 1997 (S.I. 1997/ 276 (N.I.2)) (exceeding speed limit).

3

An offence under any of the following sections of the Road Traffic Act 1988 or Articles of the Road Traffic (Northern Ireland) Order 1995–

- (a) section 1 or Article 9 (causing death by dangerous driving),
- (b) section 2 or Article 10 (dangerous driving),
- (c) section 3 or Article 12 (careless, and inconsiderate, driving),
- (d) section 3A or Article 14 (causing death by careless driving when under influence of drink or drugs),
- (e) section 4 or Article 15 (driving, or being in charge, when under influence of drink or drugs),
- (f) section 5 or Article 16 (driving, or being in charge, of a motor vehicle with alcohol concentration above prescribed limit),
- (g) section 6 or Article 17 (failing to provide a specimen of breath for a breath test),
- (h) section 7 or Article 18 (failing to provide specimen for analysis or laboratory test).

4

An offence under section 12 of the Road Traffic Act 1988 (motor racing and speed trials on public ways).

5

An offence under section 103(1)(b) of the Road Traffic Act 1988 or Article 167(1) of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/ 154 (N.I.1)) (driving while disqualified).

6

An offence under section 170(4) of the Road Traffic Act 1988 or Article 175(2) of the Road Traffic (Northern Ireland) Order 1981 (failing to stop after accident and give particulars or report of accident).

PART 2

OFFENCES WHERE ORDER OF DISQUALIFICATION FOR MINIMUM PERIOD NECESSARY

7

An offence which–

- (a) is mentioned in Part 1 of Schedule 2 to the Road Traffic Offenders Act 1988 (c. 53) or Part 1 of Schedule 1 to the Road Traffic Offenders (Northern Ireland) Order 1996 (S.I. 1996/ 1320 (N.I.10)), but
- (b) is not an offence mentioned in Part 1 of this Schedule.

SCHEDULE 4

TERRORIST PROPERTY: FREEZING ORDERS

Section 90

1

The Terrorism Act 2000 (c. 11) is amended as follows.

2

In section 123 (orders and regulations), in subsection (2)(i), for “paragraph” there is substituted “paragraphs 11A, 25A, 41A and”.

3

In Part 1 of Schedule 4 (forfeiture orders: England and Wales), after paragraph 11 there is inserted—

“Domestic and overseas freezing orders

11A

- (1) This paragraph has effect for the purposes of paragraphs 11B to 11G.
- (2) The relevant Framework Decision means the Framework Decision on the execution in the European Union of orders freezing property or evidence adopted by the Council of the European Union on 22nd July 2003.
- (3) A listed offence means—
 - (a) an offence described in Article 3(2) of the relevant Framework Decision, or
 - (b) a prescribed offence or an offence of a prescribed description.
- (4) An order under sub-paragraph (3)(b) which, for the purposes of paragraph 11D, prescribes an offence or a description of offences may require that the conduct which constitutes the offence or offences would, if it occurred in a part of the United Kingdom, constitute an offence in that part.
- (5) Specified information, in relation to a certificate under paragraph 11B or 11D, means—
 - (a) any information required to be given by the form of certificate annexed to the relevant Framework Decision, or
 - (b) any prescribed information.
- (6) In this paragraph, “prescribed” means prescribed by an order made by the Secretary of State.
- (7) A participating country means—
 - (a) a country other than the United Kingdom which is a member State on a day appointed for the commencement of Schedule 4 to the Crime (International Co-operation) Act 2003, and
 - (b) any other member State designated by an order made by the Secretary of State.
- (8) “Country” includes territory.
- (9) Section 14(2)(a) applies for the purposes of determining what are the proceeds of the commission of an offence.

Domestic freezing orders: certification

11B

- (1) If any of the property to which an application for a restraint order relates is property in a participating country, the applicant may ask the High Court to make a certificate under this paragraph.
- (2) The High Court may make a certificate under this paragraph if—
 - (a) it makes a restraint order in relation to property in the participating country, and
 - (b) it is satisfied that there is a good arguable case that the property is likely to be used for the purposes of a listed offence or is the proceeds of the commission of a listed offence.
- (3) A certificate under this paragraph is a certificate which—
 - (a) is made for the purposes of the relevant Framework Decision, and
 - (b) gives the specified information.
- (4) If the High Court makes a certificate under this paragraph—
 - (a) the restraint order must provide for notice of the certificate to be given to the person affected by it, and
 - (b) paragraph 6(2) to (4) applies to the certificate as it applies to the restraint order.

Sending domestic freezing orders

11C

- (1) If a certificate is made under paragraph 11B, the restraint order and the certificate are to be sent to the Secretary of State for forwarding to—
 - (a) a court exercising jurisdiction in the place where the property is situated, or
 - (b) any authority recognised by the government of the participating country as the appropriate authority for receiving orders of that kind.
- (2) The restraint order and the certificate must be accompanied by a forfeiture order, unless the certificate indicates when the court expects a forfeiture order to be sent.
- (3) The certificate must include a translation of it into an appropriate language of the participating country (if that language is not English).
- (4) The certificate must be signed by or on behalf of the court and must include a statement as to the accuracy of the information given in it.
The signature may be an electronic signature.
- (5) If the restraint order and the certificate are not accompanied by a forfeiture order, but a forfeiture order is subsequently made, it is to be sent to the Secretary of State for forwarding as mentioned in sub-paragraph (1).

Overseas freezing orders

11D

- (1) Paragraph 11E applies where an overseas freezing order made by an appropriate court or authority in a participating country is received by the Secretary of State from the court or authority which made or confirmed the order.
- (2) An overseas freezing order is an order prohibiting dealing with property—
- (a) which is in the United Kingdom,
 - (b) which the appropriate court or authority considers is likely to be used for the purposes of a listed offence or is the proceeds of the commission of such an offence, and
 - (c) in respect of which an order has been or may be made by a court exercising criminal jurisdiction in the participating country for the forfeiture of the property, and in respect of which the following requirements of this paragraph are met.
- (3) The action which the appropriate court or authority considered would constitute or, as the case may be, constituted the listed offence is action done as an act of terrorism or for the purposes of terrorism.
- (4) The order must relate to—
- (a) criminal proceedings instituted in the participating country, or
 - (b) a criminal investigation being carried on there.
- (5) The order must be accompanied by a certificate which gives the specified information; but a certificate may be treated as giving any specified information which is not given in it if the Secretary of State has the information in question.
- (6) The certificate must—
- (a) be signed by or on behalf of the court or authority which made or confirmed the order,
 - (b) include a statement as to the accuracy of the information given in it,
 - (c) if it is not in English, include a translation of it into English (or, if appropriate, Welsh).
- The signature may be an electronic signature.
- (7) The order must be accompanied by an order made by a court exercising criminal jurisdiction in that country for the forfeiture of the property, unless the certificate indicates when such an order is expected to be sent.
- (8) An appropriate court or authority in a participating country in relation to an overseas freezing order is—
- (a) a court exercising criminal jurisdiction in the country,
 - (b) a prosecuting authority in the country,
 - (c) any other authority in the country which appears to the Secretary of State to have the function of making such orders.
- (9) References in paragraphs 11E to 11G to an overseas freezing order include its accompanying certificate.

Enforcement of overseas freezing orders

11E

- (1) Where this paragraph applies the Secretary of State must send a copy of the overseas freezing order to the High Court and to the Director of Public Prosecutions.
- (2) The court is to consider the overseas freezing order on its own initiative within a period prescribed by rules of court.
- (3) Before giving effect to the overseas freezing order, the court must give the Director an opportunity to be heard.
- (4) The court may decide not to give effect to the overseas freezing order only if, in its opinion, giving effect to it would be incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998).

11F

The High Court may postpone giving effect to an overseas freezing order in respect of any property—

- (a) in order to avoid prejudicing a criminal investigation which is taking place in the United Kingdom, or
- (b) if, under an order made by a court in criminal proceedings in the United Kingdom, the property may not be dealt with.

11G

- (1) Where the High Court decides to give effect to an overseas freezing order, it must—
 - (a) register the order in that court,
 - (b) provide for notice of the registration to be given to any person affected by it.
- (2) For the purpose of enforcing an overseas freezing order registered in the High Court, the order is to have effect as if it were an order made by that court.
- (3) Paragraph 7 applies to an overseas freezing order registered in the High Court as it applies to a restraint order under paragraph 5.
- (4) The High Court may cancel the registration of the order, or vary the property to which the order applies, on an application by the Director of Public Prosecutions or any other person affected by it, if or to the extent that—
 - (a) the court is of the opinion mentioned in paragraph 11E(4), or
 - (b) the court is of the opinion that the order has ceased to have effect in the participating country.
- (5) Her Majesty may by Order in Council make further provision for the enforcement in England and Wales of registered overseas freezing orders.
- (6) An Order in Council under this paragraph—
 - (a) may make different provision for different cases,
 - (b) is not to be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.”

4

In paragraph 14 of that Schedule (enforcement of orders made in designated countries), in sub-paragraph (2), after the second “order” there is inserted “(other than an overseas freezing order within the meaning of paragraph 11D)”.

5

In Part 2 of that Schedule (forfeiture orders: Scotland), after paragraph 25 there is inserted–

“Domestic and overseas freezing orders

25A

- (1) This paragraph has effect for the purposes of paragraphs 25B to 25G.
- (2) The relevant Framework Decision means the Framework Decision on the execution in the European Union of orders freezing property or evidence adopted by the Council of the European Union on 22nd July 2003.
- (3) A listed offence means–
 - (a) an offence described in Article 3(2) of the relevant Framework Decision, or
 - (b) a prescribed offence or an offence of a prescribed description.
- (4) An order under sub-paragraph (3)(b) which, for the purposes of paragraph 25D, prescribes an offence or a description of offences may require that the conduct which constitutes the offence or offences would, if it occurred in a part of the United Kingdom, constitute an offence in that part.
- (5) Specified information, in relation to a certificate under paragraph 25B or 25D, means–
 - (a) any information required to be given by the form of certificate annexed to the relevant Framework Decision, or
 - (b) any prescribed information.
- (6) In this paragraph, “prescribed” means prescribed by an order made by the Secretary of State.
- (7) A participating country means–
 - (a) a country other than the United Kingdom which is a member State on a day appointed for the commencement of Schedule 4 to the Crime (International Co-operation) Act 2003, and
 - (b) any other member State designated by an order made by the Secretary of State.
- (8) “Country” includes territory.
- (9) Section 14(2)(a) applies for the purposes of determining what are the proceeds of the commission of an offence.

Domestic freezing orders: certification

25B

- (1) If any of the property to which an application for a restraint order relates is property in a participating country, the applicant may ask the Court of Session to make a certificate under this paragraph.
- (2) The Court of Session may make a certificate under this paragraph if—
 - (a) it makes a restraint order in relation to property in the participating country, and
 - (b) it is satisfied that there is a good arguable case that the property is likely to be used for the purposes of a listed offence or is the proceeds of the commission of a listed offence.
- (3) A certificate under this paragraph is a certificate which—
 - (a) is made for the purposes of the relevant Framework Decision, and
 - (b) gives the specified information.
- (4) If the Court of Session makes a certificate under this paragraph—
 - (a) the restraint order must provide for notice of the certificate to be given to the person affected by it, and
 - (b) paragraph 19(2) to (4) applies to the certificate as it applies to the restraint order.

Sending domestic freezing orders

25C

- (1) If a certificate is made under paragraph 25B, the restraint order and the certificate are to be sent to the Lord Advocate for forwarding to—
 - (a) a court exercising jurisdiction in the place where the property is situated, or
 - (b) any authority recognised by the government of the participating country as the appropriate authority for receiving orders of that kind.
- (2) The restraint order and the certificate must be accompanied by a forfeiture order, unless the certificate indicates when the court expects a forfeiture order to be sent.
- (3) The certificate must include a translation of it into an appropriate language of the participating country (if that language is not English).
- (4) The certificate must be signed by or on behalf of the court and must include a statement as to the accuracy of the information given in it.
The signature may be an electronic signature.
- (5) If the restraint order and the certificate are not accompanied by a forfeiture order, but a forfeiture order is subsequently made, it is to be sent to the Lord Advocate for forwarding as mentioned in sub-paragraph (1).

Overseas freezing orders

25D

- (1) Paragraph 25E applies where an overseas freezing order made by an appropriate court or authority in a participating country is received by the Secretary of State from the court or authority which made or confirmed the order.
- (2) An overseas freezing order is an order prohibiting dealing with property—
 - (a) which is in the United Kingdom,
 - (b) which the appropriate court or authority considers is likely to be used for the purposes of a listed offence or is the proceeds of the commission of such an offence, and
 - (c) in respect of which an order has been or may be made by a court exercising criminal jurisdiction in the participating country for the forfeiture of the property, and in respect of which the following requirements of this paragraph are met.
- (3) The action which the appropriate court or authority considered would constitute or, as the case may be, constituted the listed offence is action done as an act of terrorism or for the purposes of terrorism.
- (4) The order must relate to—
 - (a) criminal proceedings instituted in the participating country, or
 - (b) a criminal investigation being carried on there.
- (5) The order must be accompanied by a certificate which gives the specified information; but a certificate may be treated as giving any specified information which is not given in it if the Secretary of State has the information in question.
- (6) The certificate must—
 - (a) be signed by or on behalf of the court or authority which made or confirmed the order,
 - (b) include a statement as to the accuracy of the information given in it,
 - (c) if it is not in English, include a translation of it into English.The signature may be an electronic signature.
- (7) The order must be accompanied by an order made by a court exercising criminal jurisdiction in that country for the forfeiture of the property, unless the certificate indicates when such an order is expected to be sent.
- (8) An appropriate court or authority in a participating country in relation to an overseas freezing order is—
 - (a) a court exercising criminal jurisdiction in the country,
 - (b) a prosecuting authority in the country,
 - (c) any other authority in the country which appears to the Secretary of State to have the function of making such orders.
- (9) References in paragraphs 25E to 25G to an overseas freezing order include its accompanying certificate.

Enforcement of overseas freezing orders

25E

- (1) Where this paragraph applies the Secretary of State must send a copy of the overseas freezing order to the Court of Session and to the Lord Advocate.
- (2) The court is to consider the overseas freezing order on its own initiative within a period prescribed by rules of court.
- (3) Before giving effect to the overseas freezing order, the court must give the Lord Advocate an opportunity to be heard.
- (4) The court may decide not to give effect to the overseas freezing order only if, in its opinion, giving effect to it would be incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998).

25F

The Court of Session may postpone giving effect to an overseas freezing order in respect of any property—

- (a) in order to avoid prejudicing a criminal investigation which is taking place in the United Kingdom, or
- (b) if, under an order made by a court in criminal proceedings in the United Kingdom, the property may not be dealt with.

25G

- (1) Where the Court of Session decides to give effect to an overseas freezing order, the Deputy Principal Clerk of Session must—
 - (a) register the order in the Books of Council and Session,
 - (b) provide for notice of the registration to be given to any person affected by it.
- (2) For the purpose of enforcing an overseas freezing order registered in the Books of Council and Session, the order is to have effect as if it were an order made by the Court of Session.
- (3) Paragraphs 20 and 21 apply to an overseas freezing order registered in the Books of Council and Session as they apply to a restraint order under paragraph 18.
- (4) The Court of Session may cancel the registration of the order, or vary the property to which the order applies, on an application by the Lord Advocate or any other person affected by it, if or to the extent that—
 - (a) the court is of the opinion mentioned in paragraph 25E(4), or
 - (b) the court is of the opinion that the order has ceased to have effect in the participating country.
- (5) Her Majesty may by Order in Council make further provision for the enforcement in Scotland of registered overseas freezing orders.
- (6) An Order in Council under this paragraph—
 - (a) may make different provision for different cases,
 - (b) is not to be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.”

6

In paragraph 28 of that Schedule (enforcement of orders made in designated countries), in sub-paragraph (2), after the second “order” there is inserted “(other than an overseas freezing order within the meaning of paragraph 25D)”.

7

In Part 3 of that Schedule (forfeiture orders: Northern Ireland), after paragraph 41 there is inserted–

“Domestic and overseas freezing orders

41A

- (1) This paragraph has effect for the purposes of paragraphs 41B to 41G.
- (2) The relevant Framework Decision means the Framework Decision on the execution in the European Union of orders freezing property or evidence adopted by the Council of the European Union on 22nd July 2003.
- (3) A listed offence means–
 - (a) an offence described in Article 3(2) of the relevant Framework Decision, or
 - (b) a prescribed offence or an offence of a prescribed description.
- (4) An order under sub-paragraph (3)(b) which, for the purposes of paragraph 41D, prescribes an offence or a description of offences may require that the conduct which constitutes the offence or offences would, if it occurred in a part of the United Kingdom, constitute an offence in that part.
- (5) Specified information, in relation to a certificate under paragraph 41B or 41D, means–
 - (a) any information required to be given by the form of certificate annexed to the relevant Framework Decision, or
 - (b) any prescribed information.
- (6) In this paragraph, “prescribed” means prescribed by an order made by the Secretary of State.
- (7) A participating country means–
 - (a) a country other than the United Kingdom which is a member State on a day appointed for the commencement of Schedule 4 to the Crime (International Co-operation) Act 2003, and
 - (b) any other member State designated by an order made by the Secretary of State.
- (8) “Country” includes territory.
- (9) Section 14(2)(a) applies for the purposes of determining what are the proceeds of the commission of an offence.

Domestic freezing orders: certification

41B

- (1) If any of the property to which an application for a restraint order relates is property in a participating country, the applicant may ask the High Court to make a certificate under this paragraph.
- (2) The High Court may make a certificate under this paragraph if—
 - (a) it makes a restraint order in relation to property in the participating country, and
 - (b) it is satisfied that there is a good arguable case that the property is likely to be used for the purposes of a listed offence or is the proceeds of the commission of a listed offence.
- (3) A certificate under this paragraph is a certificate which—
 - (a) is made for the purposes of the relevant Framework Decision, and
 - (b) gives the specified information.
- (4) If the High Court makes a certificate under this paragraph—
 - (a) the restraint order must provide for notice of the certificate to be given to the person affected by it, and
 - (b) paragraph 34(2) to (4) applies to the certificate as it applies to the restraint order.

Sending domestic freezing orders

41C

- (1) If a certificate is made under paragraph 41B, the restraint order and the certificate are to be sent to the Secretary of State for forwarding to—
 - (a) a court exercising jurisdiction in the place where the property is situated, or
 - (b) any authority recognised by the government of the participating country as the appropriate authority for receiving orders of that kind.
- (2) The restraint order and the certificate must be accompanied by a forfeiture order, unless the certificate indicates when the court expects a forfeiture order to be sent.
- (3) The certificate must include a translation of it into an appropriate language of the participating country (if that language is not English).
- (4) The certificate must be signed by or on behalf of the court and must include a statement as to the accuracy of the information given in it.
The signature may be an electronic signature.
- (5) If the restraint order and the certificate are not accompanied by a forfeiture order, but a forfeiture order is subsequently made, it is to be sent to the Secretary of State for forwarding as mentioned in sub-paragraph (1).

Overseas freezing orders

41D

- (1) Paragraph 41E applies where an overseas freezing order made by an appropriate court or authority in a participating country is received by the Secretary of State from the court or authority which made or confirmed the order.
- (2) An overseas freezing order is an order prohibiting dealing with property—
 - (a) which is in the United Kingdom,
 - (b) which the appropriate court or authority considers is likely to be used for the purposes of a listed offence or is the proceeds of the commission of such an offence, and
 - (c) in respect of which an order has been or may be made by a court exercising criminal jurisdiction in the participating country for the forfeiture of the property, and in respect of which the following requirements of this paragraph are met.
- (3) The action which the appropriate court or authority considered would constitute or, as the case may be, constituted the listed offence is action done as an act of terrorism or for the purposes of terrorism.
- (4) The order must relate to—
 - (a) criminal proceedings instituted in the participating country, or
 - (b) a criminal investigation being carried on there.
- (5) The order must be accompanied by a certificate which gives the specified information; but a certificate may be treated as giving any specified information which is not given in it if the Secretary of State has the information in question.
- (6) The certificate must—
 - (a) be signed by or on behalf of the court or authority which made or confirmed the order,
 - (b) include a statement as to the accuracy of the information given in it,
 - (c) if it is not in English, include a translation of it into English.The signature may be an electronic signature.
- (7) The order must be accompanied by an order made by a court exercising criminal jurisdiction in that country for the forfeiture of the property, unless the certificate indicates when such an order is expected to be sent.
- (8) An appropriate court or authority in a participating country in relation to an overseas freezing order is—
 - (a) a court exercising criminal jurisdiction in the country,
 - (b) a prosecuting authority in the country,
 - (c) any other authority in the country which appears to the Secretary of State to have the function of making such orders.
- (9) References in paragraphs 41E to 41G to an overseas freezing order include its accompanying certificate.

Enforcement of overseas freezing orders

41E

- (1) Where this paragraph applies the Secretary of State must send a copy of the overseas freezing order to the High Court and to the Director of Public Prosecutions for Northern Ireland.
- (2) The court is to consider the overseas freezing order on its own initiative within a period prescribed by rules of court.
- (3) Before giving effect to the overseas freezing order, the court must give the Director an opportunity to be heard.
- (4) The court may decide not to give effect to the overseas freezing order only if, in its opinion, giving effect to it would be incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998).

41F

The High Court may postpone giving effect to an overseas freezing order in respect of any property—

- (a) in order to avoid prejudicing a criminal investigation which is taking place in the United Kingdom, or
- (b) if, under an order made by a court in criminal proceedings in the United Kingdom, the property may not be dealt with.

41G

- (1) Where the High Court decides to give effect to an overseas freezing order, it must—
 - (a) register the order in that court,
 - (b) provide for notice of the registration to be given to any person affected by it.
- (2) For the purpose of enforcing an overseas freezing order registered in the High Court, the order is to have effect as if it were an order made by that court.
- (3) Paragraph 35 applies to an overseas freezing order registered in the High Court as it applies to a restraint order under paragraph 33.
- (4) The High Court may cancel the registration of the order, or vary the property to which the order applies, on an application by the Director of Public Prosecutions for Northern Ireland or any other person affected by it, if or to the extent that—
 - (a) the court is of the opinion mentioned in paragraph 41E(4), or
 - (b) the court is of the opinion that the order has ceased to have effect in the participating country.
- (5) Her Majesty may by Order in Council make further provision for the enforcement in Northern Ireland of registered overseas freezing orders.
- (6) An Order in Council under this paragraph—
 - (a) may make different provision for different cases,
 - (b) is not to be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.”

8

In paragraph 44 of that Schedule (enforcement of orders made in designated countries), in sub-paragraph (2), after the second “order” there is inserted “(other than an overseas freezing order within the meaning of paragraph 41D)”.

9

In Part 4 of that Schedule (insolvency), in paragraph 45, at the end of paragraph (c) of the definition of “restraint order” there is inserted “or an order which is enforceable in England and Wales, Scotland or Northern Ireland by virtue of paragraph 11G, 25G or 41G”.

SCHEDULE 5**MINOR AND CONSEQUENTIAL AMENDMENTS****Section 91***The Internationally Protected Persons Act 1978 (c. 17)***1**

The Internationally Protected Persons Act 1978 is amended as follows.

2

In section 2 (supplementary provisions), in subsections (1) and (2), for “and the United Nations Personnel Act 1997” there is substituted “, the United Nations Personnel Act 1997 and the Terrorism Act 2000”.

*The Suppression of Terrorism Act 1978 (c. 26)***3**

The Suppression of Terrorism Act 1978 is amended as follows.

4

In section 4 (jurisdiction in respect of offences committed outside United Kingdom), in subsections (4) and (5), for “and the United Nations Personnel Act 1997” there is substituted “, the United Nations Personnel Act 1997 and the Terrorism Act 2000”.

*The Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/ 154 (N.I. 1))***5**

The Road Traffic (Northern Ireland) Order 1981 is amended as follows.

6

In Article 4 (exceptions to offence under Article 3), in paragraph (3)(a), after “Road Traffic Orders” there is inserted “or Chapter 1 of Part 3 of the Crime (International Co-operation) Act 2003”.

The Nuclear Material (Offences) Act 1983 (c. 18)

7

The Nuclear Material (Offences) Act 1983 is amended as follows.

8

In section 3 (supplemental), in subsections (1) and (2), for “and the United Nations Personnel Act 1997” there is substituted “, the United Nations Personnel Act 1997 and the Terrorism Act 2000”.

The Child Abduction Act 1984 (c. 37)

9

The Child Abduction Act 1984 is amended as follows.

10

In section 11 (consequential amendments and repeals), in subsection (3), after “the Internationally Protected Persons Act 1978” there is inserted “and sections 63B(2) and 63C(2) of the Terrorism Act 2000”.

The Criminal Justice Act 1987 (c. 38)

11

The Criminal Justice Act 1987 is amended as follows.

12

In section 2 (investigation powers of Director of Serious Fraud Office)–

(a) in subsection (1A), for paragraph (b) there is substituted–

“(b) the Secretary of State acting under section 15(2) of the Crime (International Co-operation) Act 2003, in response to a request received by him from a person mentioned in section 13(2) of that Act (an “overseas authority”).”,

(b) in subsection (8A), for the words from “furnished” to the end there is substituted “given to the overseas authority which requested it or given to the Secretary of State for forwarding to that overseas authority”;

(c) subsection (8B) is omitted,

(d) in subsection (8C), for “transmitted” (in both places) there is substituted “forwarded”,

(e) in subsection (18), “(8B)” is omitted.

The Criminal Justice Act 1988 (c. 33)

13

The Criminal Justice Act 1988 is amended as follows.

14

In section 24 (business etc. documents), in subsection (4), for “section 3 of the Criminal Justice (International Co-operation) Act 1990” there is substituted “section 7 of the Crime (International Co-operation) Act 2003”.

15

In section 26 (statements in documents that appear to have been prepared for the purposes of criminal proceedings or investigations), for “section 3 of the Criminal Justice (International Co-operation) Act 1990” there is substituted “section 7 of the Crime (International Co-operation) Act 2003”.

16

In paragraph 6 of Schedule 13 (evidence before courts-martial etc.)–

- (a) in sub-paragraph (1)–
 - (i) for “section 3 of the Criminal Justice (International Co-operation) Act 1990” there is substituted “section 7 of the Crime (International Co-operation) Act 2003”, and
 - (ii) for “letters of request or corresponding documents” there is substituted “requests for assistance in obtaining outside the United Kingdom evidence”, and
- (b) in sub-paragraph (4), for “letters of request or corresponding documents” there is substituted “requests for assistance in obtaining evidence”.

The Road Traffic Act 1988 (c. 52)

17

The Road Traffic Act 1988 is amended as follows.

18

In section 88 (exceptions to offence under section 87)–

- (a) in subsection (1A)(b)(ii), for “section 4(1) of or paragraph 6(1) or 9(1)” there is substituted “section 4 of or paragraph 6 or 9”,
- (b) in subsection (1B)(a), after “Road Traffic Acts” there is inserted “or Chapter 1 of Part 3 of the Crime (International Co-operation) Act 2003”.

19

In section 92 (requirements as to physical fitness of drivers), in subsection (7D), after “99D” there is inserted “or 109C”.

20

In section 94A (driving after refusal or revocation of licence), in subsection (1)–

- (a) in paragraph (a)(ii), for “section 93(1) or (2)” there is substituted “section 93”,
- (b) in paragraph (a)(iii)–
 - (i) after “section 99C(1) or (2)” there is inserted “or 109B”,
 - (ii) after “Community licence” there is inserted “or Northern Ireland licence”,
- (c) in paragraph (b)(ii), at the end there is inserted “or Northern Ireland licence”.

21

In section 97 (grant of licences), in subsection (1)(d), for “section 4(1) of or paragraph 6(1) or 9(1)” there is substituted “section 4 of or paragraph 6 or 9”.

22

In section 100 (appeals relating to licences), in subsection (1)–

- (a) in paragraph (c), after “99(3)” there is inserted “or (3A)”,
- (b) for “or 99C” there is substituted “, 99C or 109B”.

23

In section 105 (regulations)–

- (a) in subsection (2)–
 - (i) in paragraph (a), after “this Act,” there is inserted “Northern Ireland licences,”,
 - (ii) in paragraph (b)(iii), after “this Act” there is inserted “, of Northern Ireland licences”,
 - (iii) in paragraph (ea), after “counterparts” (in the first place) there is inserted “of Northern Ireland licences or” and after “counterparts” (in the second place) there is inserted “of Northern Ireland licences or (as the case may be)”,
 - (iv) in paragraph (f), before “Community licences” there is inserted “Northern Ireland licences or”,
- (b) in subsection (5), for “, 91A and” there is substituted “and 91ZA to”.

24

In section 107 (service of notices), for “99B or 99E” there is substituted “99B, 99E or 109A”.

25

In section 108 (interpretation), in subsection (1)–

- (a) in the definition of “counterpart”, the “and” at the end of paragraph (a) is omitted and after that paragraph there is inserted–

“(aa) in relation to a Northern Ireland licence, has the meaning given by section 109A of this Act (except in the definition of “Northern Ireland counterpart” below), and”,

- (b) in the definition of “Northern Ireland driving licence” and “Northern Ireland licence”, at the end there is inserted “and “Northern Ireland counterpart” means the document issued with the Northern Ireland licence as a counterpart under the law of Northern Ireland”.

26

In section 109 (provisions as to Northern Ireland drivers' licences)–

- (a) in subsection (1), after “Great Britain,” there is inserted “in accordance with that licence,”,
- (b) in subsection (2), paragraph (b) and the “and” preceding it are omitted,
- (c) subsections (3) to (5) are omitted.

27

In section 164 (power of constables to require production of driving licence etc.)–

- (a) in subsection (3)–

- (i) in paragraph (a), before “the Secretary of State” there is inserted “a person is required to deliver his licence and its counterpart to the Secretary of State under section 63 of the Crime (International Co-operation) Act 2003 or”,
- (ii) in paragraph (a)(iii), after “99C” there is inserted “, 109B”,
- (iii) in paragraph (b), after “99C” there is inserted “, 109B” and after “or 118” there is inserted “or section 63 of the Crime (International Co-operation) Act 2003”,
- (b) in subsection (11)–
 - (i) in the definition of “licence”, after “this Act” there is inserted “, a Northern Ireland licence”,
 - (ii) after ““counterpart”,” there is inserted ““Northern Ireland licence”,”.

28

In section 167 (power of arrest for constable in Scotland), before “Community licence” there is inserted “Northern Ireland licence or”.

29

In section 173 (forgery of documents, etc.)–

- (a) in subsection (2)(aa), after “counterpart of a” there is inserted “Northern Ireland licence or”,
- (b) in subsection (4), for “and “Community licence”” there is substituted “, “Community licence” and “Northern Ireland licence””.

30

In section 176 (power to seize certain articles)–

- (a) in subsection (1A), before “Community licence” (in both places) there is inserted “Northern Ireland licence or”,
- (b) in subsection (3A), after “such licence or” there is inserted “of a Northern Ireland licence or”,
- (c) in subsection (8), for “and “Community licence”” there is substituted “, “Community licence” and “Northern Ireland licence””.

31

In section 193A (tramcars and trolley vehicles), in subsection (2)(b), for “91A,” there is substituted “91ZA to”.

The Road Traffic Offenders Act 1988 (c. 53)

32

The Road Traffic Offenders Act 1988 is amended as follows.

33

In section 3 (restriction on institution of proceedings for certain offences), in subsection (2A), after “99D” there is inserted “or 109C”.

34

In section 26 (interim disqualification), in subsection (10), for the words from “and 91A(5)” to “licences)” there is substituted “, 91ZA(7) and 91A(5) of this Act”.

35

In section 98 (general interpretation), in subsection (1)–

- (a) in the definition of “the provisions connected with the licensing of drivers”, for “91A,” there is substituted “91ZA to”,
- (b) for “and “EEA State”” there is substituted “, “EEA State” and “Northern Ireland licence””.

36

In Schedule 1 (offences to which sections 1, 6, 11 and 12(1) of the Act apply)–

- (a) in the entry for section 94(3) of the Road Traffic Act 1988, in column 1, at the end there is inserted “or 109C”,
- (b) in the entry for section 94(3A) of that Act, in column 1, at the end there is inserted “or 109C(c)”,
- (c) in the entry for section 94A of that Act, in column 2, at the end there is inserted “or 109B”,
- (d) in the entry for section 99B(11) of that Act–
 - (i) in column 1, at the end there is inserted “and that subsection as applied by RTA section 109A(5)”,
 - (ii) in column 2, at the end there is inserted “or a requirement under section 99B(6) or (7) as applied by section 109A(5)”.

37

In Schedule 2 (prosecution and punishment of offences)–

- (a) in the entry for section 94(3) of the Road Traffic Act 1988, in column 2, at the end there is inserted “or 109C”,
- (b) in the entry for section 94(3A) of that Act, in column 2, at the end there is inserted “or 109C(c)”,
- (c) in the entry for section 94A of that Act, in column 2, at the end there is inserted “or 109B”,
- (d) in the entry for section 99B(11) of that Act–
 - (i) in column 1, at the end there is inserted “and that subsection as applied by RTA section 109A(5)”,
 - (ii) in column 2, at the end there is inserted “or a requirement under section 99B(6) or (7) as applied by section 109A(5)”.
- (e) the entry for section 109 of that Act is omitted,
- (f) before the entry for section 114 of that Act there is inserted–

	AT R “ notices)4(B901	Failure to deliver Northern Ireland licence to Secretary of State when required by notice under section 109B.					.yl i r am S levl B n o en t d r i n s . e l a s
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The Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988 (S.I. 1988/1847 (N.I. 17))

38

The Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988 is amended as follows.

39

In Article 4 (business etc. documents), in paragraph (4), for “section 3 of the Criminal Justice (International Co-operation) Act 1990” there is substituted “section 7 of the Crime (International Co-operation) Act 2003”.

40

In Article 6 (statements in documents that appear to have been prepared for the purposes of criminal proceedings or investigations), for “section 3 of the Criminal Justice (International Co-operation) Act 1990” there is substituted “section 7 of the Crime (International Co-operation) Act 2003”.

The Criminal Justice (International Co-operation) Act 1990 (c. 5)

41

The Criminal Justice (International Co-operation) Act 1990 is amended as follows.

42

Sections 1 to 4, 7, 8 and 11 (mutual service of process and provision of evidence) are omitted.

43

In section 5 (transfer of UK prisoner to give evidence or assist investigation overseas), after subsection (3) there is inserted–

“(3A) A warrant under this section has effect in spite of section 127(1) of the Army Act 1955, section 127(1) of the Air Force Act 1955 or section 82A(1) of the Naval Discipline Act 1957 (restriction on removing persons out of the United Kingdom who are serving military sentences).”

44

Schedule 1 (proceedings of nominated court) is omitted.

The Road Traffic (New Drivers) Act 1995 (c. 13)

45

The Road Traffic (New Drivers) Act 1995 is amended as follows.

46

In section 2 (surrender of licences), at the end there is inserted–

“(6) In this section and section 3 “licence” includes a Northern Ireland licence.”

47

In section 3 (revocation of licences)–

(a) after subsection (1) there is inserted–

“(1A) Where the Secretary of State serves on the holder of a Northern Ireland licence a notice under subsection (1), the Secretary of State must send to the licensing authority in Northern Ireland–

(a) particulars of the notice; and

(b) the Northern Ireland licence.

(1B) Where the Secretary of State is sent by that licensing authority particulars of a notice served on the holder of a licence under a provision of Northern Ireland law corresponding to subsection (1), he must by notice served on the holder revoke the licence.”,

- (b) in subsection (2), after “subsection (1)” there is inserted “or (1B)”,
 (c) at the end, there is inserted–

“(3) In this section references to the revocation of a person's Northern Ireland licence are references to its revocation as respects Great Britain; and, accordingly, the person ceases to be authorised by virtue of section 109(1) of the Road Traffic Act 1988 to drive in Great Britain a motor vehicle of any class.”

48

In section 4 (re-testing)–

- (a) in subsection (1)–
 (i) for “section 3(1)” there is substituted “section 3”,
 (ii) after “full licence” (in the second place it occurs) there is inserted “or (as the case may be) full Northern Ireland licence”,
 (b) after subsection (1) there is inserted–

“(1A) Subject to subsection (5), the Secretary of State may not under that Part grant a person whose Northern Ireland licence has been revoked under a provision of Northern Ireland law corresponding to section 3(1) a full licence to drive any class of vehicles in relation to which the revoked licence was issued as a full Northern Ireland licence unless he satisfies the Secretary of State as mentioned in subsection (1).”,

- (c) in subsections (2) and (3), at the end there is inserted “or (as the case may be) full Northern Ireland licence”,
 (d) in subsection (5)–
 (i) for “Subsection (1) does” there is substituted “Subsections (1) and (1A) do”,
 and
 (ii) for “section 3(1)” there is substituted “section 3 or whose Northern Ireland licence has been revoked under a provision of Northern Ireland law corresponding to section 3(1)”.

49

In section 5 (restoration of licence without re-testing in certain cases)–

- (a) in subsections (1), (4) and (6), for “section 3(1)” there is substituted “section 3”,
 (b) in subsections (3)(a) and (4)(c), after “section 2” there is inserted “or (as the case may be) the provision of Northern Ireland law corresponding to that section”,
 (c) at the end there is inserted–

“(11) Nothing in this section applies in relation to a person whose Northern Ireland licence has been revoked under section 3(1).”

50

In section 7 (early termination of probationary period)–

- (a) in paragraph (b), for “section 3(1)” there is substituted “section 3”,
- (b) in paragraph (c)–
 - (i) for “paragraph 5(1)” there is substituted “paragraph 5”,
 - (ii) for “paragraph 8(1)” there is substituted “paragraph 8”.

51

In section 9 (interpretation), after subsection (2) there is inserted–

“(2A) In this Act–
“full Northern Ireland licence” means a Northern Ireland licence other than a Northern Ireland provisional licence,
“Northern Ireland provisional licence” means a Northern Ireland licence which corresponds to a provisional licence.”;

52

Schedule 1 (newly qualified drivers holding test certificates) is amended as follows.

53

In paragraph 1, at the end there is inserted–

“(3) In this Schedule “licence” includes a Northern Ireland licence, “full licence” includes a full Northern Ireland licence and “provisional licence” includes a Northern Ireland provisional licence.

(4) In relation to the holder of a Northern Ireland licence, the following sub-paragraphs have effect for the purposes of this Schedule.

(5) References to a test certificate are references to a certificate or other document (in this Schedule referred to as a “Northern Ireland test certificate”) which is evidence that he has not more than two years previously passed a Northern Ireland test of competence to drive corresponding to the test mentioned in sub-paragraph (1).

(6) References to prescribed conditions are references to conditions subject to which the Northern Ireland provisional licence was granted.”

54

In paragraph 2, after sub-paragraph (4) there is inserted–

“(4A) In relation to the holder of a Northern Ireland licence, the reference in sub-paragraph (4)(b) to section 98(2) of the Road Traffic Act 1988 is a reference to the corresponding provision under the law of Northern Ireland.”

55

In paragraph 5–

- (a) after sub-paragraph (1) there is inserted–

“(1A) Where the Secretary of State serves on the holder of a Northern Ireland licence a notice under sub-paragraph (1), the Secretary of State must send to the licensing authority in Northern Ireland particulars of the notice together with the Northern Ireland test certificate.

(1B) Where the Secretary of State is sent by that licensing authority particulars of a notice served on the holder of a licence under a provision of Northern Ireland law corresponding to sub-paragraph (1), he must by notice served on that person revoke his test certificate.”

- (b) in sub-paragraph (2), after “sub-paragraph (1)” there is inserted “or (1B)”,
- (c) at the end there is inserted–

“(4) In this paragraph and paragraph 8 references to the revocation of a person's Northern Ireland test certificate are references to its revocation as respects Great Britain.

(5) The effect of the revocation of a person's Northern Ireland test certificate as respects Great Britain is that any prescribed conditions to which his Northern Ireland provisional licence ceased to be subject when he became a qualified driver shall again apply for the purposes of section 109(1) of the Road Traffic Act 1988.”

56

In paragraph 6, in sub-paragraph (1), for “paragraph 5(1)” there is substituted “paragraph 5, or whose Northern Ireland test certificate has been revoked under a provision of Northern Ireland law corresponding to paragraph 5(1),”.

57

In paragraph 8–

- (a) after sub-paragraph (1) there is inserted–

“(1A) Where the Secretary of State serves on the holder of a Northern Ireland licence a notice under sub-paragraph (1), the Secretary of State must send to the licensing authority in Northern Ireland particulars of the notice together with the Northern Ireland licence and the Northern Ireland test certificate.

(1B) Where the Secretary of State is sent by that licensing authority particulars of a notice served on the holder of a licence under a provision of Northern Ireland law corresponding to sub-paragraph (1), he must by notice served on that person revoke his licence and test certificate.”

- (b) in sub-paragraph (2), after “sub-paragraph (1)” there is inserted “or (1B)”,
- (c) at the end there is inserted–

“(3) In this paragraph references to the revocation of a person's Northern Ireland licence are references to its revocation as respects Great Britain; and, accordingly, the person ceases to be authorised by virtue of section 109(1) of the Road Traffic Act 1988 to drive in Great Britain a motor vehicle of any class.”

58

In paragraph 9–

- (a) in sub-paragraph (1), for “paragraph 8(1)” there is substituted “paragraph 8, or whose Northern Ireland licence and Northern Ireland test certificate have been revoked under a provision of Northern Ireland law corresponding to paragraph 8(1),”
- (b) in sub-paragraph (4)(b)(i), after “1988” there is inserted “, or under a provision of Northern Ireland law corresponding to that section,”.

59

In paragraph 10(a)–

- (a) for “paragraph 5(1)” there is substituted “paragraph 5 (or a person's Northern Ireland test certificate has been revoked under a provision of Northern Ireland law corresponding to paragraph 5(1))”,
- (b) for “paragraph 8(1)” there is substituted “paragraph 8 (or a person's Northern Ireland licence and Northern Ireland test certificate have been revoked under a provision of Northern Ireland law corresponding to paragraph 8(1))”.

60

In paragraph 11–

- (a) in sub-paragraphs (1) and (2)(c), for “paragraph 5(1)” and “paragraph 8(1)” there is substituted “paragraph 5” and “paragraph 8” respectively,
- (b) in sub-paragraph (1)(d), after “section 2” there is inserted “or (as the case may be) the provision of Northern Ireland law corresponding to that section”.

The Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)

61

The Criminal Law (Consolidation) (Scotland) Act 1995 is amended as follows.

62

In section 27 (Lord Advocate's direction), in subsection (2), for “section 4(2B) of the Criminal Justice (International Co-operation) Act 1990” there is substituted “section 15(4) of the Crime (International Co-operation) Act 2003”.

63

In section 28 (powers of investigation)–

- (a) in subsection (8), for the words from “by the” to the end there is substituted “by virtue of section 27(2) of this Act shall be given to the overseas authority which requested it or to the Lord Advocate for forwarding to that authority”,
- (b) subsection (9) is omitted,
- (c) in subsection (10), for “transmitted” (in both places) there is substituted “forwarded”.

The Criminal Procedure (Scotland) Act 1995 (c. 46)

64

The Criminal Procedure (Scotland) Act 1995 is amended as follows.

65

In section 210(1)(c) (consideration, in passing sentence of imprisonment or detention, of time spent in custody), at the end there is inserted “so however that a period of time spent both in custody on remand and, by virtue of section 47(1) of the Crime (International Co-operation) Act 2003, abroad is not for any reason to be discounted in a determination under paragraph (a) above or specification under paragraph (b) above”.

The United Nations Personnel Act 1997 (c. 13)

66

The United Nations Personnel Act 1997 is amended as follows.

67

In section 5 (supplementary provisions), in subsections (1) and (2), for “and the Nuclear Material (Offences) Act 1983” there is substituted “, the Nuclear Material (Offences) Act 1983 and the Terrorism Act 2000”.

The Data Protection Act 1998 (c. 29)

68

The Data Protection Act 1998 is amended as follows.

69

In section 28(1) (national security), for “section” there is substituted “sections 54A and”.

70

In section 60(2) and (3) (prosecutions and penalties), before “paragraph 12” there is inserted “section 54A and”.

71

In section 63(5) (application to the Crown), for “section” there is substituted “sections 54A and”.

The Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)

72

The Powers of Criminal Courts (Sentencing) Act 2000 is amended as follows.

73

In section 146 (driving disqualification for any offence)–

(a) in subsection (4), the “or” at the end of paragraph (a) is omitted and after that paragraph there is inserted–

“(aa) in the case where he holds a Northern Ireland licence (within the meaning of Part 3 of the Road Traffic Act 1988), his Northern Ireland licence and its counterpart (if any); or”,

(b) in subsection (5), in the definition of “counterpart”, the “and” at the end of paragraph (a) is omitted and after that paragraph there is inserted–

“(aa) in relation to a Northern Ireland licence, has the meaning given by section 109A of that Act; and”.

74

In section 147 (driving disqualification where vehicle used for purposes of crime), in subsection (5), the “or” at the end of paragraph (a) is omitted and after that paragraph there is inserted–

“(aa) in the case where he holds a Northern Ireland licence (within the meaning of Part 3 of the Road Traffic Act 1988), his Northern Ireland licence and its counterpart (if any); or”.

The Terrorism Act 2000 (c. 11)

75

The Terrorism Act 2000 is amended as follows.

76

In section 121 (interpretation), in the definition of “premises”, before “includes” (in the first place) there is inserted “, except in section 63D,”.

77

In section 123 (orders and regulations), in subsection (2), after paragraph (b) there is inserted–

“(ba) section 63C(3)(d);”.

The Regulation of Investigatory Powers Act 2000 (c. 23)

78

The Regulation of Investigatory Powers Act 2000 is amended as follows.

79

In section 65 (investigatory powers tribunal)–

(a) in subsection (5)–

(i) after paragraph (c) there is inserted–

“(ca) the carrying out of surveillance by a foreign police or customs officer (within the meaning of section 76A);”.

(ii) in paragraph (d), at the beginning there is inserted “other”.

(b) after subsection (7), there is inserted–

“(7A) For the purposes of this section conduct also takes place in challengeable circumstances if it takes place, or purports to take place, under section 76A.”

80

In section 78 (orders, regulations and rules), in subsection (3)(a), for “or 71(9)” there is substituted “, 71(9) or 76A(9)”.

The Armed Forces Act 2001 (c. 19)

81

In section 31 of the Armed Forces Act 2001 (power to make provision in consequence of enactments relating to criminal justice), in subsection (7)–

(a) after “section” there is inserted “section 5 of the Criminal Justice (International Co-operation) Act 1990 and”.

- (b) for “is” there is substituted “are”.

The Proceeds of Crime Act 2002 (c. 29)

82

The Proceeds of Crime Act 2002 is amended as follows.

83

In section 376 (evidence overseas)–

- (a) subsection (5) is omitted,
 (b) in subsection (6), for the words preceding paragraph (a) there is substituted “The person issuing a letter of request may send it”,
 (c) for subsection (7) there is substituted–

“(7) Alternatively, the person issuing the letter of request may send it to the Secretary of State for forwarding to the court, tribunal or authority mentioned in subsection (6).

(7A) In a case of urgency, the person issuing the letter of request may send it 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 the court, tribunal or authority mentioned in subsection (6).”

SCHEDULE 6

REPEALS

Section 91

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Criminal Justice Act 1987 (c. 38)	In section 2– subsection (8B), in subsection (18), the word “(8B)”. In section 3(6), the “and” preceding paragraph (m).
Road Traffic Act 1988 (c. 52)	In section 108(1), in the definition of “counterpart”, the “and” at the end of paragraph (a). In section 109– in subsection (2), paragraph (b) and the “and” preceding it, subsections (3) to (5).
Road Traffic Offenders Act 1988 (c. 53)	In Schedule 2, the entry for section 109 of the Road Traffic Act 1988.
Criminal Justice (International Co-operation) Act 1990 (c. 5)	Sections 1 to 4, 7, 8 and 11. Schedule 1. In Schedule 4, paragraphs 6(2) and 8.
Criminal Justice and Public Order Act 1994 (c. 33)	Section 164(1).
Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)	Section 28(9).

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)	In section 146– in subsection (4), the “or” at the end of paragraph (a), in subsection (5), in the definition of “counterpart”, the “and” at the end of paragraph (a). In section 147(5), the “or” at the end of paragraph (a).
Criminal Justice and Police Act 2001 (c. 16)	In Schedule 1, paragraph 49.
Proceeds of Crime Act 2002 (c. 29)	Section 376(5).

EXPLANATORY NOTES

(This note is not part of the Order)

INTRODUCTION

1. These explanatory notes relate to the Crime (International Co-operation) Act 2003 which received Royal Assent on 30 October 2003. They have been prepared by the Home Office and the Department for Transport in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. These notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Act extends to the whole of the UK, with the following exceptions:

- sections 32 to 36 extend only to England and Wales and Northern Ireland (requests for information about banking transactions in England and Wales and Northern Ireland for use abroad);
- sections 37 to 41 extend only to Scotland (requests for information about banking transactions in Scotland for use abroad).

4. The Act is in five Parts, and contains six Schedules.

Part 1: Mutual Assistance in Criminal Matters

5. Part 1 largely replaces the UK's mutual legal assistance legislation, contained in Part 1 of the Criminal Justice (International Co-operation) Act 1990, which enabled the UK to request and provide assistance to all countries. It implements the mutual legal assistance provisions of the Schengen Implementing Convention of 14th June 1985 (the “Schengen Convention”), the Convention on Mutual Assistance in Criminal Matters 2000 (the “MLAC”), and the evidence-freezing provisions of the 2003 Framework Decision on the execution in the European Union of orders freezing property or evidence adopted by the Council of the European Union on 22nd July 2003 (the “2003 Framework Decision”). Chapter 4 of Part 1 implements the 2001 Protocol to the Convention on Mutual Assistance in Criminal Matters (the “2001 Protocol”) which creates obligations for participating countries to respond to requests for assistance with locating banking accounts and to provide banking information relating to criminal investigations.

Part 2: Terrorist Acts and Threats: Jurisdiction

6. Part 2 implements the Framework Decision of 13th June 2002 on combating terrorism (the “2002 Framework Decision”), insofar as it requires the UK to take extra-territorial jurisdiction over a range of terrorist offences.

Part 3: Road Traffic

7. Part 3 implements the Convention on Driving Disqualification of 17th June 1998 drawn up on the basis of Article K.3 of the Treaty on European Union (the “Convention”) which introduces the mutual recognition of driving disqualifications. Part 3 also introduces new measures to prevent drivers banned from driving in Northern Ireland from obtaining a British driving licence or vice versa.

Part 4: Miscellaneous

8. Part 4 implements additional measures set out in the Schengen Convention in the area of police co-operation, extradition and data protection. Part 4 also contains provisions which are necessary to enable the UK to implement the Framework Decision of 28th May 2001 on combating fraud and counterfeiting of non-cash means of payment (the “2001 Framework Decision”), and implements, in relation to terrorist property, the 2003 Framework Decision.

Part 5: Final Provisions

9. Part 5 contains amendments and repeals, and other miscellaneous provisions.

Schedules 1 to 6

10. A brief explanation of the Schedules follows in these explanatory notes in the Commentary on Sections.

BACKGROUND

11. The Crime (International Co-operation) Act 2003 implements several outstanding European Union (“EU”) commitments in the area of police and judicial co-operation.

12. The Act includes the legislation necessary to enable the UK's partial participation in the Schengen Convention. The Schengen Convention was designed to facilitate the free movement of persons by removing internal border controls. A series of measures to enhance police and judicial co-operation was then agreed to compensate for the lifting of controls. The Schengen Convention was formally integrated into the EU treaty structure by the 1997 Treaty of Amsterdam.

13. In May 1999, the UK formally applied to participate in the provisions on police and judicial co-operation, and the Schengen Information System, a database storing criminal information from all participating countries. The UK's implementation of the Schengen Convention will be formally evaluated by the other Schengen states before its participation can be approved by the Justice and Home Affairs Ministerial Council. Legislation is required to implement some of the mutual legal assistance measures, the extradition provisions and some of the measures on police co-operation.

14. Furthermore, the Act implements several Framework Decisions of the EU in the field of Justice and Home Affairs policy. Framework Decisions were introduced by the 1997 Treaty of Amsterdam and have:

“the purpose of approximation of the laws and regulations of the Member States. Framework Decisions shall be binding upon the Member States as to the result to be achieved, but shall

leave to the national authorities the choice of form and methods”: Article 34(2)(b), Treaty on European Union.

15. The UK government has agreed to the Framework Decisions contained in the Act.

Part 1: Mutual Assistance in Criminal Matters

16. Part 1 of the Act deals with mutual legal assistance and the evidence aspects of the 2003 Framework Decision. It implements both the mutual legal assistance provisions of the Schengen Convention that are not repealed and replaced by the MLAC and those of the MLAC itself. The primary aim of the MLAC is to improve judicial co-operation by developing and modernising the existing provisions governing mutual assistance, mainly by extending the range of circumstances in which mutual assistance may be requested, and by facilitating assistance so that it is quicker, more flexible, and therefore more effective. Part 1 re-enacts and updates the provisions in Part 1 of the Criminal Justice (International Co-operation) Act 1990 to widen the scope of cases in which the UK is able to request and offer assistance, and to introduce the direct transmission of legal process and requests for assistance where possible. Part 1 also implements the 2001 Protocol which extends mutual legal assistance to enable provision of a wider range of banking information than at present, including tracing any bank accounts and monitoring identified accounts held by an individual or company.

17. Part 1 of the Act also introduces the mutual recognition of freezing orders on evidence as introduced by the 2003 Framework Decision. The Tampere Council held in October 1999 — a special meeting of the European Council focusing specifically on Justice and Home Affairs matters — agreed that the mutual recognition of judicial decisions should be the “cornerstone” of the future development of judicial co-operation within the EU, rather than harmonisation of legal systems. The Justice and Home Affairs Ministerial Council held in December 2000 adopted a programme of work to implement the principle of mutual recognition. The 2003 Framework Decision, and the Framework Decision of 13th June 2002 on the European Arrest Warrant to be implemented through the Extradition Bill, are the first results of that work programme.

18. The mutual legal assistance provisions in Part 1 apply to all other countries, in line with existing legislation, except for certain new provisions which are specifically restricted to “participating countries”. For the purposes of those provisions, all EU Member States will be “participating countries” (subject to their participation in the relevant instruments). Some arrangements may also be extended to other countries by order if appropriate. In such cases, countries will be designated by an order that will be laid before and approved by both Houses of Parliament, or, in relation to Scotland, the Scottish Parliament.

Part 2: Terrorist Acts and Threats: Jurisdiction

19. The 2002 Framework Decision was drafted in response to the attacks of 11 September 2001, with the purpose of ensuring that all EU Member States had effective terrorist legislation in place. The 2002 Framework Decision defines a range of terrorist offences and requires Member States to introduce “effective, proportionate and dissuasive” criminal penalties for these offences. Much of the substance of the 2002 Framework Decision is already given effect to in existing UK legislation. However, Article 9 which deals with extra-territorial jurisdiction for certain terrorist offences is not for the most part covered. Part 2 of this Act will therefore give effect to Article 9 of the 2002 Framework Decision by allowing the UK to take extra-territorial jurisdiction both over terrorist offences committed by UK residents and nationals anywhere in the world and over attacks on UK residents, nationals and diplomatic premises wherever they occur.

Part 3: Road Traffic

20. Part 3 provides for the implementation of the Convention. Under the Convention, drivers normally resident in one Member State of the EU who are disqualified from driving in another Member State will also be disqualified in their state of residence. The duties placed on the Secretary of State for Transport under this Part will be administered by the Driver and Vehicle Licensing Agency. The Convention will come into effect when it has been ratified by all the Member States but there is also provision for the Convention to be implemented on a bilateral basis between participating Member States. Part 3 also introduces new measures to prevent drivers banned from driving in Northern Ireland from obtaining a British driving licence or vice versa.

Part 4: Miscellaneous

21. Part 4 makes various miscellaneous provisions. Section 80 provides for the disclosure of information by the Serious Fraud Office in the context of criminal investigations or proceedings. This Part also covers four different areas of the Schengen Convention. Firstly, section 81 permits the Information Commissioner to inspect any of the three European information systems which are or will be used by the UK. Section 82 provides for driver licensing information to be disclosed for the purposes of the Schengen Information System. In the realm of police co-operation, sections 83 to 85 implement the requirement of the Schengen Convention for officers from one Member State to conduct unaccompanied surveillance in another Schengen state for up to five hours in exceptional circumstances. The extradition provisions in sections 86 and 87 would allow the UK to apply the Schengen-building provisions of the 1996 Extradition Convention to non-EU Member States such as Iceland and Norway; and to apply the 1995 and 1996 Extradition Conventions to Italy and France.

22. The 2001 Framework Decision, one aspect of which is implemented in Part 4 of the Act, is intended to support the fight against fraud and counterfeiting across the EU. The measure forms part of the Commission's Fraud Prevention Action Plan. It requires Member States to criminalise different types of conduct in relation to non-cash means of payment — for example, the obtaining and possession of false or counterfeit monetary instruments for fraudulent purposes. With the exception of part of one article, the provisions of the 2001 Framework Decision are already covered within UK law.

TERRITORIAL APPLICATION: WALES

23. There is no effect on the National Assembly for Wales, and the Act's effect in Wales is no different from its effect in England.

COMMENTARY ON SECTIONS

Part 1: Mutual Assistance in Criminal Matters

Chapter 1: *Mutual Service of Process etc.*

Section 1: Service of overseas process in the UK

24. This section replaces and expands upon sections 1(1) and (2) of the Criminal Justice (International Co-operation) Act 1990 (the “1990 Act”), which established the procedure for service of overseas procedural legal documents in the UK. The Schengen Convention and the MLAC introduce different procedures, enabling most procedural documents to be sent directly by post from the issuing authority to persons in the UK. Other countries may also send documents directly to recipients in the UK, if so enabled by their domestic law.

25. This section regulates those cases where direct service is not used.

26. The Schengen Convention and the MLAC extend the scope of mutual legal assistance to a much broader range of proceedings, and the process to be served under section 1 will encompass documents relating to the extended categories of proceedings specified in section 1(2). Neither instrument defines the term “procedural documents”, so the section is broadly drafted. The types of administrative and criminal proceedings to which this section applies are defined in section 51(1).

27. Subsection (3) replaces section 1(2) of the 1990 Act, giving the Secretary of State, (or, in Scotland, the Lord Advocate), discretion as to how to serve the document — it may be served by post, or the chief officer of police in the relevant area may be directed to serve it personally where this is required.

Section 2: Service of overseas process: supplementary

28. This section replaces subsections (3) to (6) of section 1 of the 1990 Act, and there are no material changes. Where the process served requires a person to appear as a party or witness, the process must be accompanied by a notice stating that no obligation under UK law to comply with the process is imposed, but that the person may wish to take advice on failure to comply under the laws of the overseas country, and that the person may not be accorded the same rights and privileges as he would be in the UK. Where a chief officer of police causes process to be served under section 1, that officer must inform the Secretary of State (or the Lord Advocate) when and how it was served and (if possible) provide a signed receipt: where the process cannot be served, the officer must inform the Secretary of State (or the Lord Advocate) of the reason for this.

Section 3: General requirements for service of process

29. This section, with section 4, replaces and expands on section 2 of the 1990 Act, which governs the service of UK legal process to persons in other countries. The section extends that provision to enable service of all documents issued or made for the purposes of criminal proceedings, making it consistent with the broad interpretation of “procedural documents” envisaged in the MLAC and the Schengen Convention. It does not provide for the service of documents relating to administrative proceedings, as the UK does not have proceedings of this nature.

30. Subsection (3) creates an obligation on the person at whose request the process is issued to provide a translation where he is aware that the recipient does not understand English.

31. Subsections (4) to (7) replace section 2(3) and (4) of the 1990 Act. The serving of process does not impose an obligation under UK law to comply with that process, with the result that failure to comply does not constitute contempt of court. However, if the process is later served on the person when they are in the UK, the usual consequences for non-compliance will apply. This does not represent any change from existing practice.

Section 4: Service of process otherwise than by post

32. Although most process from the UK will be served by post, this section retains the option of serving process issued in England and Wales or Northern Ireland in accordance with arrangements made by the Secretary of State. Where the person on whom it is to be served is in a participating country, this option is available only if one of the conditions in subsection (3) is met. (The meaning of “participating country” is explained in paragraph 18 of these explanatory notes.)

33. In these cases, process may be sent via the Secretary of State to the central authority of the other country, which will transmit the process to the recipient. (The “UK central authority” is the authority for mutual legal assistance located in the Home Office, and references in these explanatory notes to overseas central authorities are to the equivalent bodies overseas.)

Section 5: General requirements for effecting Scottish citation etc.

34. This section is the Scottish equivalent to section 3. It reflects the provisions of section 3 but refers to the Scottish term “citation” rather than “process”. In criminal proceedings in Scotland “citation” is the term used for the procedure whereby someone is called to court to answer an action or give evidence as a witness.

Section 6: Effecting Scottish citation etc. otherwise than by post

35. This section is the Scottish equivalent to section 4. It reflects the provisions of section 4 but provides that the Lord Advocate, rather than the Secretary of State, is to make arrangements for service of a citation or document otherwise than by post.

*Chapter 2: Mutual Provision of Evidence***Section 7: Requests for assistance in obtaining evidence abroad**

36. Sections 7 to 9 deal with requests to obtain evidence from abroad in relation to a prosecution or investigation taking place in the UK. These provisions develop and expand on section 3 of the 1990 Act, which they replace.

37. Section 7 sets out the authorities which may make requests for assistance, in which circumstances, and the form in which requests may be made. The judicial authorities which may request assistance under this section, (provided it appears that an offence has been committed or there are reasonable grounds for suspecting this, and proceedings or an investigation are underway), are any judge, and a justice of the peace (in England and Wales), a sheriff (in Scotland) and a resident magistrate (in Northern Ireland). A prosecuting authority which has been designated by an order made by the Secretary of State — (or, in Scotland, the Lord Advocate or a procurator fiscal) — may also request assistance if the conditions set out in subsection (5) are satisfied. This arrangement is not new: designated prosecuting authorities were able to issue requests under the 1990 Act. The assistance which may be requested is to obtain evidence located outside the UK for use in a domestic criminal proceeding or investigation.

38. Subsection (7) requires that any outgoing requests for information about banking transactions made to participating countries under Article 2 of the 2001 Protocol must clearly state the relevance of the evidence to the investigation. This is in line with the conditions set out in the 2001 Protocol.

Section 8: Sending requests for assistance

39. This section makes provision for the transmission of UK requests to overseas authorities. It enables requests made under section 7 to be sent directly from the requesting authority in the UK to the relevant overseas authority, rather than via the central authorities of the two countries. This is a new arrangement. Under existing powers, direct transmission is possible only in cases of urgency. Direct transmission is a key tenet of the MLAC, which these provisions implement and, in general, where a request is destined for the EU it will in future be sent directly to the appropriate overseas authority from the UK authority making the request.

40. As there will be situations where direct transmission is not possible, for example where the particular executing authority is not known, where direct transmission is not permitted under the MLAC, or where the requested state is outside the EU, subsection (2) retains the option of indirect transmission via the Secretary of State (or the Lord Advocate in Scotland).

41. Subsection (3) implements Article 6(4) of the MLAC, and permits urgent requests to be submitted via Interpol or any other body able to receive it under any provisions adopted under the Treaty on

European Union. This will permit, for example, EU Member States to make a request to their national member of Eurojust, a body established by Council Decision under Part VI of the Treaty on European Union with a view to reinforcing the fight in Member States against serious crime.

Section 9: Use of evidence obtained

42. This section ensures that evidence obtained from an overseas authority may be used only for the purposes for which it was requested (unless the consent of the requested overseas authority has been obtained), and is subject to the same provisions on the admissibility of evidence as evidence obtained under normal domestic arrangements. This section replicates sections 3(7) to 3(9) of the 1990 Act.

Section 10: Domestic freezing orders

43. This section provides for the issuing of domestic freezing orders, in accordance with the 2003 Framework Decision. The section deals with orders to freeze evidence only. Schedule 4 to the Act deals with orders to freeze terrorist assets, but orders to freeze property are not otherwise covered by this Act. A domestic freezing order is defined for the purposes of this section as an order for protecting evidence which is in a participating country (explained in paragraph 18) pending the transfer of the evidence to the UK.

44. The section specifies the circumstances in which a judicial authority (as defined in subsection (5)) may make a freezing order. For a domestic freezing order to be made, it should appear to the judicial authority that proceedings in respect of an offence covered by the 2003 Framework Decision have been instituted or such an offence is being investigated, that there are reasonable grounds to believe there is evidence in a participating country which satisfies the requirements of this section (including, for example, that the evidence is likely to be of substantial value to criminal proceedings or an investigation in the UK), and that a request has been (or will be) made to the authority for the evidence to be sent to the UK.

Section 11: Sending freezing orders

45. This section provides that freezing orders must be sent via the Secretary of State (or, in Scotland, the Lord Advocate). This is in contrast to the general direct transmission provision in section 8.

46. This is necessary because freezing orders based on the concept of mutual recognition under the 2003 Framework Decision are completely new, and will be unfamiliar to those issuing and receiving them in terms of format, conditions and procedural requirements. Transmission via the central authority will enable the orders to be checked and monitored, to ensure that they comply with the requirements of the 2003 Framework Decision, and to ensure that they are responded to by the overseas authority in the appropriate manner. Under the terms of the 2003 Framework Decision the UK is allowed to require transmission via the central authority.

47. The section provides that freezing orders must be accompanied by a certificate, and lists requirements relating to the certificate. This is in accordance with Article 9 of the 2003 Framework Decision. Subsection (3) requires the judicial authority to send the order to the Secretary of State within 14 days of it being made. Whilst we expect that such orders will be transmitted without delay, the time limit has been included to ensure that they are not held up for lengthy periods.

Section 12: Variation or revocation of freezing orders

48. This section provides that a judicial authority which makes a freezing order under section 10 may vary or revoke it on application by the persons mentioned in this section.

Section 13: Requests for assistance from overseas authorities

49. This section deals with handling incoming requests for assistance with obtaining evidence located in the UK.

50. Subsection (1) provides that, if the conditions set out in section 14 are satisfied, arrangements may be made for evidence to be obtained, or for an application for a warrant to be made in response to a request for assistance.

51. Subsection (2) sets out the authorities competent to make requests for mutual legal assistance. These are courts, prosecuting authorities and other authorities which have the function of making such requests — (examining magistrates, for example). Subsection (3) also provides for requests to be received from Interpol and from bodies or persons competent to make requests pursuant to agreements adopted under the Treaty on European Union. Eurojust is an example of such a body.

52. The section makes provision for requests to be received by “territorial authorities”. These are defined in section 28(9). This enables transmission to the Secretary of State, or (for Scotland) the Lord Advocate.

53. Article 6 of the MLAC envisages direct transmission of most requests, but direct transmission is difficult to apply in our domestic system where jurisdiction is based largely on function rather than geography, and where the same authorities are not necessarily competent to both issue and execute letters of request. Misdirection of requests sent directly to the wrong authority would create delays, defeating the purpose of direct transmission which is to speed up the process. The UK therefore has a special provision in the MLAC enabling it to opt out of the direct transmission requirement.

54. Section 27 of the Act enables the Treasury by order to provide for certain functions conferred on the Secretary of State or on a constable to be exercisable by HM Customs and Excise, and for the Secretary of State by order to provide for certain functions conferred on him or on a constable to be exercisable by other persons prescribed by order. This will facilitate more extensive direct transmission in the future.

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.

Section 15: Nominating a court etc. to receive evidence

58. This section provides for a court to be nominated to receive evidence under section 14 above, and covers proceedings currently governed by section 4 of the 1990 Act.

59. The powers to nominate a court are conferred on the Secretary of State in England, Wales and Northern Ireland and on the Lord Advocate in Scotland. Where it appears that the request relates to an offence involving serious or complex fraud, the request may be referred to the Director of the Serious Fraud Office, or, in Scotland, a direction may be made applying the powers of investigation of a nominated officer under Part IV of the Criminal Law (Consolidation) (Scotland) Act 1995.

60. Schedule 1 makes further provision in relation to proceedings of a court nominated to receive evidence.

Section 16: Extension of statutory search powers

61. Subsection (1) replicates section 7(1) of the 1990 Act, which it replaces. Subsection (3) applies the provision to Northern Ireland. As with the provision in the 1990 Act, the section enables the appropriate authorities in England, Wales and Northern Ireland to apply for and execute a search warrant or a production order in response to an overseas request, in the same circumstances as would be possible in relation to a domestic case — (that is when the conduct in question would be a serious arrestable offence if committed here).

62. Subsection (2)(b) provides that such a search warrant or production order may also be applied for and executed without an overseas request if the constable who makes the application is a member of an international joint investigation team (as defined in subsection (5)). Subsection (4)(b) provides similarly for Northern Ireland. These provisions implement Article 13(7) of the MLAC which contemplates investigative measures being undertaken without such a request by seconded members of a joint investigation team in relation to the team's investigations overseas. The constable making the application for the warrant or order would have personal knowledge of the joint investigation as he would in making such an application in a domestic investigation.

Section 17: Warrants in England and Wales or Northern Ireland

63. This section replicates section 7(2) of the 1990 Act, which it replaces. It enables search warrants to be issued if the conditions in subsection (3) are satisfied. These conditions are that criminal

proceedings overseas have been instituted or a person has been arrested in the course of a criminal investigation, the alleged criminal conduct would constitute an arrestable offence if it occurred in England and Wales or Northern Ireland, and there are reasonable grounds to suspect that there is evidence relating to the offence on premises here. This section enables the search of premises occupied or controlled by the suspect only.

Section 18: Warrants in Scotland

64. This section is the Scottish equivalent to sections 16 and 17 and it serves the same purpose as those sections do in relation to England, Wales and Northern Ireland, consistent with Scottish procedure for search warrants. It replaces and largely replicates sections 8(1) and (2) of the 1990 Act, with the exception of inclusion of a reference to section 134 of the Criminal Procedure (Scotland) Act 1995. It gives a sheriff the same power to issue a warrant authorising entry, search and seizure by a constable or customs officer, as he would have under section 134 of the Criminal Procedure (Scotland) Act 1995. Before issuing such a warrant the sheriff must be satisfied that an offence under the law of a country outside the UK has been committed and that the conduct would have constituted an offence punishable by imprisonment if it had occurred in Scotland. In Scotland, with regard to joint investigation teams, the application for a search warrant will be made by the procurator fiscal on behalf of the team.

Section 19: Seized evidence

65. This section deals with the treatment of any evidence that is seized under the procedures set out in sections 16 to 18. Article 6 of the MLAC requires the evidence to be sent directly to the court or authority which requested it. This is a departure from existing procedure established by the 1990 Act. It will speed up the provision of evidence by cutting out any central authority involvement once the evidence has been obtained. However, there will be circumstances when evidence may not be returned directly, (for example, when a country that is not party to the MLAC requires evidence to be returned via the central authority), and subsection (1) therefore provides that evidence may be sent directly to the requesting authority, or via the Secretary of State (or, in Scotland, the Lord Advocate). Subsection (3) provides that this section does not apply to evidence obtained by virtue of sections 16(2)(b) or (4)(b) or 18(2)(b) in an international joint investigation.

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.

Section 21: Considering the order

71. This section sets out the procedure when an overseas freezing order is received in the UK.

72. Providing the conditions in section 20 are met, the territorial authority (defined in section 28 as the Secretary of State in England and Wales and Northern Ireland, and the Lord Advocate in Scotland) must refer the order to a court for execution. There is no discretion at this stage.

73. The section provides for rules of court to set time limits for the court to consider the order and sets out the grounds on which the court may decide to refuse to execute an order. The grounds are if execution of the order would be incompatible with the Convention rights (as defined in the Human Rights Act 1998) and where the principle of double jeopardy is infringed — (that is where the person to whom the order relates would be entitled to be discharged under any rule of law in the participating country or the UK relating to previous acquittal or conviction).

Section 22: Giving effect to the order

74. This section sets out how an overseas freezing order will be executed in practical terms. This will be done by issuing a domestic search warrant or production order. The procedures largely follow those provided for under the Police and Criminal Evidence Act 1984 (“PACE”). However, the warrants or orders will not be issued under PACE. They will be free-standing warrants or orders that will be issued in relation to the offences covered by the 2003 Framework Decision. PACE does not apply in Scotland which has its own search warrant procedure.

Section 23: Postponed effect

75. This section sets out circumstances (covered in Article 7 of the 2003 Framework Decision) in which UK authorities may postpone giving effect to freezing orders. If the decision is taken to postpone acting on a freezing order, the requesting country will be informed accordingly. If the grounds for postponement cease, the order will then be given effect to under section 22.

Section 24: Evidence seized under the order

76. This section provides that evidence which has been subject to a freezing order must be retained by the constable until the territorial authority gives him instructions either to send the evidence to the requesting authority or to release it. If the territorial authority has received a request from the overseas authority for the evidence to be sent, it may require a constable to send the evidence to the overseas authority. Otherwise, the territorial authority must order the release of the evidence under section 25(4).

Section 25: Release of evidence held under the order

77. Under this section, the court may, in response to an application made by one of the persons listed in subsection (2), authorise the release of evidence by the constable. This would enable the persons mentioned in subsections (2)(a) and (2)(b) to apply for the release of the evidence seized

in the event that the overseas freezing order were withdrawn, or if one of the conditions for non-execution in section 21 were met.

78. It would also enable a third party affected by the order, for example the person whose property had been seized, to challenge the execution of the order on the grounds listed in subsection (1). Substantial reasons for issuing the overseas freezing order can, however, be challenged only in the country which issued the order.

Section 26: Powers under warrants

79. This section relates to issuing warrants in relation both to mutual legal assistance requests under section 17 and overseas freezing orders under section 22.

80. In line with PACE, subsection (1) prevents a warrant being issued if items sought are subject to legal privilege, excluded material or special procedure material (as defined in PACE under section 28(3)). Excluded or special procedure material must be obtained by issuing a less intrusive production order. Warrants in respect of such material can be sought only if a production order has been obtained and has failed to produce the evidence sought.

81. Subsection (3) makes an amendment to the Criminal Justice and Police Act 2001, providing that the additional powers of seizure in that Act will apply to seizure of evidence relevant to overseas offences or investigations under these provisions.

Section 27: Exercise of powers by others

82. This section provides for certain functions conferred on the Secretary of State or on a constable to be conferred upon others. This is in recognition of the MLAC requirement for direct transmission of requests. Currently, the authorities which deal with many requests for assistance, such as HM Customs and Excise, do not have the power to nominate courts or to apply for warrants in order to execute mutual legal assistance requests, and have to rely on the Secretary of State to nominate a court or issue a direction to make an application for a warrant.

83. Therefore, this section contains an order-making power to provide that certain functions conferred on the Secretary of State or a constable may be exercisable by customs officers or persons acting under their direction. The practical effect of this power is that it would enable requests to be sent directly to HM Customs and Excise and fully executed by them, without recourse to the Secretary of State, in circumstances where a court nomination or application for a warrant is required, and will implement the principle of direct transmission more fully.

84. Subsection (2) provides for the Secretary of State to confer similar powers on prescribed persons in the future. This could apply either to authorities that already execute requests, or be extended to other authorities that may take on a role in the execution of mutual legal assistance requests.

Section 28: Interpretation of Chapter 2

85. This section defines the terms used in Chapter 2.

86. Subsection (5) defines “a listed offence” as an offence described in Article 3(2) of the 2003 Framework Decision, or as an offence prescribed, or of a description prescribed, by an 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. Subsection (6) therefore provides that any order

which the Secretary of State makes (or, in relation to Scotland, the Scottish Ministers) in respect of a prescribed offence may require that the conduct involved must if it occurred in a part of the UK constitute an offence in that part.

Chapter 3: *Hearing Evidence through Television Links or by Telephone*

Section 29: Hearing witnesses abroad through television links

87. Article 10 of the MLAC permits the hearing of witnesses by video link where it is neither possible nor desirable for the witness to travel from his Member State to that where his evidence is required.

88. Outgoing requests from the UK are currently covered by the provisions contained in section 32 of the Criminal Justice Act 1988, and section 273 of the Criminal Procedure (Scotland) Act 1995, which allow the use of video links in limited circumstances. The Act does not change the current position on the types of case when video links can be used to import evidence into UK court proceedings, although the section makes provision for the Secretary of State (or, in relation to Scotland, the Scottish Ministers) to extend this provision to other types of criminal proceedings in the future.

Section 30: Hearing witnesses in the UK through television links

89. This section introduces arrangements so that, for the first time, courts can take video evidence of witnesses for transmission abroad. All requests will be sent to the Secretary of State, (or, in Scotland, the Lord Advocate), who will then nominate a court where the hearing will take place. The proceedings will be subject to section 1 of the Perjury Act 1911, (in Northern Ireland, Article 3 of the Perjury (Northern Ireland) Order 1979, and, in Scotland, sections 44 to 46 of the Criminal Law (Consolidation) (Scotland) Act 1995 or any matter pertaining to the common law crime of perjury), and the rules on contempt of court will apply to the hearing. Although the hearing will not be a UK court proceeding, states must (in accordance with Article 10(8) of the MLAC), be able to deal with witnesses who refuse to testify or do not testify according to the truth under their domestic law.

90. Subsection (6) makes reference to Schedule 2 to the Act which makes provision on procedural matters such as securing attendance of witnesses, the conduct of the hearing, and witness privilege. The domestic court must ensure that it protects the rights and privileges of the witness (such as the privilege against self-incrimination) and is to intervene where necessary to safeguard the rights of the witness. Translation must be available for the benefit of the court as well as the witness.

Section 31: Hearing witnesses in the UK by telephone

91. Article 11 of the MLAC allows for courts to hear witnesses or experts by telephone within the scope of national law. This section allows the UK to respond to requests for assistance in arranging telephone hearings at the request of a participating country. All requests will be sent to the Secretary of State, (in Scotland, the Lord Advocate) who will then nominate a court where the hearing will take place. Unlike the provisions concerning evidence by television link, the witness or expert has to give his consent, in accordance with Article 11(2) of the MLAC, and subsection (3) provides that a request for a person to give evidence in this way must state that the witness is willing to give evidence. There is, therefore, no power to compel witnesses to attend the hearing. As with section 30, proceedings will be subject to the law on perjury, and the rules on contempt of court will apply to the hearing, but, except for these limited purposes, the evidence given before the nominated court is not to be treated as evidence given in UK proceedings. Some countries find telephone

hearings a useful means of taking routine statements from key witnesses. As UK law does not provide any scope for evidence to be heard in this way there is no provision made here for outgoing requests.

Chapter 4: *Information about Banking Transactions*

92. Sections 32 to 46 implement the 2001 Protocol. The purpose of the 2001 Protocol is to tackle serious crime, in particular economic crime and money laundering. Countries participating in the 2001 Protocol are obliged to identify, provide information about, and monitor bank accounts at the request of other participating countries, subject to certain restrictions and conditions which are explained in more detail below. The 2001 Protocol obliges participating countries to establish mechanisms whereby they can provide the stipulated information. The manner in which they do so is left to individual participating countries.

Sections 32: Customer Information

93. Sections 32 and 33 implement the provisions of Article 1 of the 2001 Protocol in relation to incoming requests to provide information about bank accounts in the UK relating to a person who is the subject of an investigation in a participating country.

94. Section 32 applies where the Secretary of State receives such a request and authorises him to direct the appropriate police or customs officer to apply for a customer information order. A customer information order requires a financial institution specified in the application to provide details of any accounts held by the person who is the subject of an investigation into serious criminal conduct as defined in section 46(3). Subsection (6) provides that the definition of customer information in section 364 of the Proceeds of Crime Act 2002 (“POCA”) has effect to the extent specified. The scope of the 2001 Protocol is different to that of POCA, however, which is restricted to confiscation or money laundering investigations. In practice, the power will largely be used in relation to these types of investigations, but it may also be exercised in relation to other investigations into serious criminal conduct. Subsection (8) provides that information obtained should be returned to the Secretary of State for forwarding to the overseas authority which made the request. This is different to the procedure in section 19 of the Act which provides that, in general, evidence should be returned by direct channels. Transmission of information about banking transactions via the Secretary of State will enable effective monitoring of this new measure.

Section 33: Making, varying or discharging customer information orders

95. This section sets out the conditions which must be satisfied before a judge may make a customer information order and what an application to the judge contains. Subsection (2) provides that the application may be made without notice (*ex parte*) to a judge in chambers. Subsection (4) provides for the discharge or variation of an order.

Section 34: Offences

96. This section replicates section 366 of POCA, and provides for various criminal offences connected with failure to comply with customer information orders. The penalties, which are financial only, are directed at non-compliant institutions, rather than at individuals.

Section 35: Account Information

97. Sections 35 and 36 implement Article 3 of the 2001 Protocol in relation to incoming requests. Article 3 provides for requests to be made for a specified account to be monitored during a specified period of time. Such a request might be made subsequent to an Article 1 request for bank details or in cases where the investigator already has the details of the relevant account. Account monitoring

procedures were introduced in the UK under POCA, but separate provision is required in this Act to ensure that the UK can respond to all requests that meet the requirements of the 2001 Protocol which has a wider scope than POCA.

98. Section 35 applies where the Secretary of State receives such a request and authorises him to direct the appropriate police or customs officer to apply for an account information order. An account information order requires a financial institution specified in the application to provide account information specified in the order (for example, details of all transactions passing through the account) during a specified period. Subsection (5) defines account information. Article 3(3) of the 2001 Protocol provides that the order shall be made with due regard for the national law of the requested Member State. Under POCA, account monitoring orders may be made for a period of up to 90 days and the same restriction will apply to requests under the 2001 Protocol. No limit is stated because the arrangements will be made between the relevant authorities on a case by case basis, as provided for in Article 3(4) of the 2001 Protocol.

Section 36: Making, varying or discharging account monitoring orders

99. This section sets out the conditions which must be satisfied before a judge may make an account monitoring order in response to an overseas request, and the types of information that an application for such an order may specify. Subsection (2) provides that the application may be made without notice (*ex parte*) to a judge in chambers.

Sections 37 to 41: Customer information and account monitoring orders (Scotland)

100. These sections are the corresponding Scottish provisions to sections 32 to 36 for England and Wales and Northern Ireland, and they have the same effect in Scotland as those sections do in the rest of the United Kingdom. They differ to take account of Scottish procedure — (for example, references to the procurator fiscal and the sheriff). They also refer to the corresponding Scottish provisions in POCA. In Scotland, the Lord Advocate carries out the functions given to the Secretary of State in the rest of the United Kingdom.

Section 42: Offence of disclosure

101. This section creates criminal offences in relation to the unlawful disclosure of information. The purpose of the section is to ensure that financial institutions do not inform their customers of any requests for customer or account information, or that an investigation is being carried out, or that information has been passed on by the financial institution. A financial institution, or an employee of the institution, is guilty of an offence if it (or, as the case may be, the employee) discloses the types of information specified in subsection (3), and subsections (4) and (5) provide for the penalties which may be imposed if such an offence is committed.

Section 43: Information about a person's bank account

102. This section makes provision for the UK to request assistance from other participating countries in obtaining details of any accounts held by a person subject to an investigation into serious criminal conduct in accordance with Article 1 of the 2001 Protocol. Whilst the general provisions of section 7 of this Act are relevant, special requirements apply to requests for information on bank accounts. An application may be made to a judicial authority (as defined in subsection (2)) to make a request for assistance under this section where a person is subject to an investigation in the UK, the person holds (or may hold) a bank account in a participating country, and the information is likely to be of substantial value to the investigation. A prosecuting authority which has been designated by order made by the Secretary of State may itself make a request for assistance under this section if

the conditions specified in subsection (3) are satisfied — (in Scotland, the Lord Advocate or a procurator fiscal may likewise request assistance). Subsection (5) sets out the types of information which may be requested under this section, and subsection (6) sets out what a request for assistance must contain.

Section 44: Monitoring banking transactions

103. This section implements Article 3 of the 2001 Protocol for the purpose of outgoing requests from the UK to other participating countries to monitor transactions conducted on a specified account or accounts. Subsection (1) provides that an application may be made to a judicial authority (as defined in subsection (2)) to request assistance under this section if it appears relevant to a UK investigation into criminal conduct. A prosecuting authority designated by order made by the Secretary of State (or, in relation to Scotland, the Lord Advocate or procurator fiscal) may itself request assistance under subsection (3).

Section 45: Sending requests for assistance

104. This section provides that, in general, requests for assistance under sections 43 or 44, must be transmitted via the Secretary of State — (in Scotland, the Lord Advocate) — in contrast to the direct transmission provision introduced by section 8. This is to enable the central authority to monitor these requests, to ensure that the detailed requirements of the 2001 Protocol are met and to assess how extensively the new powers are used. It can also monitor responses to requests. The central authority will monitor incoming requests in the same way. However, in cases of urgency, a request may be sent directly to a court in the area where the information is to be obtained.

Section 46: Interpretation of Chapter 4

105. The section defines the terms used in Chapter 4. The definition of serious criminal conduct in subsection (3) refers to Article 1 of the 2001 Protocol. Article 1(3) lists the circumstances in which countries are obliged to provide assistance in tracing bank accounts. The list limits the general obligation to assist to particular circumstances: when the offence is punishable by a 4 year custodial penalty in the requesting state and 2 years in the requested state, or when the offence is one referred to in the Europol Convention or the Convention on the Protection of the European Communities' Financial Interests. The second part of the definition of serious criminal conduct in subsection (3)(b) enables it to be extended by order to cover new offences if the scope of Article 1(3) is amended by the Council of the EU at a future date.

Chapter 5: Transfer of Prisoners

Section 47: Transfer of UK prisoner to assist investigations abroad

106. This section provides for prisoners from the UK to be transferred to another participating country to assist with an investigation, implementing Article 9 of the MLAC. This differs from section 5 of the 1990 Act which covers the transfer of UK prisoners to other countries at the request of the authorities of that country to assist their investigations. This new power might be used, for example, where a prisoner assisting a UK investigation could identify a site or participate in an identification parade in another participating country. It is unlikely to be used frequently. The requirement that a prisoner (or an appropriate person acting on his behalf) must give his consent before the transfer takes place (subsections (4) and (5)) is consistent with section 5 of the 1990 Act.

Section 48: Transfer of EU etc. prisoner to assist UK investigation

107. This section provides for the transfer of a prisoner from a participating country to the UK in order to assist with that country's investigation. Section 6 of the 1990 Act allows overseas prisoners to be transferred at the UK's request to assist with a domestic investigation. The requirement that a prisoner must give his consent before the transfer takes place (subsections (4) and (5)) is consistent with section 6 of the 1990 Act.

Chapter 6: *Supplementary*

Section 49: Rules of court

108. This section provides that rules of court may be made governing court practice and procedure to be followed in connection with proceedings under Part 1. These are additional to the rules set out in Schedule 1 which govern the proceedings of a court nominated to receive evidence under section 15, and Schedule 2 which govern hearings through television links and by telephone under sections 30 and 31.

Section 50: Subordinate legislation

109. This section provides that the power to make orders under Part 1 is to be exercised by statutory instrument, and that the negative resolution procedure will apply to such instruments, although subsection (5) provides that an order designating a country that is not a Member State of the EU as a "participating country" under section 51(2)(b) is subject to the affirmative resolution procedure.

Part 2: Terrorist Acts and Threats: Jurisdiction

Section 52: Jurisdiction for terrorist offences

110. The main UK legislation on counter-terrorism is the Terrorism Act 2000 (the "Terrorism Act"). The Terrorism Act defines terrorism as being both a serious criminal act, and one that is designed to influence the government or to intimidate the public and made for the purpose of advancing a political, religious or ideological cause. Under UK law, in general, there are no "terrorist" offences (apart from a few specific offences such as directing terrorism, weapons training, terrorist funding and inciting terrorism). Suspected terrorists are prosecuted under criminal legislation such as murder, conspiracy to cause explosions, for example. Criminal offences falling within the definition of terrorism contained within the Terrorism Act can be investigated by the police using the powers within the Terrorism Act. The UK's extensive anti-terrorism legislation already broadly meets the requirements of the 2002 Framework Decision, with the exception of the provisions on extra-territorial jurisdiction.

111. Article 9 of the 2002 Framework Decision requires participating countries to take extra-territorial jurisdiction for specified offences where these are committed for a terrorist purpose. Existing UK legislation does not provide for this because the primary basis of criminal jurisdiction in the differing parts of the UK is territorial, which has the effect that, unless a criminal statute expressly provides for extra-territorial jurisdiction, jurisdiction is only in respect of offences which take place in that part of the UK. There is already provision for extra-territorial jurisdiction in the Terrorism Act for terrorist financing and terrorist bombing offences. These provisions allowed the UK to ratify the UN Convention for the Suppression of Terrorist bombings and the UN Convention for the Suppression of the Financing of Terrorism (see sections 62 and 63 respectively). The provisions enable the UK to meet its obligations under the "extradite or prosecute" provisions of these Conventions.

112. The purpose of Article 9 of the 2002 Framework Decision is to ensure that Member States take responsibility for terrorist activities by their own nationals and residents, no matter where

those acts occur, and also to ensure that those who attack UK nationals, residents, UK diplomatic staff and EU institutions can be prosecuted effectively. The first section inserts extra sections 63A to E after section 63 of the Terrorism Act.

63A Other terrorist offences under this Act: jurisdiction

113. Section 63A extends the jurisdiction of specific terrorist offences included within the Terrorism Act to outside the UK for section 54 (weapons training) and sections 56 to 61 inclusive (directing a terrorist organisation, possession for terrorist purposes, collection of information, and inciting terrorism overseas). Extra-territorial jurisdiction is only taken in respect of UK nationals and residents. Subsections (2) and (3) define respectively a UK national and a UK resident for the purposes of sections 63A, 63B and 63C.

114. Where an extra-territorial offence is created, extra-territorial jurisdiction is also automatically taken over secondary and inchoate offences, such as aiding, abetting, attempting, inciting, conspiring, counselling or procuring.

63B Terrorist attacks abroad by UK residents or nationals: jurisdiction

115. Section 63B(1) gives the UK extra-territorial jurisdiction over certain specific domestic offences where they are committed by UK nationals or residents outside the UK as an act of terrorism or for the purposes of terrorism. Subsection (2) lists the specific offences. These reflect those contained in Article 1 of the 2002 Framework Decision. The 2002 Framework Decision uses a similar definition of terrorism to that in the Terrorism Act. This new section and the sections below depend on the definition of terrorism in section 1 of the Terrorism Act to ensure that extra-territorial jurisdiction is only taken for acts that would be considered acts of terrorism under the Terrorism Act.

63C Terrorist attacks abroad on UK nationals, residents and diplomatic staff etc.: jurisdiction

116. Section 63C(1) gives the UK extra-territorial jurisdiction over certain domestic offences where they are committed against UK nationals or residents and “protected persons” outside the UK as an act of terrorism or for the purposes of terrorism. The nationality or residence of the offender is irrelevant. Subsection (2) lists the offences for which the UK will take extra-territorial jurisdiction. Subsection (3) specifies those persons who are “protected persons”. “Protected persons” includes all diplomatic and consular staff, whether of UK nationality or not. Since Article 9(1)(e) of the 2002 Framework Decision requires Member States to take extra-territorial jurisdiction over offences against institutions of the EU established on their territory, subsection (3)(c) includes in the definition of “protected persons” employees of the European Agency for the Evaluation of Medicinal Products, which is at present the only EU institution based in the UK. Should further EU agencies set up in the UK in future, subsection (3)(d) provides a power for the Secretary of State to add further bodies by order. Subsection (4) limits subsection (3)(d) to any future EU institution based in the UK. Subsection (5) provides that a certificate issued by the Secretary of State stating any fact relating to whether a person is a “protected person” is to be conclusive evidence of that fact.

63D: Terrorist attacks or threats in connection with UK diplomatic premises etc.: jurisdiction

117. This section gives the UK jurisdiction over terrorist offences or the threat of terrorist offences committed either against the residential or working premises or vehicles of protected persons when a protected person is in, or likely to be, on the premises or in the vehicle. This will cover attacks on UK embassies and consulates abroad. This is to give effect to Article 9(1)(e) of the 2002 Framework Decision, which requires Member States to take extra-territorial jurisdiction in cases of terrorist attack on their institutions. At present if a terrorist act is committed against UK diplomatic

residencies, any proceedings have to be brought by the relevant authorities of the country in which the incident took place. Under these new provisions, the UK government would be able to prosecute effectively those who attack or threaten to attack its personnel and premises. Subsection (1) provides that the UK will take extra-territorial jurisdiction over certain domestic offences where they are committed against the premises or vehicles of protected persons when a protected person is in, or likely to be, on the premises or in the vehicle. Subsection (2) lists the offences for which the UK will take extra-territorial jurisdiction. Subsections (3) and (4) provide that in addition the UK will take extra-territorial jurisdiction over the threat offences in the Criminal Damage Act 1971, (and its Northern Ireland equivalent, and, in Scotland, breach of the peace), when committed in respect of protected persons' premises or vehicles, as an act of terrorism or for the purposes of terrorism.

63E Sections 63B to 63D: supplementary

118. This section provides that the Attorney General's consent is required for prosecutions in England and Wales in respect of conduct which would not be an offence apart from sections 63B, C and D and the consent of the Advocate General for Northern Ireland in respect of prosecutions in Northern Ireland. In relation to offences under sections 54 to 61 of the Terrorism Act, section 117 makes provision for consent to prosecution. No express provision is required for Scotland. The Lord Advocate has responsibility for all prosecutions.

Section 53: Jurisdiction for offence under section 113 of the Anti-Terrorism, Crime and Security Act 2001

119. This section provides for extra territorial jurisdiction over offences under section 113 of the Anti-terrorism, Crime and Security Act 2001 (offences involving noxious substances) by adding section 113A. It is an offence under section 113 for a person to use or threaten to use a biological, chemical, radioactive or other noxious substance to cause various kinds of serious harm in a manner designed to influence the government or intimidate the public. Offences under this section carry a sentence of up to 14 years' imprisonment and a fine. Extra-territorial jurisdiction for offences under section 113 are confined however to those committed for a terrorist purpose in the sense that it is undertaken for the purpose of advancing a political religious or ideological cause through subsection (2). Subsection (3) outlines the circumstances when extra-territorial jurisdiction is to be taken. These are the same as in the sections above, namely; when the act is by a United Kingdom national or resident; by any person to a United Kingdom national, resident or protected person; and by anyone against the premises or vehicle of a protected person when they are in or on it.

Part 3: Road Traffic

Chapter 1: Convention on Driving Disqualifications

Section 54: Application of section 55

120. This section prescribes when the duty in section 55 to notify a central authority of an EU Member State about a disqualification will apply. The duty covers a driving disqualification imposed in the UK on a resident of another Member State. Schedule 3 lists the road traffic offences which, in the circumstances specified, would require notification of disqualification. A minimum period of disqualification must apply in respect of the offences in Part 2 but not Part 1.

121. The requirement will only apply to a disqualification which is no longer subject to appeal. The section also provides for section 55 not to apply in circumstances prescribed in regulations. Where another Member State has declared that it will apply, in full or in part, the discretionary

conditions to the recognition of disqualifications described in Article 6(2) of the Convention, regulations will state when notification is not required in respect of that State.

Section 55: Duty to give notice to foreign authorities of driving disqualification of a non-UK resident

122. This section places a duty on the appropriate Minister (the Secretary of State in Great Britain or the Department of the Environment in Northern Ireland) in the circumstances specified in the previous section to notify a driving disqualification to the authorities in the Member State where the offender is normally resident. The notice must include information required by the Convention to allow the central authority to locate the offender, together with details of the offence and the order made against him. The appropriate Minister is also required to provide evidence that an offender who did not take part in the proceedings was properly notified of them. This will usually have been by way of a summons and subject to the normal conditions of service. Under Article 6(1)(e) of the Convention, the State of residence must refuse to recognise a disqualification if it considers that the person concerned did not have an adequate opportunity to defend himself. If the period of disqualification is reduced or removed by a court subsequent to the appropriate Minister sending his notification, he must also inform the central authority.

Section 56: Application of section 57

123. This section describes when under section 57 a driving disqualification, imposed in another Member State on a person normally resident in the UK, will be enforced in the UK. This will be the case where the offence which gives rise to the disqualification constitutes one of the categories of conduct specified in the Convention, or other conduct constituting an offence which results in a disqualification of at least the minimum period. The offender must have been duly notified of, and entitled to take part in, the proceedings and the disqualification must not be subject to any further appeal in the State of the offence. A disqualification will not be enforced if the relevant proceedings in the State of offence were brought later than the time provided for the commencement of summary proceedings for a corresponding offence in the United Kingdom. This accords with Article 6(1)(d) of the Convention which precludes enforcement of a disqualification where the period of limitation would have expired under the state of residence's legislation. The appropriate Minister may make regulations about the correspondence between UK offences and other States' offences.

Sections 57 and 58: Recognition in the UK of foreign driving disqualifications

124. These sections allow for a person in the circumstances set out in the previous section, and to whom the appropriate Minister sends notification, to be disqualified from driving in the UK. The appropriate Minister should be provided under the Convention by the State of offence with the information he requires to enforce the disqualification. The appropriate Minister has discretion as to whether to enforce a disqualification where the unexpired period is less than one month. Where the disqualification is effective until a condition is satisfied, the offender is disqualified until the condition is satisfied. The UK disqualification takes effect 21 days after notification to the offender. However, the appropriate Minister has power to substitute a longer period. The intention is that the period at the end of which the disqualification takes effect should be the same as the period for appealing under section 59.

125. The Convention requires any part of the disqualification already served in the State of the offence to be taken into account in recognising the disqualification in the offender's State of residence. Section 57 grants the appropriate Minister power to make regulations to prescribe how

the unexpired period of disqualification is to be determined. Although the normal appeals process will have been exhausted before the disqualification is notified to the UK, if the State of the offence removes the disqualification at any time during the unexpired period, the disqualification will also cease to have effect in the UK at that time.

Sections 59 to 62: Appeal against Disqualification and Power of Appellate Courts to Suspend Disqualification

126. Section 59 enables a person disqualified under section 57 to appeal on limited grounds to their local magistrates' court in England and Wales, the sheriff court in Scotland or a court of summary jurisdiction in Northern Ireland. The appeal is only concerned with the imposition of the disqualification under section 57 and has no bearing on the conviction and disqualification in the State of the offence. An appeal must be made within 21 days of the notice of disqualification being issued (although the appropriate Minister may by regulations substitute a longer period). Separate provision is made in sections 60 to 62 for the appellate courts in each part of the UK, where the court thinks fit, to suspend the disqualification and notify the appropriate Minister that it has done so. If the court allows the appeal it is also required to notify the appropriate Minister.

Sections 63 to 65: Production of Licence

127. Sections 63 and 64 require a licence holder given notice of disqualification under section 57 to deliver his licence and counterpart to the appropriate Minister within 21 days of the notice being given. It is an offence not to comply with this requirement. However, there are circumstances set out in sections 63 and 64 where an offence will not be committed where the person is not in possession of his licence or has applied for a new licence. Where a Community licence is produced to the appropriate Minister by a person disqualified under section 57, the appropriate Minister is required to send the details of the holder and the disqualification to the authority in the relevant State which issued the licence. The appropriate Minister will return the licence to the holder at the appropriate time specified in section 65(4) unless the driver would not be authorised to drive in Great Britain or Northern Ireland, in which case the licence will be returned to the issuing authority in the relevant State.

Sections 66 and 67: Effect of disqualification and Rule for determining end of period of disqualification

128. The licence is treated as revoked from the beginning of the period of UK disqualification, subject to any suspension which is granted. Similarly, any period when a disqualification has been suspended, or the driver not disqualified, will not count towards determining the end of the period of disqualification.

Sections 68 and 69: Endorsement of Licence

129. The particulars of a disqualification under section 57 must be endorsed on the counterpart of a licence. The endorsement remains effective for four years from conviction in all cases. A person may obtain a licence free from the endorsement at the end of this period. If a disqualification is removed under section 57(6), the appropriate Minister must endorse the counterpart of the licence.

Section 70: Duty of appropriate Minister to inform competent authority

130. Under this section, where the appropriate Minister has been notified of a disqualification under the Convention, in accordance with the Convention, he is required to inform the competent authority of the State where the offence took place of the details of the disqualification imposed in the UK or, if he has not recognised the disqualification, he must inform the State of his reasons.

Section 71: Notices

131. This specifies how a notice which is required to be sent under this Chapter to an individual, or a Community licence which is required to be returned to its holder, may be delivered to that person. The latest address known to the appropriate Minister will be the proper address for this purpose.

Chapter 2: *Mutual Recognition with the United Kingdom*

132. Chapter 2, together with its consequential amendments, removes driver licensing anomalies between Great Britain and Northern Ireland, so as to give the United Kingdom a more coherent system for the implementation of the Convention. It provides that a person disqualified from holding or obtaining a driving licence in Northern Ireland, the Isle of Man, the Channel Islands or Gibraltar is similarly disqualified in Great Britain. The Secretary of State's powers to revoke a licence either on grounds of medical disability or during a new driver's probationary period are extended to holders of Northern Ireland driving licences in Great Britain.

Section 76: Recognition in Great Britain of disqualifications in Northern Ireland etc.

133. This section amends the Road Traffic Act 1988 ("RTA 1988") to introduce the recognition in Great Britain of driving disqualifications imposed in Northern Ireland, the Isle of Man, the Channel Islands and Gibraltar. So long as a person is subject to a driving disqualification imposed in Northern Ireland, the Isle of Man, the Channel Islands or Gibraltar, he will also be disqualified in Great Britain. This remedies an existing anomaly in the UK driver licensing system, under which none of these jurisdictions recognised driving disqualifications imposed in any of the others. Reciprocal legislation will be needed in these territories for mutual recognition: legislation will be implemented in Northern Ireland by Order in Council under section 92 due to the current suspension of the Assembly; the Isle of Man has already implemented legislation.

Section 77: Endorsement of counterparts issued to Northern Ireland licence holders

134. This section provides that the holder of a Northern Ireland licence committing a road traffic offence in Great Britain will be able to opt for the fixed penalty system for road traffic offences, like the holder of a Great Britain licence, avoiding the inconveniences of a prosecution. The fixed penalty option is not currently available in Great Britain to the holder of a Northern Ireland licence. The section facilitates endorsement of a Northern Ireland licence for a road traffic offence or offences committed in Great Britain for which the fixed penalty system is applied.

135. Subsection (1) inserts a new section 109A of the RTA 1988, enabling the Secretary of State to issue a driving licence counterpart to the holder of a Northern Ireland licence so as to enable endorsement by authorities in Great Britain. The section makes provisions similar to those already applied to the holder of a European Community driving licence other than from Great Britain or Northern Ireland. It enables the Secretary of State to endorse a Northern Ireland licence, obliging him to return it to the holder. Section 109A(5) empowers the Secretary of State to require surrender of the counterpart or delivery of the licence to him, and to serve notice in writing that such delivery must be made and information provided within 28 days. It makes it an offence to drive a motor vehicle on a road having unreasonably failed to surrender the counterpart for endorsement or for correction of particulars of the holder's name or address.

136. Subsection (2) inserts new sections 91ZA and 91ZB into the Road Traffic Offenders Act 1988 ("RTOA 1988"), setting out the application of that Act to Northern Ireland licence holders. The provisions of the RTOA 1988 to be applied to Northern Ireland licence holders are those which

apply to them the fixed penalty system for traffic offences committed in Great Britain. The court procedures followed when penalty points are endorsed on a driving licence are extended to Northern Ireland licences. In particular, this includes various aspects of procedure when a driver is both disqualified and gains penalty points at the same time.

Section 78: Prohibition on holding or obtaining Great Britain and Northern Ireland licences

137. Subsection (2) prevents a Northern Ireland licence holder who obtains a Great Britain licence from continuing to be able to drive in Great Britain by virtue of the Northern Ireland licence. It provides that, on surrender of the Northern Ireland licence when a Great Britain licence is granted, the authorisation to drive a vehicle in Great Britain by virtue of the Northern Ireland licence ceases, and that the Secretary of State must send the Northern Ireland licence and its counterpart back to the Northern Ireland authorities.

138. Subsection (3) is in respect of reciprocal provisions intended in Northern Ireland law. It requires the Secretary of State, where he is satisfied that a Northern Ireland licence has been granted to the holder of a Great Britain licence and he has received the Great Britain licence, to serve written notice on the person concerned that the Great Britain licence is revoked.

139. Subsection (4) provides, in order to prevent duplication of licences, that a person holding a Northern Ireland licence to drive a particular class or classes of vehicle is disqualified from holding or obtaining a Great Britain licence to drive a motor vehicle of that class or classes, if he does not surrender the Northern Ireland licence to the Secretary of State and remains authorised to drive in Great Britain as a holder of that licence.

Section 79: Disability and prospective disability

140. This section amends the provisions of the RTA 1988 relating to disability and prospective disability of a licence holder. Subsection (2) inserts a new section 109B into the RTA 1988, which provides for revocation by the Secretary of State of the authorisation to drive in Great Britain conferred by a Northern Ireland licence, on grounds of disability or prospective disability. Currently the Secretary of State has a power to revoke a driving licence issued in Great Britain as set out at section 93 of the RTA 1988. The new provisions parallel those which already exist for revocation of a Great Britain licence on medical grounds, except that the revocation extends only to the right to drive in Great Britain conferred by virtue of section 109(1)RTA 1988. The Secretary of State may require the Northern Ireland licence holder to deliver up his licence and the relevant counterparts, so that it may be returned to the Northern Ireland authorities.

141. Subsection (2) also inserts a new section 109C into the RTA 1988. This amendment places the holders of Northern Ireland licences, if resident in Great Britain, under the same duty as Great Britain licence holders to provide information relating to disabilities.

142. Subsection (3) makes provision for Great Britain licences, where the right to drive in Northern Ireland has been revoked on medical grounds there under a corresponding provision of Northern Ireland law. In this event the Secretary of State may revoke the licence.

143. In either circumstance, the Secretary of State may on application grant a new licence for a period which he determines. (For example, in the case of an individual suffering from a degenerative disease likely progressively to impair his or her ability to drive, a short period licence might be granted.)

Part 4: Miscellaneous

Section 80: Disclosure of information by SFO

(Represents Current Law in Force - for pending amendments see Prospective Law on Westlaw UK.)

144. This section amends section 3 of the Criminal Justice Act 1987 (which established the Serious Fraud Office (“SFO”)).

145. It extends the circumstances in which the SFO can disclose information. Currently, the SFO is permitted to disclose information, in particular circumstances, for the purposes of any prosecution: the amendment will enable that disclosure also to take place for the purposes of any criminal investigation, whether in the UK or elsewhere.

146. This section also extends the categories of persons or bodies to which information may be disclosed. At present, disclosure of information by the SFO is limited to bodies with functions equating to those of the SFO. The amendment will improve international co-operation in respect of crime, and extends to bodies established under the Treaty on European Union (designed, in particular, to facilitate exchanges of information with Eurojust) or any other treaty to which the UK is a party.

Section 81: Inspection of Information Systems

147. This section extends the functions of the Information Commissioner under Part VI of the Data Protection Act 1998 (the “1998 Act”). It allows the Information Commissioner to inspect personal data recorded in the UK sections of three European information systems without a warrant. These information systems are the Schengen Information System (“SIS”), the Europol Information System (“EIS”) and the Customs Information System (“CIS”). The requirement for an independent power of supervision arises from the Conventions referred to in subsection (7) of the section, establishing the SIS, EIS and CIS. These Conventions require the supervisory authority to have free access to the national sections of the systems. At present the Commissioner is only able to enter premises to carry out inspections of the EIS either by agreement with the relevant UK body, the National Criminal Intelligence Service (“NCIS”), or on production of a warrant. The UK is not yet connected to the SIS or the CIS, but similar arrangements would apply once connection has been established.

148. As required by the Conventions, the purpose of the Information Commissioner's inspections will be to ensure that the processing of personal data in the national sections of these systems is in compliance with processing requirements under the 1998 Act. The Information Commissioner will be required to notify the relevant data controller of his intention to inspect the systems (other than in cases of urgency), but a person obstructing the Information Commissioner in the course of his inspection or failing without reasonable excuse to give him any reasonable assistance will be guilty of an offence. The penalties for the offence are as established by section 60 of the 1998 Act, which provides that a person guilty of an offence in relation to the powers of the Information Commissioner is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000). However, if required for the purposes of safeguarding national security, the additional powers attributed to the Information Commissioner under this section in respect of personal data in the systems will not apply.

Section 82: Driver licensing information

149. This section provides statutory authority for the Driver and Vehicle Licensing Agency (“DVLA”) and Driver and Vehicle Licensing Northern Ireland (“DVLNI”) to disclose certain data for the purposes of the SIS. The relevant data held by DVLA and DVLNI relates to driver licensing and is that held in any form under Part 3 of the RTA 1988, or Part 2 of the Road Traffic (Northern Ireland) Order 1981. This information is to be shared with the United Kingdom's national section of the SIS, and will ensure that the UK fully meets the requirements of its opt-in to the Schengen Convention according to EU Council Decision 2000/365/EC.

Section 83: Foreign Surveillance Operations

150. Article 40 of the Schengen Convention provides that police officers keeping a person under surveillance in their own country because he is suspected of having committed an extraditable offence may require neighbouring Schengen countries to assist in keeping the person under surveillance if he crosses the border into their territory. In the vast majority of cases such assistance will be requested in advance and, when the surveillance enters the UK, our own officers will take over the surveillance. These UK officers will need to be properly authorised to conduct such surveillance under the Regulation of Investigatory Powers Act 2000 (“RIPA”) and the Regulation of Investigatory Powers (Scotland) Act 2000. However, on occasions it will not be possible for a request to be made sufficiently far in advance for a UK team to take over the surveillance at the point of entry to the UK. This section implements Article 40(2) of the Schengen Convention, which covers such cases by making provision for a foreign surveillance operation, which was initiated in one participating country but which has had to travel unexpectedly to another participating country, to continue lawfully to keep an individual under surveillance for a period of up to five hours. To legislate for this change, this section amends RIPA by introducing a new section (Section 76A Foreign surveillance operations) to allow police or customs officers from other Member States to continue surveillance on UK territory for this period.

151. At present, UK police officers are not allowed to follow suspects across the border into the territory of another Schengen state (and vice versa foreign officers may not travel into the UK to conduct similar activities). Instead they are expected to contact the police authorities of that state, and arrange for them to take over the surveillance operation. However, in practice police officers are not always immediately available to take over the operation, and this can result in losing the suspect. The provisions set out in this section are meant to avoid this occurrence.

152. This section applies in the circumstances set out in subsection (1)(a), (b) and (c). Subsection (1)(a) provides that before crossing the border the surveillance must be lawful in the country in which it is being carried out. In addition the surveillance must be “relevant surveillance”. Subsection (2) defines this as being surveillance which would fall within the definition of directed or intrusive surveillance in RIPA, therefore being covert surveillance of which the target is unaware. In addition the target of the surveillance is suspected of having committed a relevant crime.

153. Subsection (3) provides that a relevant crime is one that falls within Article 40(7) of the Schengen Convention, namely; murder, manslaughter, rape, arson, forgery of money, aggravated burglary and robbery and receiving stolen goods, extortion, kidnapping and hostage taking, trafficking in human beings, illicit trafficking in narcotic drugs and psychotropic substances, breach of laws on arms and explosives, wilful damage through the use of explosives, illicit transportation of toxic and hazardous waste. Subsection (3)(b) sets out that a relevant crime can also be a crime as defined in other international agreements, which contain provisions on cross-border surveillance, specified by the Secretary of State by order.

154. Subsection (1)(b) provides that the surveillance can only be carried out in the UK. Subsection (1)(c) provides that the circumstances must be such that it is not reasonably practicable for UK officers (as defined in subsection (11)) to take over the surveillance when the suspect arrives in the UK under a normal RIPA authorisation (or its Scottish equivalent).

155. The purpose of subsection (4) is to provide that urgent cross border surveillance will be lawful under RIPA if certain conditions are complied with. Two key conditions from Article 40 have been placed on the face of the Act. The first refers to subsection (6) that implements the requirement in Article 40(2) for foreign officers to contact the authorities of the state into which they have entered

immediately upon crossing the border and to submit a formal request for assistance. The second in subsection (4)(b) implements the condition in Article 40(3) that prohibits the officers from entering private homes or places. The Secretary of State is also given an order-making power to specify, if needed, other appropriate conditions for the conduct of foreign officers should their surveillance operation unexpectedly cross into the UK. Failure to comply with any such conditions would mean that the surveillance would not be lawful under this new section. Subsection (4) also provides that no surveillance is lawful by virtue of this subsection, even if all the other conditions covered by the section are satisfied, if the foreign officer subsequently seeks to stop and question the person under surveillance in the United Kingdom in relation to the relevant crime. This is in line with Article 40(3)(f) which provides that the officers conducting the surveillance may neither challenge nor arrest the person. Although it is most unlikely that a foreign officer would ever stop and question the person under surveillance, this unequivocal declaration in the subsection makes clear that such conduct would be unacceptable.

156. Subsection (5) provides that foreign police officers carrying out such surveillance operations are not subject to civil liabilities in relation to conduct which is incidental to surveillance which is lawful. Incidental conduct is considered to be conduct that is inextricably associated with surveillance to the extent that it is effectively unavoidable if the surveillance, which would have to be lawful, is to continue. Incidental conduct covers an extremely narrow set of circumstances, for example trespass. The same protection is given to UK officers by section 27(2) of RIPA in respect of UK officers who conduct surveillance authorised under RIPA.

157. Subsection (7) establishes that this type of unaccompanied surveillance should not last for more than five hours. The five hour period will allow officers to continue surveillance, whilst providing time for officers in the destination country to be mobilised. If resources are available to mobilise a UK surveillance team within the five-hour period, a joint operation will be established, with the UK officers taking over the surveillance and the foreign officers adopting observer status at the point of hand-over. If the UK has not taken over the operation by the time the five hour period has elapsed then the foreign officers will no longer have lawful authority to continue and will be expected to cease the surveillance.

158. Subsection (8) and (10) set out further restrictions on the operation of such teams. Subsection (8) permits the Secretary of State to designate persons within UK law enforcement with the power to terminate surveillance operations of this kind taking place in the UK, fulfilling the requirements of Article 40(2) of the Schengen Convention. The decision to terminate might be taken because UK officers have taken over the surveillance or because the surveillance was considered inappropriate.

159. Taking account of devolved responsibilities, the wording of this and the other order-making powers in section 76A provide for a single order to be made to cover the whole of the UK, subject to the consent of Scottish Ministers.

160. Subsection (11) includes a definition of UK officer which is relevant to subsection (1).

Section 84: Assaults on foreign officers

161. The purpose of this section is to provide, in accordance with Article 42 of the Schengen Convention, that officers from abroad conducting surveillance under the new section 76A are treated in the same way as constables while in England and Wales, Scotland or Northern Ireland with respect to offences committed against them.

162. The modifications to the relevant Acts put the foreign officers on to the same footing as domestic officers, in that just as it is already an offence to assault or obstruct a constable or a person assisting a constable in the execution of his duty, it shall also be an offence to assault or obstruct any foreign officer carrying out surveillance under section 76A of RIPA.

Section 85: Liability in respect of foreign officers

163. This section implements Article 43 of the Schengen Convention, which establishes that in the first instance the state in whose territory the surveillance operation is being undertaken, is liable to cover the cost of any damage foreign surveillance officers may commit, or legal action to which they may be subject. The UK has decided that NCIS should be responsible for such liabilities in the first instance in relation to persons carrying out surveillance under new section 76A of RIPA. Under the Schengen Convention, such sums may be recovered from the foreign state. Subsection (3) provides that such sums received from abroad by the Secretary of State shall be paid into the NCIS service fund.

Section 86: Schengen-building provisions of the 1996 Extradition Convention

164. The UK is participating in Chapter 4 of the Schengen Convention (Articles 59 to 66) which relates to extradition. No legislation is needed to implement these provisions as they have been superseded by two further Conventions on extradition in 1995 and 1996 which build on the Schengen provisions — the Convention on Simplified Extradition Procedure between Member States of the European Union (the “1995 Convention”) and the Convention Relating to Extradition between Member States of the European Union (the “1996 Convention”). The 1995 Convention and the 1996 Convention have already been implemented in the UK by the European Union Extradition Regulations 2002 (S.I. 2002/419) (the “2002 Regulations”), which amended existing extradition legislation contained in the 1989 Extradition Act.

165. As non-EU Member States, Norway and Iceland were not original parties to the 1995 and 1996 Conventions but they are participants in Schengen, including the extradition provisions. As such, it is open to them, subject to the approval of the Member States, to seek to participate in those elements of the 1995 Convention and the 1996 Convention that have been classified as “Schengen-building”. The 1995 Convention is entirely “Schengen-building”, and such a decision would bring the Convention into force between the UK and Norway or Iceland under the 2002 Regulations. However, the 1996 Convention is only partially “Schengen-building”, and if Norway and Iceland chose to participate in the “Schengen-building” parts alone, the Convention as a whole would not be in force between the UK and Norway or Iceland and the implementation of the 1996 Convention under the 2002 Regulations would not suffice. This section therefore provides a power for the UK to bring into force the relevant parts of the 1996 Convention by Order in Council, subject to the negative resolution procedure. This would enable the relevant provisions of the Extradition Act 1989 to apply to Norway and Iceland; and to any other state which may participate in these Schengen-building measures. EU Member States are currently in the process of negotiating an agreement with Norway and Iceland that will introduce surrender procedure similar to the European Arrest Warrant between them. In the light of these negotiations, Norway and Iceland are no longer interested in applying the 1995 and 1996 Conventions.

166. The Schengen-building provisions are concerned with the definition of extraditable offences; extradition for fiscal offences; statute barring of extradition; barring by amnesty; and facsimile transmission of documents in extradition requests.

Section 87: States in relation to which 1995 and 1996 Extradition Conventions are not in force

167. This section is designed to allow the UK unilaterally to apply the provisions of the 1995 Convention and the 1996 Convention to countries which have not ratified the Conventions themselves. The section is largely necessary so that the UK is able to fulfil its Schengen obligations to Italy and France, which have ratified the Schengen extradition provisions but have not subsequently ratified the 1995 Convention and the 1996 Convention.

168. Rather than introduce a different extradition regime to that for other EU Member States, this section creates an enabling power which may be used to extend to Italy and France the relevant provisions of the 1995 Convention and the 1996 Convention by providing for the application of the relevant provisions of the Extradition Act 1989. (The power could also be used to apply these to such other states as are specified by Order in Council.) It is expected that in both cases this will be a short-term measure, as it is anticipated that all existing EU Member States will have implemented the Framework Decision on the European Arrest Warrant by 1 January 2004, which will significantly alter current extradition proceedings within the EU.

Section 88: False monetary instruments: England and Wales and Northern Ireland

169. This section implements Article 2 of the 2001 Framework Decision. The purpose of the 2001 Framework Decision is to ensure that fraud and counterfeiting involving non-cash means of payment are recognised as criminal offences and are subject to effective sanctions in all EU Member States. Since these offences occur increasingly on an international scale, it was considered appropriate for action to be taken at EU level.

170. UK law already covers most of the provisions of the 2001 Framework Decision. However, Article 2 requires Member States to make it a criminal offence to misuse specified “payment instruments”, where misuse includes possession of a stolen instrument or of a counterfeit instrument for fraudulent purposes. The Forgery and Counterfeiting Act 1981 (the “1981 Act”) criminalises the forgery and fraudulent use of any instrument. However, simple possession is only an offence in relation to a specific list of forged instruments, as set out under section 5(5) of the 1981 Act. The list is not quite as extensive as that covered by the 2001 Framework Decision. This section therefore extends the list of instruments covered by section 5(5) of the 1981 Act to include bankers drafts, promissory notes and debit cards, all of which fall within the scope of the 2001 Framework Decision. The section also creates a power for further monetary instruments to be added by order, should future developments require this. This power will be exercised by the Secretary of State.

Section 89: False monetary instruments: Scotland

171. This section makes provision for Scotland in relation to the 2001 Framework Decision. The position in Scotland is different from the rest of the UK because under the common law of Scotland forgery itself is not a crime and only becomes so when a false instrument is uttered as genuine. Section 5 of the Forgery and Counterfeiting Act 1981 does not apply to Scotland. This section inserts a new section 46A into the Criminal Law (Consolidation) (Scotland) Act 1995. This new provision creates an offence of counterfeiting or falsifying a specified monetary instrument — (“specified” means by order of the Scottish Ministers). It will also be an offence for a person to have in his custody or control equipment for making a specified monetary instrument. The new section 46A also makes provision relating to offences committed by companies and partnerships.

Section 90: Freezing of Terrorist Property

172. This section gives effect to Schedule 4, which introduces the mutual recognition of orders freezing terrorist assets. An explanation of Schedule 4 follows in these explanatory notes.

Part 5: Final Provisions

Section 92: Northern Ireland

173. This section will enable Northern Ireland to replicate the provisions of Chapter 2 of Part 3 of the Act (mutual recognition of driving disqualification within the UK) during suspension of devolved government by way of Order in Council subject to negative resolution procedure.

Section 93: Supplementary and consequential provision

174. This section will allow the appropriate Minister (defined in subsection (2)) to make supplementary and consequential amendments to give full effect to any provision of the Act. Section 93 provides that any statutory instrument containing an order which adds to, replaces or omits any part of the text of an Act of Parliament, or as the case may be an Act of the Scottish Parliament, is not to be made unless it has been laid in draft before, and approved by resolution of, each House of Parliament, or of the Scottish Parliament, whilst other orders will be subject to the negative resolution procedure.

Schedule 1: Proceedings of a nominated court under section 15

175. Schedule 1 makes provision for the proceedings of a nominated court to receive evidence under section 15 of the Act.

Schedule 2: Evidence given by television link or telephone

176. Schedule 2 makes provision on hearing witnesses in the UK under sections 30 and 31 of the Act and is in two Parts. Part 1 of the Schedule relates to evidence given by television link, and Part 2 relates to evidence given by telephone.

Schedule 3: Offences for the purposes of section 54

177. Schedule 3 relates to section 54 of the Act and is in two Parts. Part 1 lists the offences where an order of disqualification for a minimum period is unnecessary for the driving disqualification condition in section 54 to be met, and Part 2 lists the offences where an order of disqualification for a minimum period is necessary.

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.

Schedule 5: **Minor and consequential amendments**

191. Schedule 5 contains minor and consequential amendments, including the following in relation to road traffic.

Paragraph 26: **Amendment of section 109 of RTA 1988— Northern Ireland provisional licences**

192. Sub-paragraph (a) provides that the holder of a Northern Ireland provisional driving licence will no longer be treated in Great Britain as the holder of a full Northern Ireland driving licence. A person's authorisation to drive in Great Britain as the holder of a Northern Ireland licence extends only to driving in accordance with that licence.

Paragraphs 45 to 60: **Amendments to the Road Traffic (New Drivers) Act 1995**

193. The amendments to the Road Traffic (New Drivers) Act 1995 provide for the early termination in Great Britain of the probationary period for the holder of a Northern Ireland driving licence in similar circumstances to those applying to the holder of a Great Britain driving licence, except that, as regards revocation, it is not the licence which is revoked, but the permission to drive in Great Britain conferred by section 109(1) of the RTA 1988. As for revocations on medical grounds, the Secretary of State is obliged to inform the Northern Ireland authorities of any such revocation involving a Northern Ireland licence. The amendments also provide that a Northern Ireland licence-holder whose entitlement has been revoked under a corresponding provision of Northern Ireland law shall be subject to the requirement to satisfy the Secretary of State on a re-test.

Schedule 6: **Repeals**

194. Schedule 6 relates to repeals.

COMMENCEMENT

195. Section 94 provides that the provisions of this Act will come into force on such day as the Secretary of State by order appoints, but subsections (2) and (3) make provision for various provisions of Part 1 in relation to the Scottish Ministers. It is expected that there will be different commencement dates for different parts of the Act.

HANSARD REFERENCES

196. The following table sets out the date and Hansard references for each stage of this Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Lords		
Introduction	19 November 2002	Vol. 641 Col.263

Stage	Date	Hansard Reference
Second Reading	2 December 2002	Vol. 641 Cols. 971–1018
Committee	13 January to 3 February (5 Sessions)	Grand Committee Vol. 643 GC1–GC226 Vol. 644 GC1–GC46
Report	25 February and 3 March 2003	Vol. 645 Cols. 141–230 and Cols. 627–696
Third Reading	17 March 2003	Vol. 646 Cols. 42–66
Consideration of Commons Reasons	28 October 2003	Vol. 654 Cols. 140–145
House of Commons		
Introduction	18 March 2003	Vol. 401
Second Reading	1 April 2003	Vol. 402 Cols. 800–860
Committee	10–19 June 2003 (8 Sessions)	Standing Committee A
Report and Third Reading	14 October 2003	Vol. 411 Cols. 25–79
Royal Assent		
	30 October 2003	House of Lords Vol. 654 Col. 375 House of Commons Vol. 412 Col. 415