



**JUSTICE BRIEFING ON THE
CRIME (INTERNATIONAL CO-OPERATION) BILL**

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1. JUSTICE is an independent all party law reform and human rights organisation which aims to improve British justice through law reform and policy work, publications and training. It is the British section of the International Commission of Jurists.
2. The Crime (International Co-operation) Bill implements various pieces of legislation at European level relating to Mutual Legal Assistance in Criminal Matters, police co-operation, mutual recognition of penalties and terrorism. This briefing will concentrate primarily on the aspects concerning mutual assistance.
3. JUSTICE's prime concern with the drafting of this Bill is the absence of sufficient procedural safeguards combined with a failure to address the rights of the defence. While it is important for countries to be able to co-operate to combat crime, it is equally important that defence rights are maintained in such circumstances in order to protect the rights of the individual in an increasingly international environment.

Mutual Assistance

4. Clause 20 allows for overseas freezing orders to be given effect regardless of the nature of the authority making the order in a participating country. JUSTICE believes that the drafting of clause 20(3)(c) is too broad applying to 'any other authority'. It should be restricted to 'a judicial authority in the country having the power to make such orders'.
5. JUSTICE is concerned that clauses 43 and 44 (relating to requests for information about banking transactions for use in the UK) allow prosecuting authorities to make requests for this type of assistance directly to other countries without passing through a UK judicial authority. This is particularly worrying given the lack of detail included into the bill as to the nature of appropriate authorities in other countries.
6. Clause 2 describes procedural safeguards in relation to service of overseas process requiring a person to appear as a party or attend as a witness, in particular the inclusion of a notice advising the person concerned that their rights and the consequences of failure to comply with the process may be different according to the law of the country concerned than they would be according to UK law. In order for the procedural safeguards contained in the notice described in Clause 2(3) to be effective, the notice should include details of how to obtain legal advice on the law of the country concerned. Clause 2(3)(c) should refer to the rights and privileges of a defendant as well as those applicable to a witness.
7. Chapter 2 of the Bill relates to the mutual provision of evidence. Freezing orders for evidence are dealt with in clause 10 (domestic) and clause 20 (overseas). The procedure for considering and giving effect to such orders is dealt with in subsequent paragraphs but there seems to be no provision for defence rights such as the provision of documents etc. Defence rights must be protected in cases of international mutual assistance, particularly in the light of the complex nature of such proceedings.

8. The Bill makes no reference in clause 19 to the use that may be made of seized evidence once it has been sent to the court or authority making the request for assistance. In order to avoid international 'fishing expeditions', the Bill should specify that evidence seized under the terms of the Act may only be used for the purposes set out in the original request for assistance unless the territorial authority expressly consents for it to be used in specified further investigations.
9. Chapter 4 of the Bill relates to information about banking transactions. There is some discrepancy between clause 32 which requires that a person appears to be subject to an investigation into 'serious criminal conduct' before customer information may be obtained, and clauses 35 (account information), 36 (account monitoring) and 44 (monitoring banking transactions) which specify only 'criminal conduct'. All of these forms of monitoring are intrusive in nature and therefore JUSTICE would recommend that they should only apply to investigations into 'serious criminal conduct'.
10. Throughout the bill, authorities in prescribed countries are referred to in an insufficiently exact way. The authorities from which requests may be received and to which requests may be sent are not defined. For example, clause 14(3) relating to the powers to arrange for evidence to be obtained reads:

The territorial authority is to regard as conclusive a certificate ... issued by any authority in the country in question which appears to him to be the appropriate authority to do so.

For the avoidance of doubt, where reference is made to the authorities of other countries, these should be identified as 'the appropriate authority' which is an objective and verifiable entity.

Transfer of Prisoners

11. Chapter 5 of the Bill refers to the transfer of prisoners. In particular, clause 47 relates to the transfer of a UK prisoner to assist an investigation abroad. In order for a warrant to be issued, written consent must be obtained from the prisoner or 'a person appearing to the Secretary of State to be an appropriate person to act on the prisoner's behalf' where the prisoner cannot act for himself 'by reason of his physical or mental condition or his youth. Such consent cannot be withdrawn after the issue of the warrant.
12. In order to ensure that the prisoner's rights are adequately protected, free legal advice should be made available to the prisoner on the possible consequences of such consent. In particular, prior to consent being accepted, the prisoner should have access to legal advice on the exercise of his rights according to the law of the country in question when assisting in the investigation of the offence. Likewise, 'an appropriate person to act on the prisoner's behalf' should be objectively defined in the Act. It is not clear at all from the current wording on what basis the Secretary of State could come to a conclusion as to whether or not consent was given by 'an appropriate person'.

13. Transfer of a prisoner could have a significant impact on the exercise of that person's fundamental rights. Those rights can only be guaranteed if the prisoner is adequately represented and advised on the potential consequences of consent to transfer. This is particularly important given the irrevocable nature of consent.

Foreign Surveillance Operations

14. In principle, JUSTICE recognises that there may be cases involving investigations into serious international crimes where foreign surveillance operations may need to be continued in the UK for a brief period until UK police can be contacted and mobilised to take over the surveillance.

15. The imposition of conditions on the conduct of foreign officers operating in the UK is a crucial safeguard to the rights of individuals in the UK. JUSTICE welcomes the inclusion in clause 82 of specific conditions applying to the conduct of such cross-border surveillance following amendment in the House of Lords.

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