



# **Mutual Assistance in Criminal Matters (Sweden) Regulations 2001**

**Statutory Rules 2001 No. 120 as amended**

made under the

*Mutual Assistance in Criminal Matters Act 1987*

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This compilation was prepared on 18 June 2003  
taking into account amendments up to SR 2001 No. 304

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### **1**      **Name of Regulations** [see Note 1]

These Regulations are the *Mutual Assistance in Criminal Matters (Sweden) Regulations 2001*.

### **2**      **Commencement**

These Regulations commence on 1 December 2001.

### **3**      **Application of Act**

The *Mutual Assistance in Criminal Matters Act 1987* applies to Sweden subject to the Treaty between Australia and Sweden on Mutual Assistance in Criminal Matters done at Stockholm on 18 December 1998, a copy of the English text of which is set out in Schedule 1.

## **Schedule 1 Mutual assistance treaty**

(regulation 3)

### TREATY BETWEEN AUSTRALIA AND SWEDEN ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

AUSTRALIA AND SWEDEN

DESIRING to extend to each other the widest measure of co-operation to combat crime,

HAVE AGREED as follows:

#### Article 1 Scope of Application

1. The Contracting States shall, in accordance with this Treaty, grant to each other assistance in respect of criminal matters.
2. Criminal matter includes matters relating to revenue offences, foreign exchange control offences and customs duties offences.
3. Such assistance shall include:
  - (a) taking of evidence and obtaining of statements of persons;
  - (b) provision of documents and other records;
  - (c) location and identification of persons;
  - (d) execution of requests for search and seizure;
  - (e) measures to locate and restrain proceeds of crime and to enforce orders in respect of proceeds of crime;
  - (f) making persons in custody available to give evidence or to assist investigations;
  - (g) making other persons available to give evidence or to assist investigations;
  - (h) service of documents; and

- (i) other assistance consistent with the objects of this Treaty which is not inconsistent with the law of the Requested State.
4. Assistance shall not include:
- (a) the arrest or detention of any person with a view to extradition;
  - (b) the execution in the Requested State of criminal judgments imposed in the Requesting State except to the extent permitted by the law of the Requested State and this Treaty; and
  - (c) the transfer of prisoners to serve sentences.

Article 2  
Other assistance

This Treaty shall not derogate from obligations subsisting between the Contracting States whether pursuant to other treaties or arrangements or otherwise nor prevent the Contracting States providing assistance to each other pursuant to other treaties or arrangements.

Article 3  
Central office

1. The Contracting States shall each appoint a Central Office to transmit and receive requests for the purpose of this Treaty. Until either Contracting State designates another authority, the Central Office for Australia shall be the Attorney-General's Department, Canberra and the Central Office for Sweden shall be the Ministry for Foreign Affairs, Stockholm.
2. Requests for assistance shall be made through the Central Offices which shall arrange for the prompt carrying out of such requests.

Article 4  
Refusal of assistance

1. Assistance may be refused if:
- (a) the request relates to an offence that is regarded by the Requested State as:

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- (i) an offence of a political character;
  - (ii) a military offence which is not also an offence under the ordinary criminal law of the Requested State; or
  - (iii) an offence in respect of which the person concerned has been finally convicted, acquitted or pardoned in the Requested State or in a third State or in respect of which the Requested State has decided not to prosecute;
- (b) there are substantial grounds for believing that the request for assistance has been made to facilitate the prosecution of a person, or, in respect of Article 17, that the order has been brought about or aggravated, on account of that person's race, sex, religion, nationality or political opinions or that that person's position may be prejudiced for any of these reasons;
  - (c) the request relates to an offence where the acts or omissions alleged to constitute that offence would not, if they had taken place within the jurisdiction of the Requested State, have constituted an offence;
  - (d) the request relates to an offence which is committed outside the territory of the Requesting State and the law of the Requested State does not provide for the punishment of an offence committed outside its territory in similar circumstances;
  - (e) the results of the request for assistance are to be used in relation to an offence which, had it been committed in the Requested State, could no longer be prosecuted by reason of lapse of time or any other reason;
  - (f) the provision of the assistance sought could prejudice an investigation or proceeding in the Requested State, prejudice the safety of any person or impose an excessive burden on the resources of that State; or
  - (g) the Requested State is of the opinion that the request, if granted, would seriously impair its sovereignty, security, national interest or other essential interests.

2. Before refusing to grant a request for assistance the Requested State shall consider whether assistance may be granted subject to such conditions as it deems necessary.

Article 5  
Contents of requests

1. Requests for assistance shall include:
  - (a) the name of the competent authority conducting the investigation or proceedings to which the requests relate;
  - (b) a description of the nature of the criminal matter including a statement setting out the relevant facts and laws;
  - (c) the court order, if any, sought to be enforced and a statement to the effect that it is a final order;
  - (d) except in cases of requests for service of documents, a description of the essential acts, or omissions or matters alleged or sought to be ascertained;
  - (e) the purpose for which the request is made and the nature of the assistance sought;
  - (f) details of any particular procedure or requirement that the Requesting State wishes to be followed;
  - (g) the requirements, if any, of confidentiality and the reasons therefor; and
  - (h) specification of any time limit within which compliance with the request is desired.
  
2. Requests for assistance, to the extent necessary and insofar as possible, shall also include:
  - (a) the identity, nationality and location of the person or persons who are the subject of the investigation or proceeding;
  - (b) a statement as to whether assistance should be provided by a court or some other authority;
  - (c) a statement as to whether sworn or affirmed evidence or statements are required;
  - (d) a description of the information, statement or evidence sought;
  - (e) a description of the documents, records or articles or evidence to be produced as well as a description of the appropriate person to be asked to produce them and, to the extent not otherwise provided for, the form in which they should be reproduced and authenticated; and
  - (f) information as to the allowances and expenses to which a person appearing in the Requesting State will be entitled.

3. All documents submitted in support of a request shall be accompanied by a translation into the language of the Requested State.

4. If the Requested State considers that the information contained in the request is not sufficient in accordance with this Treaty to enable the request to be dealt with, it may request additional information.

Article 6  
Execution of requests

1. To the extent permitted by its law, the Requested State shall provide assistance in accordance with the requirements specified in the request and shall respond to the request as soon as practicable.

2. The Requested State may postpone the delivery of material requested if such material is required for proceedings in respect of criminal or civil matters in that State. The Requested State shall, upon request, provide certified copies of documents.

3. The Requested State shall promptly inform the Requesting State of circumstances, when they become known to the Requested State, which are likely to cause a significant delay in responding to the request.

4. The Requested State shall promptly inform the Requesting State of a decision of the Requested State not to comply in whole or in part with a request for assistance and the reason for that decision.

Article 7  
Return of material to requested state

Where required by the Requested State, the Requesting State, after the completion of the proceedings, shall return to the Requested State material provided by the Requested State.

#### Article 8

##### Protecting confidentiality and restricting use of evidence and information

1. The Requested State, to the extent permitted by its law and if so requested, shall keep the application for assistance, the contents of a request and its supporting documents, and the fact of granting of such assistance, confidential. If the request cannot be executed without breaching confidentiality, the Requested State shall so inform the Requesting State which shall then determine whether the request should nevertheless be executed.
2. The Requesting State, to the extent permitted by its law and if so requested, shall keep confidential evidence and information provided by the Requested State.
3. The Requesting State shall not use evidence obtained, nor information derived therefrom, for purposes other than those stated in a request without the prior consent of the Requested State.

#### Article 9

##### Service of documents

1. The Requested State shall effect service of documents which are transmitted to it for this purpose by the Requesting State.
2. A request to effect service of a document requiring the appearance of a person shall be made to the Requested State not less than 45 days before the date on which the appearance is required. In urgent cases, the Requested State may waive this requirement.
3. The Requested State may effect service of any document in accordance with its law including by mail, or, if the Requesting State so requests, in any other manner required by the law of the Requesting State which is not inconsistent with the law of the Requested State.
4. The Requested State shall forward to the Requesting State proof of service of the documents. If service cannot be effected, the Requesting State shall be so informed and advised of the reasons.

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5. A person who fails to answer a summons to appear, service of which has been requested, shall not by reason thereof, be liable to any penalties or be subjected to any coercive measures notwithstanding any contrary statement contained in the summons, unless the person subsequently voluntarily enters the Requesting State and is there again duly summoned.

#### Article 10

##### Taking of evidence of witnesses and experts

1. Where a request is made:
  - (i) in the case of Australia, by the Attorney-General or his delegate, a judge or magistrate;
  - (ii) in the case of Sweden, by a court or a public prosecutor;for the taking of evidence of witnesses and experts for the purpose of a proceeding in relation to a criminal matter in the Requesting State, the Requested State shall take that evidence for transmission to the Requesting State.
2. For the purpose of this Treaty, the giving or taking of evidence shall include the production of documents, records or other material.
3. For the purposes of requests under this Article the Requesting State shall specify the subject matter about which witnesses or experts are to be examined including any questions to be put.
4. Where, pursuant to a request for assistance, a witness or expert is to give evidence for the purpose of proceedings in the Requesting State, the parties to the relevant proceedings in the Requesting State, their legal representatives or representatives of the Requesting State may, subject to the laws of the Requested State, appear and question the person giving that evidence.
5. A witness or expert who is required to give evidence in the Requested State pursuant to a request for assistance may decline to give evidence where either:
  - (a) the law of the Requested State would permit that person to decline to give evidence in similar circumstances in proceedings which originated in the Requested State; or

- (b) where the law of the Requesting State would permit that person to decline to give evidence in such proceedings in the Requesting State.

6. If any person claims that there is a right to decline to give evidence under the law of the Requesting State, the Requested State shall with respect thereto rely on a certificate of the Central Authority of the Requesting State as evidence of the existence of that right.

#### Article 11

##### Locating and identifying persons and obtaining statements

1. The Requested State shall endeavour, upon request, to locate or identify persons for the purpose of an investigation or proceeding in relation to a criminal matter in the Requesting State.
2. The Requested State shall endeavour, upon request, to obtain statements of persons for the purpose of an investigation or proceeding in relation to a criminal matter in the Requesting State.

#### Article 12

##### Availability of persons in custody to give evidence or assist investigations

1. A person in custody in the Requested State may, at the request of the Requesting State, be temporarily transferred to the Requesting State to give evidence or to assist investigations.
2. The Requested State shall not transfer a person in custody to the Requesting State unless the person consents.
3. While the person is required to be held in custody under the law of the Requested State, the Requesting State shall hold that person in custody and shall return that person in custody either:
  - (i) at such time as is stipulated by the Requested State; or
  - (ii) at such earlier time as the person's presence is no longer required.

4. Where the Requested State advises the Requesting State that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person referred to in Article 13.

#### Article 13

##### Availability of other persons to give evidence or assist investigations

1. The Requesting State may request the assistance of the Requested State in inviting a person:

- (a) to appear as a witness or expert in proceedings in relation to a criminal matter in the Requesting State; or
- (b) to assist investigations in relation to a criminal matter in the Requesting State.

2. The Requested State shall, if satisfied that satisfactory arrangements for that person's security will be made by the Requesting State, invite the person to appear as a witness or expert in proceedings or to assist in the investigations.

#### Article 14

##### Safe conduct

1. Where a person is in the Requesting State pursuant to a request made under Articles 9, 12 or 13 that person shall not be prosecuted or detained or subjected to any other restriction of personal liberty in the Requesting State in respect of any act or omission which preceded the person's departure from the Requested State.

2. Where a person is in the Requesting State pursuant to a request under Articles 12 and 13 that person additionally shall not, without that person's consent, be required to give evidence in any proceeding or to assist in any investigation other than the proceedings or investigation to which the request relates.

3. Notwithstanding paragraph 1 of this Article, where the person whose appearance is required pursuant to paragraph 2 of Article 9 is the suspect or the accused, that person shall not be prosecuted or detained or subjected to any other restriction of personal liberty for acts or omissions

which preceded that person's departure from the Requested State and are not specified in the document served.

4. Paragraphs 1, 2 and 3 of this Article shall cease to apply if that person, being free to leave, has not left the Requesting State 15 days after that person has been officially notified that his or her presence is no longer required or, having left, has returned.

5. A person appearing in the Requesting State pursuant to a request under Articles 9, 12 or 13 is subject to the law of that State in relation to contempt, perjury and the making of false declarations.

6. A person who does not consent to a request pursuant to Articles 12 or 13 shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure notwithstanding any contrary statement in the request or in any document accompanying the request.

#### Article 15

##### Provision of publicly available and official documents

1. The Requested State shall provide copies of documents and records that are open to public access as part of a public register or otherwise, or that are available for purchase by the public.

2. The Requested State may provide copies of any official document or record in the same manner and under the same conditions as such document or record may be provided to its own law enforcement and judicial authorities.

#### Article 16

##### Search and seizure

1. The Requested State shall insofar as its law permits carry out requests for search, seizure and delivery of any material relevant to the investigation or prosecution of a criminal matter, to the Requesting State, provided the request contains information that would justify such action under the law of the Requested State.

2. The Requested State shall provide such information as may be required by the Requesting State concerning the result of any search, the place of seizure, the circumstances of seizure, and the subsequent custody of the material seized.

3. The Requesting State shall observe any conditions imposed by the Requested State in relation to any seized material which is delivered to the Requesting State.

Article 17  
Proceeds of crime

1. The Requested State shall, upon request, endeavour to ascertain whether any proceeds of a crime alleged are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries. In making the request, the Requesting State shall notify the Requested State of the basis of its belief that such proceeds may be located in its jurisdiction.

2. Where pursuant to paragraph 1 suspected proceeds of crime are found the Requested State shall, upon request, take such action as is permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds of crime, pending a final determination in respect of those proceeds by a court of the Requesting State.

3. The Requested State shall, upon request and insofar as its law permits, give effect to a final order forfeiting or confiscating the proceeds of crime, made by a court of the Requesting State, being an order that, but for the location of the property, would be enforceable in the Requesting State.

4. In the application of this Article the rights of bona fide third parties which have not been determined by courts of the Requesting State shall be respected under the law of the Requested State.

5. The Requested State shall retain the property obtained in satisfaction of the order referred to in paragraph 3 unless otherwise mutually decided in a particular case.

6. In making a request for restraint pursuant to this Article, the Requesting State shall notify the Requested State of the estimated time which will elapse before final judgment may be given. If final judgment is not given by the expiration of the time estimated in the request, the Requesting State shall advise the Requested State of the stage of proceedings reached and a revised estimate of time. The Requested State may then impose a condition setting the duration of the restraint.

7. In this Article “proceeds of crime” means any property suspected, or found by a court, to be property derived or realised, directly or indirectly, as a result of the commission of an offence or to represent the value of that property as well as any other benefits derived from the commission of an offence.

8. The Requesting State shall promptly inform the Requested State of any circumstances, including any other enforcement action, which may affect the request or its execution or which may make it inappropriate to proceed with giving effect to it.

#### Article 18 Certification and authentication

1. Documents supporting the request for assistance and documents and other material supplied in response to such a request shall be authenticated in accordance with paragraph 2.

2. Documents and materials are authenticated for the purposes of this Treaty if:

- (a) they purport to be signed or certified by an officer in or of the State sending the document; and
- (b) they purport to be sealed with an official seal of the State sending the document or of a minister of state, or of a Department or officer of the Government, of that State.

#### Article 19 Subsidiary arrangements

The Central Office of each Contracting State may enter into subsidiary arrangements with each other consistent with the purposes of this Treaty

to the extent that such arrangements are consistent with the laws of both Contracting States.

Article 20  
Representation and expenses

1. Unless otherwise provided in this Treaty the Requested State shall make the necessary arrangements for the representation of the Requesting State in proceedings arising out of a request for assistance and shall otherwise represent the interests of the Requesting State.
2. The Requested State shall meet the cost of fulfilling the request for assistance except that the Requesting State shall bear:
  - (a) the expenses associated with conveying any person to or from the territory of the Requested State, and any fees, allowances or expenses payable to that person whilst in the Requesting State pursuant to a request under Articles 12 or 13;
  - (b) the expenses associated with conveying custodial or escorting officers;
  - (c) the expenses associated with the attendance of experts in the Requested State; and
  - (d) where required by the Requested State, exceptional expenses in fulfilling the request.

Article 21  
Consultation

The Contracting States shall consult promptly, at the request of either, concerning the interpretation, the application or the carrying out of this Treaty either generally or in relation to a particular case.

Article 22  
Entry into force and termination

1. This Treaty shall be ratified; the instruments of ratification shall be exchanged in Stockholm as soon as possible. It shall enter into force on the first day of the second month after the exchange of the instruments of ratification.

2. This Treaty shall apply to requests pursuant to it whether or not the relevant acts or omissions occurred prior to this Treaty entering into force.

3. Either Contracting State may terminate this Treaty by notice in writing at any time and it shall cease to be in force on the one hundred and eightieth day after the day on which notice is given.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Treaty.

DONE at Stockholm on the eighteenth day of December, one thousand nine hundred and ninety-eight in the English and Swedish languages, both texts being equally authentic.

For Australia:

For Sweden:

Judith Pead

Anna Lindh

**Notes to the *Mutual Assistance in Criminal Matters (Sweden) Regulations 2001*****Note 1**

The *Mutual Assistance in Criminal Matters (Sweden) Regulations 2001* (in force under the *Mutual Assistance in Criminal Matters Act 1987*) as shown in this compilation comprise Statutory Rules 2001 No. 120 amended as indicated in the Tables below.

**Table of Statutory Rules**

<b>Year and number</b>	<b>Date of notification in <i>Gazette</i></b>	<b>Date of commencement</b>	<b>Application, saving or transitional provisions</b>
2001 No. 120	6 June 2001	1 Nov 2001	
2001 No. 304	15 Oct 2001	15 Oct 2001	—

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**Table of Amendments**

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**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

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<b>Provision affected</b>	<b>How affected</b>
R. 2 .....	am. 2001 No. 304

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