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Mutual Assistance in Criminal Matters (United Kingdom) Regulations 1999

Statutory Rules 1999 No. 4

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I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Mutual Assistance in Criminal Matters Act 1987*.

Dated 8 DEC 1999 1999.

WILLIAM DEANE
Governor-General

By His Excellency's Command,

AMANDA VANSTONE
Minister for Justice and Customs



Mutual Assistance in Criminal Matters (United Kingdom) Regulations 1999

Statutory Rules 1999 No. 1

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made under the

Mutual Assistance in Criminal Matters Act 1987

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1999, 1

Mutual Assistance in Criminal Matters (United Kingdom) Regulations 1999

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1 Name of Regulations

These Regulations are the *Mutual Assistance in Criminal Matters (United Kingdom) Regulations 1999*.

2 Commencement

These Regulations commence on 10 May 2000.

3 Application of Act

The *Mutual Assistance in Criminal Matters Act 1987* applies to the United Kingdom subject to the Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland concerning the Investigation, Restraint and Confiscation of the Proceeds and Instruments of Crime, done at Canberra on 6 February 1997, a copy of the text of which is set out in Schedule 1.

4 Mutual Assistance in Criminal Matters (United Kingdom) Regulations — repeal

Statutory Rules 1997 No. 2 is repealed.

Schedule 1 Mutual assistance agreement

(regulation 3)

AGREEMENT BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE GOVERNMENT OF THE UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND
CONCERNING THE INVESTIGATION,
RESTRAINT AND CONFISCATION OF THE PROCEEDS
AND INSTRUMENTS OF CRIME

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT
OF THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND;

DESIRING to provide the widest measure of mutual assistance in the
investigation, restraint and confiscation of the proceeds and instruments
of crime;

HAVE AGREED as follows:

Article 1
Scope of application

1. The Parties shall, in accordance with this Agreement, grant to each
other assistance in the investigation, restraint and confiscation of the
proceeds and instruments of crime.

2. This Agreement shall be without prejudice to other obligations between the Parties pursuant to other treaties and shall not prevent the Parties or their law enforcement agencies from providing assistance to each other pursuant to other treaties or arrangements.

Article 2 Definitions

For the purposes of this Agreement:

- (a) “confiscation” means any measure resulting in the final deprivation of property;
- (b) “instruments of crime” means any property which is or is intended to be used in connection with the commission of an offence;
- (c) “proceeds of crime” means any property derived or realised, directly or indirectly, by any person as a result of criminal activity, or the value of any such property;
- (d) “property” includes money and all kinds of moveable or immovable and tangible or intangible property, and includes any interest in such property;
- (e) “the restraint of property” means any measure for the prevention of dealing in or transfer or disposal of property.

Article 3 Central authorities

1. Requests for assistance under this Agreement shall be made through the central authorities of the Parties.

2. In the United Kingdom the central authority is the Home Office. In Australia the central authority is the Attorney-General’s Department.

Article 4 Contents of requests

1. Requests shall be made in writing. In urgent circumstances and where permitted by the Requested Party, requests may be made orally but shall be confirmed in writing thereafter.

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2. Requests for assistance shall include a statement of:
- (a) the name of the competent authority conducting the investigation or proceedings to which the request relates;
 - (b) the matters, including the relevant facts and laws, to which the investigation or proceedings relates;
 - (c) the purpose for which the request is made and the nature of the assistance sought;
 - (d) details of any particular procedure or requirement that the Requesting Party wishes to be followed;
 - (e) any time limit within which compliance with the request is desired; and
 - (f) the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings.
3. If the Requested Party considers that the information contained in the request is not sufficient to enable the request to be dealt with, that Party may request that additional information be furnished.

Article 5 Execution of requests

1. A request shall be executed as permitted by and in accordance with the domestic law of the Requested Party and, to the extent not incompatible with such law, in accordance with any requirements specified in the request.
2. The Requested Party shall inform the Requesting Party promptly of any circumstances which are likely to cause a significant delay in responding to the request.
3. The Requested Party shall inform the Requesting Party promptly of a decision of the Requested Party not to comply in whole or in part with a request for assistance and the reason for that decision.
4. The Requesting Party shall inform the Requested Party promptly of any circumstances which may affect the request or its execution or which may make it inappropriate to proceed with giving effect to it.

Article 6
Refusal of assistance

1. Assistance may be refused if:
 - (a) the Requested Party is of the opinion that the request, if granted, would seriously impair its sovereignty, security, national interest or other essential interest;
 - (b) provision of the assistance sought could prejudice an investigation or proceedings in the territory of the Requested Party, prejudice the safety of any person or impose an excessive burden on the resources of that Party;
 - (c) the request concerns restraint or confiscation of proceeds or instruments of a criminal activity which, had it occurred within the jurisdiction of the Requested Party, would not have been an activity in respect of which a confiscation order could have been made;
 - (d) the request relates to an offence in respect of which the person has been finally acquitted, pardoned, or made the subject of an amnesty; or
 - (e) the request relates to a confiscation order which has been satisfied.

2. Before refusing to grant a request for assistance, the Requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to conditions, it shall comply with them.

Article 7
Confidentiality and restricting use of
evidence and information

1. The Requested Party shall, to any extent requested, keep confidential a request for assistance, its contents and any supporting documents, and the fact of granting such assistance except to the extent that disclosure is necessary to execute the request. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party which shall then determine the extent to which it wishes the request to be executed.

2. The Requesting Party shall, if so requested, keep confidential any evidence and information provided by the Requested Party, except to the extent that its disclosure is necessary for the investigation or proceedings described in the request.

3. The Requesting Party shall not use for purposes other than those stated in a request evidence or information obtained as a result of it, without the prior consent of the Requested Party.

Article 8 Information and evidence

1. The Parties may make requests for information and evidence for the purpose of identifying proceeds or instruments of crime which may become liable to restraint or confiscation. Any documents or other material supporting a request which involves the exercise of compulsory powers by the Requested Party shall, to the extent required by the Requested Party, be authenticated in accordance with Article 12.

2. Assistance which may be given under this Article includes but is not limited to:

- (a) providing information and documents or copies thereof;
- (b) taking evidence or statements of witnesses or other persons and producing documents, records, or other material for transmission to the Requesting Party;
- (c) searching for, seizing and delivering to the Requesting Party any relevant material, and providing such information as may be required by the Requesting Party concerning the place of seizure, the circumstances of seizure and the subsequent custody of the material seized prior to delivery.

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

4. Where required by the Requested Party, the Requesting Party shall return material provided under this Article when no longer needed for the purpose for which it was supplied.

Article 9
Restraint

1. In accordance with the provisions of this Article, a Party may request the restraint of property in the territory of the Requested Party in order to ensure that it is available for the purpose of enforcement of a confiscation order which has been or may be made.
2. A request made under this Article shall include:
 - (a)
 - (i) in the case of a request from the United Kingdom, a certificate stating that an information has been laid before a justice of the peace, or a person has been charged with an offence, or a bill of indictment has been preferred, or a petition warrant has been granted, or that one of these measures is to be taken and, if so, when;
 - (ii) in the case of a request from Australia, a certificate stating that an information or a complaint has been laid before a justice of the peace or a magistrate, or a person has been charged with an offence, or an indictment or a presentment has been preferred, or that one of these measures is to be taken and, if so, when;
 - (b) either:
 - (i) a summary of the facts of the case including a description of the offence, the time and place of its commission, a reference to the relevant legal provisions, the grounds on which the suspicion is based and an authenticated copy of any relevant restraint order; or
 - (ii) where a confiscation order has been made, an authenticated copy of that order;
 - (c) to the extent possible, a description of the property in respect of which restraint is sought or which is believed to be available for restraint, and its connection with the person against whom the proceedings have been or are to be instituted;
 - (d) where appropriate, a statement of the amount which it is desired to restrain and the grounds on which this amount is estimated; and

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- (e) where applicable, an estimate of the time expected to elapse before a final judgement may be given.

3. The Requesting Party shall advise the Requested Party of any alteration in an estimate of time referred to in paragraph 2(e) above and in doing so shall also give information about the stage of proceedings reached. Each Party shall advise the other promptly of any appeal or variation made in respect of restraint action requested or taken.

Article 10

Enforcement of confiscation orders

1. This Article applies to an order, made by a court of the Requesting Party, intended to recover the proceeds or instruments of crime.

2. A request for assistance in enforcing such an order shall be accompanied by an authenticated copy of the order, and shall contain information indicating:

- (a) that neither the order nor any conviction to which it relates is subject to appeal;
- (b) that the order is enforceable in the territory of the Requesting Party;
- (c) where appropriate, property available for enforcement or the property in respect of which assistance is sought, stating the relationship between that property and the person against whom the order has been made;
- (d) where appropriate, and where known, the interests in the property of any person other than the person against whom the order has been made; and
- (e) where appropriate, the amount which it is desired to realise as a result of such assistance.

3. Where the law of the Requested Party does not permit effect to be given to a request in full, the Requested Party shall give effect to it insofar as it is able to do so.

4. If a request under this Article relates to an amount of money, that amount shall be converted into the currency of the Requested Party in accordance with its domestic law and procedures.

5. Property obtained by the Requested Party in the enforcement of an order to which this Article applies shall remain with that Party, unless otherwise mutually decided by the Parties.

Article 11

Costs

The Requested Party shall bear any costs arising within its territory as a result of action taken upon request of the Requesting Party. Extraordinary costs may be subject to a special arrangement between the Parties.

Article 12

Authentication

1. A document is authenticated for the purposes of this Agreement if:
 - (a) it purports to be signed or certified by a judge, magistrate or other officer in or of the State of the Party sending the document; and
 - (b) it purports to be authenticated by the oath or affirmation of a witness, or to be sealed with an official seal of the State of the Party sending the document or of a minister of state or department or officer of that Party.
2. Any documents or other material supplied in response to a request for assistance shall, to the extent requested by the Requesting Party, be authenticated in accordance with paragraph 1.

Article 13

Consultation

The Parties shall consult promptly, at the request of either, concerning the interpretation and the application of this Agreement either generally or in relation to a particular case.

Article 14

Territorial application in relation to the United Kingdom

This Agreement shall apply, in relation to the United Kingdom:

- (a) to England and Wales, Scotland and Northern Ireland; and
- (b) to any territory for the international relations of which the United Kingdom is responsible and to which this Agreement shall have been extended, subject to any modifications agreed, by agreement between the Parties. Such extension may be terminated by either Party by giving 180 days' written notice to the other through the diplomatic channel.

Article 15

Treaty of 1988

The Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia concerning the Investigation of Drug Trafficking and Confiscation of the Proceeds of Drug Trafficking done at Canberra on the third day of August 1988 ("the Treaty") shall terminate upon the entry into force of this Agreement except in respect of requests under the Treaty which have been made prior to the entry into force of this Agreement.

Article 16

Final provisions

1. Each of the Parties shall notify the other in writing through the diplomatic channel that their respective requirements for the entry into force of the Agreement have been completed. The Agreement shall enter into force 30 days after the later of these notifications.
2. This Agreement shall apply to a request made pursuant to it whether or not the criminal activity to which the request relates occurred prior to the Agreement entering into force.
3. Either Party may terminate this Agreement at any time giving 180 days' written notice to the other through the diplomatic channel.

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

DONE in duplicate at Canberra this sixth day of February, 1997.

FOR THE GOVERNMENT OF
AUSTRALIA:

FOR THE GOVERNMENT OF
THE UNITED KINGDOM OF
GREAT BRITAIN AND
NORTHERN IRELAND:

Daryl Williams

Roger J. Carrick

Note

1. Made by the Governor-General on *the Commonwealth of Australia Gazette* on *1* 1999, and notified in *1* 1999.

8 December
15 December