



STATUTORY INSTRUMENTS.

S.I. No. 372 of 2010



CRIMINAL JUSTICE (MUTUAL ASSISTANCE) ACT 2008 (SECTION 4)
(No. 2) ORDER 2010

(Prn. A10/1106)

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CRIMINAL JUSTICE (MUTUAL ASSISTANCE) ACT 2008 (SECTION 4)
(No. 2) ORDER 2010

I, MICHEÁL MARTIN, Minister for Foreign Affairs, in exercise of the powers conferred on me by section 4 of the Criminal Justice (Mutual Assistance) Act 2008 (No. 7 of 2008) (as adapted by the Justice, Equality and Law Reform (Alteration of Name of Department and Title of Minister) Order 2010 (S.I. No. 216 of 2010)), after consultation with the Minister for Justice and Law Reform, hereby order as follows:

1. This Order may be cited as the Criminal Justice (Mutual Assistance) Act 2008 (Section 4) (No. 2) Order 2010.
2. This Order shall come into operation on the 26 day of July 2010.
3. Each of the states specified in the Schedule is designated for the purposes of mutual assistance between the State and that state under the Criminal Justice (Mutual Assistance) Act 2008 (No. 7 of 2008), other than Part 3 of that Act, in accordance with Articles 13, 14, 18, 19 and 20 of the United Nations Convention against Transnational Organised Crime, done at New York on 15 November 2000.

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 30th July, 2010.*

SCHEDULE

Article 3

Designated states

Afghanistan, Albania, Algeria, Antigua and Barbuda, Argentina, Armenia, Australia, Azerbaijan, Bahamas, Bahrain, Belarus, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Cook Islands, Costa Rica, Croatia, Cuba, Democratic Republic of the Congo, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Ethiopia, Gabon, Gambia, Georgia, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Honduras, Iceland, Indonesia, Iraq, Israel, Jamaica, Jordan, Kazakhstan, Kenya, Kiribati, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Madagascar, Malawi, Malaysia, Mali, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mongolia, Montenegro, Morocco, Mozambique, Myanmar, Namibia, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Qatar, Republic of Moldova, Russian Federation, Rwanda, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, South Africa, Sri Lanka, Saint Kitts and Nevis, Sudan, Suriname, Switzerland, Syrian Arab Republic, Tajikistan, The former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Vanuatu, Venezuela (Bolivarian Republic of), Yemen, Zambia, Zimbabwe.



GIVEN under my Official Seal,
26 July 2010

MICHEÁL MARTIN,
Minister for Foreign Affairs.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

1. This Order will designate State Parties to the UN Convention on Transnational Organised Crime (“UNTOC”) for the purpose of mutual assistance under the Criminal Justice (Mutual Assistance) Act 2008.
2. Under section 4 of the 2008 Act, the Minister for Foreign Affairs, after consultation with the Minister may by order designate a state (other than a member state) for the purposes of mutual assistance between the State and that state under the Act or specified Parts or provisions of it in accordance with the relevant international instrument. The relevant international instrument is defined in section 2 of the Act as the “international instrument in accordance with which a request for assistance is made.” The international instruments, or provisions thereof, to which the 2008 Act gives effect are listed in the definition of “international instrument” in section 2 and appear as Schedules to the Act.
3. Articles 13, 14, 18, 19 and 20 of UNTOC have been given effect in the Criminal Justice (Mutual Assistance) Act 2008 (“2008 Act”) and are appended to the Act at Schedule 11. These Articles determine the Parts and provisions of the 2008 Act to which the State Parties to UNTOC will be designated.
4. Article 13 provides for international cooperation for the purposes of confiscation. It concerns the confiscation of the proceeds of crime, property, equipment or other instrumentalities derived from or used in offences covered by the Convention. The provisions of Article 13 are covered by Part 4 of the 2008 Act which provides for the Freezing, Confiscation and Forfeiture of Property.
5. Article 14 concerns the disposal of confiscated proceeds of crime or property. The provisions of this Article are covered by Part 4 of the 2008 Act. However, Article 14.2 requires State Parties, to the extent permitted by domestic law and if so requested, to give priority consideration to returning the confiscated property to the requesting State for the purpose of compensating the victims of the crime or returning such property to its legitimate owners. This is consistent with the restitution provisions at sections 84 to 87 of the 2008 Act.
6. For the purpose of Articles 13 and 14, State Parties to UNTOC should be designated for Part 4 and sections 84 to 87 of the 2008 Act.
7. Article 18 of UNTOC provides for mutual legal assistance. The forms of assistance to which this Article applies are listed in Article 18.3 of UNTOC. The following tables set out the forms of assistance available and the corresponding provisions of the 2008 Act for which the State Parties will be required to be designated:

Forms of assistance available under Article 18.3 UNTOC

	Assistance	Provision in 2008 Act
(a)	Taking evidence or statements from persons	s.62 to 64, 76 to 79
(b)	Effecting service of judicial documents	s.80 to 82
(c)	Executing searches and seizure, and freezing	s.73 to 75 & Part 4
(d)	Examining objects and sites	s. 83
(e)	Providing information, evidentiary items and expert evaluations	s. 62 to 64, 76 to 79
(f)	Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records	Part 2 re. financial records and Part 5
(g)	Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes	Part 4
(h)	Facilitating the voluntary appearance of persons in the requesting State Party	s. 65 to 66
(i)	Any other type of assistance that is not contrary to the domestic law of the requested State Party	All, excluding Part 3 relating to interception of telecommunications which is limited to EU Member States.

8. In light of the provision at point (i) in the above table, the present Order designates the State Parties to UNTOC for the purpose of all forms of assistance under the Criminal Justice (Mutual Assistance) Act 2008, excluding Part 3 which is limited to EU Member States (see Article 3 of the Order).

9. Article 18.4 allows for the spontaneous transmission of information, without receiving a request, where such information could assist in a criminal investigation or proceeding. Irish law permits such exchange of information under section 9 of the 2008 Act.

10. Article 18.10 and 18.11 concerns the temporary transfer of prisoners to another state for the purpose of identification, testimony or otherwise providing assistance in obtaining evidence for investigations or prosecutions. The prisoner in question and both States must consent to the transfer. This form of assistance is available in Irish law under sections 65 and 66 of the 2008 Act.

11. Article 18.13 requires the designation of a Central Authority with responsibility for making and receiving requests. Under section 8 of the 2008 Act, the Central Authority is the Minister for Justice and Law Reform.

12. Article 18.18 permits the use of videoconferencing for the taking of evidence. This form of assistance is available under Irish law in sections 67 to 70 of the 2008 Act.

13. Article 19 concerns the establishment of joint investigation teams. On foot of section 96 of the Criminal Justice (Mutual Assistance) Act 2008, a state designated under the 2008 Act is designated for the purpose of the Criminal Justice (Joint Investigation Teams) Act 2004.

14. Article 20 relates to special investigative techniques, essentially controlled deliveries. Assistance in the form of controlled deliveries is available under sections 88 to 92 of the 2008 Act.

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