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Subject: Guidelines for judicial and prosecuting authorities  
- United Kingdom

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Please find attached the guidelines for judicial and prosecuting authorities issued by the United Kingdom.

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# SEEKING ASSISTANCE IN CRIMINAL MATTERS FROM THE UNITED KINGDOM

## **GUIDELINES FOR JUDICIAL AND PROSECUTING AUTHORITIES**

(Second Edition)

JUDICIAL CO-OPERATION UNIT  
ORGANISED AND INTERNATIONAL CRIME DIRECTORATE  
HOME OFFICE  
LONDON SW1H 9AT

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## CHAPTER 1: INTRODUCTION

The United Kingdom Government attaches great importance to assisting judicial and prosecuting authorities in other countries in combating national and international crime.

The UK is able to provide a full range of legal assistance in criminal matters to judicial and prosecuting authorities in other countries under Part I of the Criminal Justice (International Co-operation) Act 1990, the UK's principal mutual legal assistance legislation.

These guidelines:

- give details of the assistance that can be provided under the Act and the procedures to follow when requesting assistance;
- explain the important role of the Judicial Co-operation Unit of the Home Office, in the execution of requests for legal assistance in criminal matters; and
- describe how the Home Office, as the UK Central Authority, works in close co-operation with the UK National Central Bureau of Interpol, which is part of the UK's National Criminal Intelligence Service (NCIS).

The Home Office staff working exclusively on requests for legal assistance and are fully conversant with mutual legal assistance law and practice. The Home Office works to very high professional standards. These are reflected in its published Code of Practice, included in these guidelines.

Extradition matters and international co-operation between, for example, Customs services, tax administrations and regulatory authorities in the financial services industry are not included in these guidelines. Separate guidance on those matters can be obtained from the relevant contact shown in Annex C.

These guidelines are available in English, French, German, Italian and Spanish. Further copies may be obtained from the Judicial Co-operation Unit at the Home Office.

The Home Office is not responsible for judicial co-operation with the Channel Islands, the Isle of Man or the UK Overseas Territories. Contact points for the competent authorities of the Islands and Territories are listed in Annex D.

## **CHAPTER 2: RANGE OF ASSISTANCE AND CHANNELS OF COMMUNICATION**

### **Range of available assistance: What is possible?**

The United Kingdom is able to provide a full range of legal assistance to judicial and prosecuting authorities in other countries and territories for the purposes of criminal investigations and criminal proceedings. The legal assistance that can be provided includes:

- service of summonses, judgements and other procedural documents;
- obtaining witness statements on oath and authenticated documentary evidence, including banking evidence;
- use of the investigation powers of the Serious Fraud Office in London and the Crown Office in Edinburgh in cases of serious or complex fraud;
- exercise of search and seizure powers;
- restraint and confiscation of proceeds of crime, and
- temporary transfer of prisoners, with their consent, to assist with criminal investigations and proceedings.

### **Which countries can the United Kingdom assist?**

The UK can assist any country (or territory) in the world, whether or not that country is able to assist the UK.

### **Are international agreements required?**

The UK can provide most forms of legal assistance without bilateral or international agreements - but assistance in the restraint and confiscation of proceeds of crime is dependent upon a bilateral agreement or other international agreement.

The UK has ratified:

- 1959 European Convention on Mutual Assistance in Criminal Matters and its Additional Protocol;

- the 1990 European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and
- the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention).

The UK has also adopted the Commonwealth Scheme Relating to Mutual Assistance in Criminal Matters.

### **Does the UK require reciprocity?**

No, but the UK would expect assistance from countries which are parties to relevant bilateral or international agreements with the UK.

### **Is dual criminality required?**

Not usually. The criminal conduct described in any request need not constitute an offence under UK law, had it occurred in the UK, except in cases involving the exercise of search and seizure powers or use of the special investigation powers of the Serious Fraud Office (in Scotland, the Crown Office) in cases of serious or complex fraud.

### **Does the UK assist with requests involving fiscal offences?**

In general, yes. But if the request is for evidence on oath, for certified documentary evidence, for search and seizure of evidence or would involve use of the investigation powers of the Serious Fraud Office (in Scotland, the Crown Office), then one or more of the following conditions must be satisfied:

- criminal proceedings must have been instituted in the requesting country (meaning that a court has issued a summons or an arrest warrant; the defendant has been charged or indicted; or the facts alleged by the prosecutor have been put to the defendant and will be put before a trial court);
- the request must come from a competent authority in a Commonwealth country or be made under an international agreement, or
- the conduct would constitute an offence of the same or similar nature under UK law had it occurred in the UK.

## **Which authorities can make requests to the UK? What information should be included in requests?**

Details of the authorities which may submit requests for legal assistance to the UK and what information should be included in letters of request (commissions rogatoires) are given in Chapter 3.

## **Where should requests to the UK be sent?**

Requests for legal assistance in criminal matters must be sent to the Home Office.

## **What does the Home Office do?**

The functions of the Home Office as UK Central Authority are described in Chapter 4.

## **Is it possible to submit requests to the Home Office through diplomatic channels?**

Yes. Diplomatic channels, such as Embassies or High Commissions in London, may be used where required by the law and practice of the requesting country. But direct communication with the Home Office is preferred as this can help speed up the execution of requests.

## **At what stage of investigations or proceedings should requests be sent to the Home Office?**

At any stage. In general, requests should be made as soon as the need for legal assistance is known and giving the UK authorities as much time as possible to execute the request. Delay in sending requests to the Home Office can result in an increase in the number of urgent cases, and delay the processing of other requests.

Requests for restraint (freezing) and confiscation of the proceeds of crime may only be considered where proceedings have been instituted or where it is certified when proceedings are to be instituted.

**Will the Home Office take account of any requirements or procedures which are specified in requests?**

Yes. Testimony may be received or recorded and oaths or cautions administered in any specified form to the extent possible under UK law.

**May witnesses in the UK be approached directly without informing the Home Office?**

Yes. Contact may be made directly by letter, fax or telephone. If the witness is willing to assist the enquiry voluntarily, an approach may be made through Interpol to record his or her statement or to the Home Office if testimony on oath is required.

**How long does it take to execute a request?**

This will depend on the circumstances of the request. Requesting authorities are kept informed of progress by the Home Office, in accordance with its Code of Practice, and provided with details of the officer(s) responsible for executing the request. These arrangements help ensure that timely assistance is provided.

Any reasons for urgency such as statutory time limits, pre-trial court appearances or trial dates should be clearly stated in all requests.

**May requests be sent to the Home Office via Interpol?**

Yes, but direct communication with the Home Office is preferred as this helps speed up execution of requests. If requests for legal assistance intended for the Home Office are sent through Interpol channels, they must be marked clearly for the attention of the Home Office.

**What assistance does the Home Office, as UK Central Authority, provide which the NCIS, as UK National Central Bureau of Interpol, does not?**

The respective competencies of the Home Office and the NCIS are set out in Annex A.



## **What requests may be sent to the UK National Central Bureau of Interpol at the NCIS?**

Examples of requests that may be submitted directly to the UK National Central Bureau of Interpol without involving the Home Office include requests for:

- interviewing witnesses or suspects in criminal investigations where the person to be interviewed is willing to co-operate without appearing or needing to appear before a judicial authority in the UK;
- sharing of information and intelligence concerning investigations into offences which have been committed in the UK (provided that the information or intelligence is not being requested for use in proceedings);
- asset tracing enquiries;
- providing details of previous convictions;
- providing, for investigative purposes, details of UK telephone subscribers;
- providing details of keepers of motor vehicles registered in the UK and of driving licences issued in the UK;
- obtaining medical or dental statements or records where the patient has given written consent.

Such requests need not be sent to the Home Office unless it is a requirement of the judicial authority making the request. Requests for both legal assistance and for investigative assistance may be sent both to the Home Office and the UK National Central Bureau of Interpol. They will jointly co-ordinate the execution of the request. Any such requests should be clearly marked to show the request had been submitted to both authorities.

## **May requests for legal assistance be sent direct to courts or prosecuting authorities in the UK?**

No. The courts in the UK have no investigative function and the prosecuting authorities do not, in general, have responsibilities for initiating enquiries on behalf of competent authorities abroad. The Home Office handles thousands of requests every year, and is best placed to ensure that requests for legal assistance are dealt with speedily, efficiently and in accordance with the requirements of the requesting authorities.

Requests should always be sent to the Home Office or to the UK National Central Bureau of Interpol at the NCIS.

## **May evidence be taken away by visiting judicial or investigating officers?**

Under law in the UK, all evidence received by a court or seized by a UK investigator must be sent to the Home Office for transmission to the requesting authorities abroad. Once received by the Home Office the evidence may be handed to visiting officials directly or sent to the requesting central or judicial authority.

## **Are requests kept confidential?**

In line with established international practice, the Home Office does not disclose the existence or content of letters of request outside government departments or agencies or the courts or enforcement agencies in the UK. Requests are not disclosed more than is necessary to obtain the co-operation of the witness or other person concerned.

In general, requests are not shown or copied to any witness or other person, nor is any witness informed of the identity of any other witness. In the event that confidentiality requirements make execution of a request difficult or impossible, the Home Office consults the requesting authorities.

Where public statements are made by authorities about the assistance they are requesting from the UK, the Home Office should be notified so that it may respond appropriately to any media or public enquiries.

## **Where should requests for Scotland and Northern Ireland be sent?**

The UK comprises three separate jurisdictions: England and Wales; Scotland; and Northern Ireland. All requests to the UK for assistance in criminal matters should be sent to the Home Office or the UK National Central Bureau of Interpol at NCIS irrespective of from where in the UK the assistance is required. But preliminary, informal enquiries about how to make requests intended for execution in Scotland may be made direct to the Crown Office in Edinburgh.

## **Where should requests for the Crown Dependencies and the UK Overseas Territories be sent?**

The Crown Dependencies, namely the Channel Islands (Guernsey and Jersey) and the Isle of Man, and the UK Overseas Territories<sup>1</sup> are not part of the United Kingdom. The Crown Dependencies and the Overseas Territories are themselves wholly responsible for executing requests within their own jurisdictions (although Interpol London is the Interpol office for the Crown Dependencies and certain of the Overseas Territories<sup>2</sup>). Requests should usually be sent to the Attorney General of the Crown Dependency or Overseas Territory from where the assistance is required.

## **Are requests ever declined? Is there anything the Home Office cannot do?**

Experience so far has shown that requests to the Home Office for legal assistance are rarely declined. However, the UK may decline requests the execution of which may prejudice UK investigations, proceedings, national security or other essential interests. No request will be declined without stating the reason or reasons why the request cannot be executed or without consulting the requesting authority and, where appropriate, inviting it to modify the request so that assistance may be provided.

The UK will decline to execute requests where a trial in the requesting country would involve double-jeopardy (*non bis in idem*). If the subject of a request has been convicted or acquitted in the UK or a third country of an offence arising from the conduct described in the request, the UK will not assist the gathering of evidence for another trial of the same person for the same conduct.

The Home Office cannot facilitate requests for interception of communications for evidential purposes. This is because UK law, section 9 of the Interception of Communications Act 1985, does not permit intercept material lawfully obtained by warrant to be adduced in evidence. Interception is an important intelligence development tool and requests for assistance with intelligence development can be considered by NCIS.

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<sup>1</sup> Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falklands, Gibraltar, Montserrat, St Helena and the Turks and Caicos Islands

<sup>2</sup> Falklands and St Helena: the other Overseas Territories host Interpol Sub-bureaux.

## **CHAPTER 3: FORM AND CONTENT OF REQUESTS TO THE UK**

### **Which authorities may make requests to the UK?**

Requests for legal assistance in criminal matters may be made by any competent court or tribunal, judicial or prosecuting authority. Requests may also be made by any other competent authority that the Home Office considers has the function of making requests for the purposes of criminal proceedings or criminal investigations. Such authorities include Attorneys General, investigating judges, examining magistrates, public prosecutors and Ministries or Departments of Justice having responsibilities for criminal matters.

### **Should requests be made or confirmed in writing?**

Yes, requests should always be made in writing, addressed to the Home Office or to the UK National Central Bureau of Interpol, depending on the nature of the assistance requested (see Annex A). They may be sent in advance by fax or e-mail but an undertaking should be given to send the original request by airmail or courier or other method of rapid delivery within a reasonable time, normally 7 days.

### **What language may requests to the Home Office be made in?**

Requests must be made in writing in English or be submitted with an English translation. If no translation is provided the Home Office will ask for one.

### **What information should be included in requests?**

All relevant information must be included. This will vary according to the nature of the assistance required. Omission of any relevant information may delay execution of the request.

Wherever possible all requests should include:

- Any information which is likely to help the Home Office arrange for execution of the request in accordance with the requirements of the requesting authority.

Letters of request must include the following details:

- Details and the address of the judicial or prosecuting authority conducting the investigation or proceedings to which the request relates, and the name, telephone and fax details of the responsible official(s) there.

- Full name(s) of the subject(s) of the investigation or proceedings.
- A summary of the facts of the offence(s) and details of the offence(s) committed or alleged. Where evidence is required, the request should make clear that there are reasonable grounds for suspecting that the offence has been committed and that proceedings have been instituted in relation to the offence or, if proceedings have not been instituted, that the offence is being investigated.
- A description of the evidence or material or other assistance required, clearly stating whether original evidence or certified copies are required.
- The purpose for which the evidence or material or other assistance is required and the relevance of the assistance to the investigation or proceedings.

Requests should also state, to the extent necessary and possible:

- The date of the trial or hearing and any other dates relevant for the purposes of executing the request; and any reasons why the request is urgent, for example because the accused person or suspect is in detention.
- The full name, date of birth and location of any person from whom evidence is required making clear whether there are a witness or an actual or potential accused.
- Available information on the identity and whereabouts of any person to be located.
- Details, including the telephone number, of any British law enforcement officer who is familiar with the investigation.
- The request should also say whether and why the presence of officers or officials of the requesting authorities is required during the execution of the request. The names of such persons should be provided (in general, such officers or officials may observe, but may not participate in, the execution of requests).

**Requests for service of summonses, judgements and other procedural documents should include:**

- The original document(s) with a translation or, if the original documents cannot be provided, a translation *certified* as a true copy of the original.
- The identity, date of birth and location of any person on whom a summons or judgement is to be served; details of that person's connection with the proceedings; and details any particular way in which the summons or judgement should be served.
- Details of any allowances and expenses to which a person asked to appear in proceedings abroad is entitled; the address of the court where the proceedings are to take place; and the name and telephone number of an official of the court from whom the person asked to appear can seek further information if necessary.

**Requests for witness evidence (testimony), should include:**

- Where evidence is required to be taken on oath before a court in the UK this should be expressly stated in the request. Expressions such as "*to hear*" or "*to examine*" witnesses or suspects should be avoided as they have no precise meaning in UK law. For the avoidance of doubt the requesting authority should set out as clearly as possible the conditions under which any interview or examination should be conducted.
- A list of questions to be asked.
- Details of the procedure to be followed in taking the evidence, including any rules on privilege which a witness or suspect may be entitled to claim.
- Any caution or formal notification of rights which should be given to the witness or suspect under the law of the requesting State.
- If banking evidence is required, the request must provide the name or number of the account and the address or number ("Sort Code") of the branch of the bank where the account is held. This detail is required because there is no central record of bank accounts held in the UK.

### **Requests for search and seizure of evidence should include:**

- The full address or a precise description of any place to be searched; full details of the specific material or type of material to be seized and a full description of the criminal conduct concerned. (Requests for search and seizure cannot be executed unless the criminal conduct would be a serious offence under UK law if it had occurred in the UK.)
- An explanation why the material requested is considered both relevant and important evidence to the investigation or proceedings; why the evidence is thought to be on the particular premises or in the possession of the particular person concerned and why the material would not be produced to a UK court if the natural or legal person holding the material were ordered to do so. (This is to help ensure that applications to the UK courts for search warrants are successful and less likely to fail or be subject to subsequent legal challenge.)
- Appropriate undertakings for the safekeeping and return of any seized evidence.

### **Requests for the restraint (freezing) of property should include:**

- The name, address, nationality, date and place of birth and present location of the defendant(s) or person(s) whose criminal conduct has given rise to civil confiscation proceedings.
- Details of the offence with which the defendant has been, or is about to be, charged (or the civil action brought or about to be brought).
- Details of the law applicable to the charges and the evidence against the defendant.
- Particulars of the property which it is intended to restrain in the United Kingdom, the persons holding it and details of the link between the defendant and the property (this is important if the property to be restrained is held in the name of a third party such as a company or another person).
- State clearly whether prior assistance in the case (including asset tracing assistance) has been provided and, if so, give particulars of the UK enforcement or other authority involved and details of the assistance already received.

- Where applicable, details of any court orders already made in the requesting State against the defendant in respect of his or her property. If any court order has been made a *duly authenticated* copy should be included with the request - that is a true copy of that order certified by a person in his or her capacity as a judge, magistrate or officer of the relevant court of the requesting State, or by an official of the Central Authority in the requesting State.
- Brief details of all known property held by the defendant outside the United Kingdom.
- A *certificate* issued by or on behalf of the requesting State's Central Authority stating:
  - ☐ that proceedings have been instituted in that country and have not been concluded, or that proceedings are to be instituted in the requesting State and, if so, when;
  - ☐ that the confiscation order which it is expected the court of the requesting State will make will have the purpose of recovering property, or the value of property, received in connection with drug trafficking or other serious crime (or, in the case of a forfeiture order, has the purpose of ordering the forfeiture of instrumentalities of crime).



**Requests for confiscation of property in the UK should include:**

- Information as in requests for restraint.
- An original confiscation order or a *duly authenticated* copy of the confiscation order.
- A *certificate* issued by or on behalf of the requesting State's Central Authority stating:
  - ☐ that the confiscation order is in force and that neither the order nor any conviction to which it may relate is subject to appeal;
  - ☐ that all or a certain amount of the sum payable under the order remains unpaid in the territory of the requesting State or that other property recoverable under the order remains unrecovered there;
  - ☐ that the confiscation order has the purpose of recovering property, or the value of property obtained in connection with drug trafficking or other serious crime (or in the case of a forfeiture order has the purpose of ordering the forfeiture of instrumentalities of crime);
  - ☐ and, where the person against whom the confiscation order was made did not appear in the proceedings, that he or she was notified of the proceedings in accordance with the requesting State's law in time to defend them.

**Where the request is for the temporary transfer of a UK prisoner to give evidence or otherwise assist in criminal investigations or proceedings outside the UK, it should include:**

- Dates on which the presence abroad of the prisoner is required, including the dates on which the court or other proceedings for which the prisoner is required will commence and are likely to be concluded;
- Information for the purpose of obtaining the prisoner's consent to the transfer and satisfying the UK authorities that arrangements will be made to keep the prisoner in secure custody such as:
  - whether the prisoner will have immunity from prosecution for previous offences;
  - details of proposed arrangements for collecting the prisoner from and returning the prisoner to the United Kingdom;

- details of the type of secure accommodation in which the prisoner will be held in the requesting State;
- details of the type of escort available abroad to and from the secure accommodation.

The above list is not exhaustive. The Home Office can provide further advice if necessary.

**If the assistance requested ceases to be required, the Home Office or the UK National Central Bureau of Interpol should be informed immediately so that enquiries are not made unnecessarily.**

## **CHAPTER 4: EXECUTION OF REQUESTS IN THE UK**

### **What is the role of the Home Office?**

The Home Office's responsibilities include:

- Ensuring that requests for legal assistance conform with the requirements of law in the UK and the UK's international obligations (for example, requests for legal assistance must come from a competent authority and be for the purposes of criminal investigations or proceedings).
- Ensuring that execution of requests is not inappropriate on public policy grounds (for example, requests involving double jeopardy will not be executed).
- Deciding how requests might most appropriately be executed (for example, some requests asking for search and seizure of evidence may be executed effectively by a witness producing the evidence to a court).
- Maintaining confidentiality of requests where necessary.
- Ensuring, so far as possible, that assistance is provided within an appropriate time scale (for example, taking account of trial dates).
- Drawing to the attention of the courts, the police and other UK authorities and agencies requests that evidence be obtained in the presence of foreign police or customs officers or prosecutors or defence lawyers.
- Seeking requesting authorities' agreement to meet extra-ordinary costs of executing requests and for services such as interpreters or stenographers or for duplication of documents. (Ordinarily, costs will be met by the UK authorities, in accordance with established international practice).

- Passing evidence received to the requesting authorities (and checking whether any part of the request remains outstanding).

## **How are requests executed?**

The information below explains the ways requests in which are executed in England and Wales. (Requests seeking assistance from Scotland or Northern Ireland are sent by the Home Office to the Crown Office or the Northern Ireland Office for execution, although the laws and practices in those parts of the UK are similar to those in England and Wales.)

## **How are requests for service of summonses and judgements executed?**

Summonses and judgements received by the Home Office from competent authorities abroad are normally served on the persons to whom they are addressed by recorded delivery post. Where personal service is requested, the Home Office arranges for the document to be served by the police.

Under law in the UK, any person to whom a summons or judgement is addressed must be given a notice explaining, as appropriate, that:

- the document does not impose any obligation under law in the UK to comply with it;
- the person might wish to seek legal advice on the possible consequences under the law of the requesting country of failure to comply, and
- the person may not, as a witness, be accorded the same rights and privileges in the requesting country as they would in criminal proceedings in the UK.

The person on whom a summons or judgement is served is asked to sign a receipt and return it to the Home Office to send to the requesting authority. The Home Office will advise the requesting authority whether the document has been delivered and a receipt has not been received or whether it was not possible to serve the document.

## **How are requests for evidence on oath executed?**

Where a request is made for evidence to be received by a court in the UK or the execution of the request requires judicial authority under UK law, the Home Office may nominate a court to receive such of the evidence as may appear to the court to be appropriate. The court has powers to secure the attendance of the witnesses and suspects named in the request.

Witnesses and suspects may claim privilege against self-incrimination and refuse to answer questions or produce documents. In particular, a person cannot be compelled to give evidence before the nominated court if he or she could not be compelled to give the evidence in criminal proceedings in the UK or in criminal proceedings in the requesting country.

Where a witness or suspect claims privilege under the law of the requesting country, evidence will not be taken if the requesting authority concedes the claim. Where the claim is not conceded, the evidence may be taken but will not be sent to the requesting authority if a court in the requesting State rules that the claim to privilege is justified.

With the agreement of the UK court, attorneys, law enforcement officers and other interested parties from abroad named in the request (or a supplementary request) may observe the proceedings. Such agreement is almost always given.

Under UK law the evidence received by the court must be furnished to the Home Office to transmit to the requesting authority. It is possible for the evidence to be received directly from the Home Office by hand or, in urgent cases, for a Home Office official to be present at the court to receive the evidence and pass it directly to the representative of the requesting authority.

**If the evidence required does not need to be taken on oath, the request may be sent to the UK National Central Bureau of Interpol which may then arrange for the evidence to be obtained directly by the police and the evidence would normally be returned to the requested authorities through Interpol channels or handed to visiting officers.**

### **How are requests for authenticated documentary evidence, including certified banking evidence, executed?**

The Home Office may nominate a court to receive such of the documentary evidence as may appear to the court to be appropriate. Normally, the custodian of the documents is required by the court to make a statement on oath. This may, for example, indicate whether the documents were created in the ordinary course of business or came into the custodian's possession from a third party and whether the documents are originals or genuine copies of the originals. Such a statement is for "chain of evidence" purposes. If banking evidence is required, the statement is normally provided by an official of the bank concerned.

The bank is under no obligation to inform the account holder that it has been ordered to disclose the information. In most cases, the nominated court will obtain the banking information without itself informing the account holder. This might not be appropriate if the account holder is a third party not complicit in the offence or if the account is administered by, for example, a firm of solicitors (professional legal advisers) or accountants. The decision whether to notify the account holder of the proceedings is entirely a matter for the court.

Before an account holder is notified, the Home Office consults with the requesting authority to ensure that execution of the request would not breach the requesting authority confidentiality requirements.

Under UK law, the evidence received by the court must be sent to the Home Office for transmission to the requesting authority.

### **How can requests for evidence in serious or complex fraud cases be executed?**

The Home Office can refer requests for assistance in serious or complex fraud, or any part of such a request, to the Director of the Serious Fraud Office to obtain such of the evidence as may appear to the Director to be appropriate. Under law in the UK, the Director must be satisfied on reasonable grounds that the criminal conduct in the requesting country involves "serious or complex fraud". Frauds involving sums less than £1 million would not normally be regarded as "serious".

Before referring a request to the Director, the Home Office will seek a written assurance from the requesting authority that any statement which might be made by a person in response to a requirement imposed by virtue of the Director's investigation powers will not be used in evidence against that person, without the consent of the Home Office. This assurance is required because witnesses do not in general have a right to refuse to answer questions where use is made of the Serious Fraud Office's investigation powers. The assurance is therefore an important safeguard for the witness in the event of self-incrimination. The statement may, of course, be used against the accused person(s) named in the request if that is considered appropriate in the requesting country.

Under UK law, the evidence obtained by the Serious Fraud Office must be sent by the Director to the Home Office for transmission to the requesting authority.

Further information on what constitutes "serious or complex fraud" and what should be included in a request for legal assistance in cases involving serious or complex fraud may be obtained from the Serious Fraud Office (in Scotland, the Crown Office).

### **How can requests for search and seizure (search warrants and production orders) be executed?**

The Home Office may direct police or Customs to apply to a court for a search warrant or a production order. (A production order is an order of the court requiring the person(s) on whom the order is served to produce the evidence specified in the order).

Where further information is required about the offence or the material to be seized, depending on the particular circumstances, the Home Office will inform the requesting authorities without delay.

Where an application is made for a production order interested parties must by law be notified (by the UK authorities) and be given an opportunity to be represented in the court that is hearing the application. In such cases, the Home Office consults the requesting authorities to ensure that execution of the request would not breach any explicit confidentiality requirement of the requesting authority. Notification of interested parties is not required where an application is made for a search warrant.

There is no authority under UK law to search for and seize, or to compel production of, any items which are subject to "legal privilege". Legal privilege applies to legal advice communicated between lawyers and their clients, but does not apply to communications intended to further a criminal purpose.

Under UK law, the evidence obtained must be sent by the police or Customs to the Home Office for transmission to the requesting authorities abroad.

### **How are requests for restraint (freezing) of assets executed?**

In the United Kingdom, a court order to freeze (restrain) assets may be obtained on behalf of a designated foreign jurisdiction when court proceedings which may lead to a confiscation order have been or are about to be instituted there; or if a confiscation order has already been made. It is vital therefore that any request for the restraint of assets in the United Kingdom should make clear whether a confiscation order has been made; and, if not, whether proceedings which may lead to confiscation have been instituted in the requesting state or, if not, when they expect to begin.

UK law enables a restraint or freezing order to be obtained on behalf of another country in our High Court only where that country has been designated by subsidiary legislation. Normally, a country will be designated for assistance in relation to drug assets when it ratifies the 1988 UN (Vienna) Drugs Convention; or for assistance in relation to the proceeds of all crimes when it ratifies the 1990 Council of Europe (Strasbourg) Confiscation or when a bilateral confiscation agreement with the UK is in place.

The Home Office will authorise a relevant prosecuting authority to represent the requesting Government in the High Court proceedings. Applications to the High Court in international restraint and confiscation cases are dealt with in England and Wales by two prosecuting authorities. They are the Central Confiscation Branch of the Crown Prosecution Service and the Asset Forfeiture Unit of HM Customs and Excise. As a general rule, the Central Confiscation Branch of the Crown Prosecution Service will deal with any restraint or confiscation request where a police officer has carried out the preliminary asset tracing enquiries in this country. The Home Office can advise which office might be appropriate in a particular case.

UK law requires that certain UK court orders, including restraint orders, should be served personally on the defendant and/or interested parties. Where the High Court grants a restraint order on behalf of a foreign Government, the order will normally need to be channelled through the Home Office, for service on the appropriate person(s) abroad.

Where a restraint order is granted on behalf of another government, the Home Office will confirm this fact in writing, and request that such service be effected as specified in the order. The requesting country will be asked to complete and return to the Home Office a memorandum of service. It is important that the Home Office receives the completed memorandum quickly since delays could affect the High Court's willingness to continue the order. It is helpful if the completed memorandum is received within two weeks of its despatch and that in the event of unavoidable delay, an advance copy is sent to the Home Office by fax.

## **How are requests for temporary transfer abroad of UK prisoners executed?**

UK law allows for the temporary transfer abroad of UK prisoners, including remand prisoners, who consent to assist with criminal investigations and proceedings. Prisoners cannot be transferred from the UK without their consent. Requests for temporary transfer of prisoners must be sent to the Home Office.

The Home Office must be satisfied before agreeing to the transfer that the presence of the prisoner is not already required in the UK for the purposes of investigations or proceedings and that the transfer would not prolong the prisoner's period of detention.

Where the transfer is agreed with the requesting authority, the Home Office arranges for:

- the taking of the prisoner in custody to a departure point in the UK and the delivery of the prisoner into the custody of a person representing the requesting authority;
- the escorting of the prisoner back to the UK by the requesting authority; and
- the subsequent transfer of the prisoner in custody from the arrival point in the UK to his or her place of detention.

The costs of escorting and accommodating prisoners from their point of departure from the UK to their point of return to the UK are borne by the requesting authority.

## **CHAPTER 5: HOME OFFICE CODE OF PRACTICE**

The Home Office aims to ensure that requests for legal assistance are executed promptly, taking account of urgency, and that requesting authorities are kept informed of progress.

All requests received by the Home Office are acknowledged and the requesting authorities are given the name and contact details of the person in the Home Office responsible for co-ordinating its execution. As soon as possible, the Home Office will inform the requesting

authority how the request is to be executed. In the relatively few instances where a request cannot be executed in whole or in part, the Home Office will provide an explanation and consult with the requesting authority about whether the assistance can be provided in a different way.

Where possible, the Home Office will give requesting authorities the contact details of the police or Customs officer or court official or other person to whom the request, or part of the request, has been referred for the purposes of executing the request. **That person may then be contacted directly by the requesting authorities.**

Any enquiries about requests that have been sent to the Home Office are also acknowledged and dealt with as quickly as possible. When making enquiries, the Home Office's reference number for the request should be quoted as this speeds up retrieval of information on the status of the request.

The sooner the Home Office is told about any difficulties which the requesting authorities may be having with any requests, the sooner the Home Office is able to reassure the requesting authorities that the matter is being dealt with.

The Home Office has published a Code of Practice. This is a set of standards that the Home Office applies in dealing with requests for legal assistance. The standards are closely monitored. The Code is set out at Annex B.

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## **ANNEX A: CONDUCTING ENQUIRIES IN OR SEEKING ASSISTANCE FROM THE UNITED KINGDOM**

### **THE COMPETENCIES OF THE HOME OFFICE (UK CENTRAL AUTHORITY) AND NCIS (UK NATIONAL CENTRAL BUREAU OF INTERPOL)**

The examples below are intended to indicate whether the Home Office, as UK Central Authority for mutual assistance in criminal matters, or the UK National Central Bureau of Interpol (Interpol London) at the UK National Criminal Intelligence Service, is more appropriate for conducting enquiries in or seeking assistance from the UK.

<b>COMPETENCIES OF THE HOME OFFICE INCLUDE:</b>	<b>COMPETENCIES OF THE UK NATIONAL CENTRAL BUREAU OF INTERPOL INCLUDE:</b>
Serving a summons or other judicial document requiring a person to appear before a judicial authority in the requesting country as a witness or defendant in criminal proceedings.	Interviewing witnesses and suspects in criminal investigations where the person to be interviewed is willing to co-operate without appearing before a judicial authority in the UK and where any statement made would be unsworn.
Obtaining sworn evidence or other authenticated or certified evidence, including banking documentation, for use in criminal proceedings or investigations.	Tracing assets in investigations preliminary to prosecution, particularly where the offence involves money laundering.
Authenticating or certifying evidence for use in the requesting country where that evidence has already been obtained by the UK police for their own purposes.	Sharing with the requesting country information concerning investigations into offences which have been committed in the UK.
Exercise of search and seizure powers where evidence is required for use in criminal proceedings or investigations.	Obtaining medical or dental statements or records where the patient has given written consent.

COMPETENCIES OF THE HOME OFFICE INCLUDE:	COMPETENCIES OF THE UK NATIONAL CENTRAL BUREAU OF INTERPOL INCLUDE:
<p>Temporarily transferring prisoners, with their consent, to the requesting country to appear as witnesses in criminal proceedings or to assist in criminal investigations.</p>	<p>Providing details of previous convictions:</p> <ul style="list-style-type: none"> <li>● for the purposes of police investigations, vetting applicants for employment in law enforcement or for work with access to children or suitability for owning firearms and holding gambling licences - when provided with a copy of the person's fingerprints.</li> <li>● for police intelligence purposes <u>only</u> - without fingerprints.</li> </ul> <p>Providing telephone subscriber details (UK telephone companies can provide only the family name and the initial of the subscriber and the address where the telephone is located).</p> <p>Seizing and securing in the UK property stolen abroad. Police in the UK can seize and retain property where the person in possession of it in the UK is suspected of knowing that the property is stolen.</p> <p>Providing passport details (all details held by the UK Passport Agency can be provided including any photographs held).</p>

COMPETENCIES OF THE HOME OFFICE INCLUDE:	COMPETENCIES OF THE UK NATIONAL CENTRAL BUREAU OF INTERPOL INCLUDE:
	<p>Providing medical samples (body orifice swabs and samples of blood, saliva, semen, hair, urine and other tissue fluids can be obtained with the consent of the person from whom the sample is required).</p> <p>Providing details of keepers of motor vehicles registered in the UK and of driving licences issued in the UK.</p>

## **ANNEX B: HOME OFFICE: CODE OF PRACTICE**

### **Requests to the United Kingdom for evidence**

The Home Office, being the central authority for the United Kingdom in mutual legal assistance in criminal matters, will:

- acknowledge all requests for evidence upon receipt, giving the name of the Home Office officer handling the request, his or her telephone and fax numbers and a reference number for any queries;
- respond to all enquiries about the execution of requests for assistance within 10 working days of receipt;
- upon receipt of the request where the request is marked “urgent”, or no later than 20 working days after receipt in other cases, either: provide the requesting authority with the assistance sought; or inform the requesting authority of the action being taken to obtain the assistance and provide, where possible, the name(s) and other contact details of the person(s) with responsibilities for executing the request, or provide the requesting authority with a full explanation why the request cannot be executed in its entirety or in part and where possible indicate how the assistance might otherwise be obtained;
- if the requesting authority notifies the United Kingdom that it is necessary, provide with 20 working days of receipt of the notification a report on the progress of the request and , where possible, indicate by when the request will be executed and update that report on a similar time scale;
- endeavour to meet all reasonable time scales for the execution of requests, including urgent requests.

## **Requests to the United Kingdom for service of process (summonses and other procedural documents)**

The Home Office will:

- arrange for the execution of all requests for service of summonses within 10 working days of receipt;
- execute all requests for service of process in the manner requested insofar as that is compatible with UK law, and where that is not possible provide the requesting authorities with a full explanation;
- acknowledge simultaneously the receipt and the execution of requests for service of summonses (unless the Home Office has not received signed proof of service at least 10 working days before the hearing date, in which case the acknowledgement will confirm the arrangements made to execute the request);
- acknowledge simultaneously the receipt and the execution of requests for service of judgements and other procedural documents at the same time (unless the Home Office has not received signed proof of service after 30 working days, in which case the acknowledgement will confirm the arrangements made to execute the request);
- when acknowledging requests for service of procedural documents, provide the requesting authorities with the name and other contact details of the officer in the Home Office who has handled the request, including telephone and fax numbers and a reference number for any queries.

## **ANNEX C: CONTACT DETAILS FOR THE HOME OFFICE AND OTHER RELEVANT UK AUTHORITIES**

### **Requests for legal assistance**

Mutual Legal Assistance Section  
Judicial Co-operation Unit  
Home Office  
50 Queen Anne's Gate  
London SW1H 9AT

Tel: +44 207 273 2437  
Fax: +44 207 273 4400/4584

The Judicial Co-operation Unit at the Home Office has a round-the-clock answer phone facility and may be contacted out-of-hours by dialling: +44 1523 523523 (an operator will take the call who should be given pager number 657782 and a message which will be relayed to the legal assistance duty officer).

### **Requests for investigative assistance**

UK National Central Bureau of Interpol (Interpol London)  
National Criminal Intelligence Service  
PO Box 8000  
London SE11 5EN

**Contact with Interpol London should be made through the National Central Bureau of Interpol in the requesting country.**

Tel (24 hours): +44 207 238 8115  
Fax: +44 207 238 8112  
Telex: 918734  
Encrypted e-Mail: Via X400

### **Requests in cases of serious or complex fraud**

Preliminary, informal enquiries may be sent to:  
Serious Fraud Office  
Elm House  
10-16 Elm Street  
London WC1X OBJ

Tel: + 44 207 239 7272  
Fax: + 44 207 833 5430

## **Requests for execution in Scotland**

Preliminary, informal enquiries may be sent to:

Fraud and Specialist Services Unit  
Crown Office  
25 Chambers Street  
Edinburgh EH1 1LA

Tel: + 44 131 226 2626  
Fax: + 44 131 226 6861

## **Advice on UK criminal law and procedure**

London Branch 2  
Crown Prosecution Service  
50 Ludgate Hill  
London EC4M 7EX

Tel: + 44 207 273 1382  
Fax: + 44 207 329 8171

## **Requests for administrative assistance in Customs matters**

HM Customs & Excise  
International Criminal Division  
Solicitor's Office  
New King's Beam House  
22 Upper Ground  
London SE1 9PJ

Tel: + 44 207 865 5167  
Fax: + 44 207 865 5654

## **Advice on making requests for restraint and confiscation of assets**

Central Confiscation Branch  
Crown Prosecution Service  
50 Ludgate Hill  
London EC4M 7EX

Tel: + 44 207 796 8283  
Fax: + 44 207 796 8270  
Asset Forfeiture Unit  
Solicitor's Office  
HM Customs and Excise  
New King's Beam House  
22 Upper Ground  
London SE1 9PJ

Tel: + 44 207 865 5187  
Fax: + 44 207 865 5902

### **Requests for extradition of fugitives**

Extradition Section  
Judicial Co-operation Unit  
Home Office  
50 Queen Anne's Gate  
London SW1H 9AT

Tel: + 44 207 273 3991  
Fax: + 44 207 273 2496

### **Requests for administrative assistance in revenue tax matters**

Inland Revenue  
Solicitor's Office  
Somerset House  
London WC2R 1LB

Tel: + 44 207 438 7091  
Fax: + 44 207 438 6246

### **Requests for regulatory assistance in companies matters**

Department of Trade & Industry  
Investigations & Enforcement Directorate  
10 Victoria Street  
London SW1 ONN

Tel: + 44 207 215 3021  
Fax: + 44 207 215 3115



## **ANNEX D: CONTACT DETAILS FOR AUTHORITIES IN THE CHANNEL ISLANDS, THE ISLE OF MAN AND THE UK OVERSEAS TERRITORIES**

### **Requests for execution in the Channel Islands and the Isle of Man**

#### Guernsey

HM Attorney General  
Attorney General's Chambers  
St James Chambers  
St Peter Port  
Guernsey  
GY1 2PA

Tel: + 44 1481 723355  
Fax: + 44 1481 725439

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#### Isle of Man

Attorney General's Chambers  
2nd Floor New Wing  
Victory House  
Douglas  
ISLE OF MAN  
IM1 3PP

Tel: + 44 1624 685452  
Fax: + 44 1624 629162

#### Jersey

HM Attorney General  
Attorney General's Chambers  
Morier House  
St Helier  
Jersey  
JE1 1DD

Tel: + 44 1534 502280  
Fax: + 44 1534 502299

**Requests for execution in the UK Overseas Territories**  
(details of authorities not listed are obtainable from the Home Office)

Anguilla

The Attorney-General  
The Attorney-General's Chambers  
The Secretariat  
The Valley  
Anguilla

Tel: + 1 264 497 3044  
Fax: + 1 264 497 3126

Bermuda

The Attorney-General's Chambers  
Global House  
43 Church Street  
Hamilton HM12  
Bermuda

Tel: + 1 441 292 2463  
Fax: + 1 441 292 3608

British Virgin Islands

The Attorney-General  
The Attorney-General's Chambers  
Government of the British Virgin Islands  
PO Box 242  
Road Town  
Tortola

Tel: + 1 284 494 3701  
Fax: + 1 284 494 6760

## Cayman Islands

The Attorney-General  
The Attorney-General's Chambers  
Government Administration Building  
George Town, Grand Cayman  
Cayman Islands

Tel: + 1 345 949 7900  
Fax: + 1 345 949 6079

## Gibraltar

Attorney-General  
Attorney-General's Department  
17 Town Range  
Gibraltar

Tel: + 350 70723  
Fax: + 350 79891

## Montserrat

The Attorney-General  
The Attorney-General's Chambers  
PO Box 129  
Olveston  
Montserrat

Tel: + 1 664 491 4686  
Fax: + 1 664 491 4687

## Turks and Caicos Islands

The Governor  
Government House  
Grand Turk  
Turks and Caicos Islands

Tel: + 1 649 946 2308  
Fax: + 1 649 946 2903