

**Mutual Legal Assistance Guidelines
for the United Kingdom
(8th Edition)**

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Requests for Mutual Legal Assistance in Criminal Matters from the United Kingdom

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Requests for Mutual Legal Assistance in Criminal Matters from the United Kingdom

Section 1: Introduction

Mutual Legal Assistance (MLA) is the formal way in which countries request and provide assistance in obtaining evidence located in one country to assist in criminal investigations or proceedings in another country. Due to the increasingly global nature of crime MLA is critical to criminal proceedings and ensuring justice for victims of crime. The UK is committed to assisting investigative, prosecuting and judicial authorities in combating international crime and is able to provide a wide range of MLA.

Who these guidelines are for:

These guidelines are intended for authorities outside of the UK who wish to make a request for MLA to the UK ('Requesting Authorities'). Guidance is also included on what can be requested from the UK without making a formal request for MLA. There are separate guidelines for authorities within the UK who wish to make a request to receive MLA from a foreign state. These guidelines are to ensure that requests for MLA received by the UK can be executed quickly and efficiently.

When MLA requests to the UK are appropriate:

A request for MLA in criminal matters is only appropriate if evidence (as opposed to intelligence) from the UK is required for a criminal matter. It can be easier and quicker to obtain intelligence and in many countries this will constitute admissible evidence in criminal trials. Requesting countries will need to determine whether, in relation to their legislation, a request for evidence or intelligence is more appropriate.

Requests for intelligence can be made on a police to police basis and a different process for this is followed. Please refer to Section 6 of this guide for how to make a request for intelligence from the UK. Requests for assistance in civil matters are also dealt with via a different process, as explained in Section 8 of this guidance.

Types of MLA Assistance that can be provided:

There is a wide range of MLA that can be provided by the UK conditional on the correct criteria being met. The type of MLA available include: service of procedural documents, witness evidence, banking and telecommunications data, search and seizure, temporary transfer of prisoners and interception of telecommunications. Please refer to Section 3 of this guide for information about each of the different types of MLA.

Countries which the UK can assist:

The UK can assist any country or territory in the world, whether or not that country is able to assist the UK. The UK can provide most forms of legal assistance without bilateral or international agreements. Please see Annex A for a list of the international agreements that the UK is party to.

Where a treaty or Convention imposes specific conditions or procedures on the provision or requesting of MLA the UK expects such conditions or procedures to be adhered to.

Reciprocity:

The UK does not require reciprocity but would expect assistance from countries which are parties to relevant bilateral or international agreements with the UK. The UK would also

expect reciprocity from countries to which we give assistance without a treaty or international agreement.

The role of Central Authorities in the UK:

Central Authorities have the function of receiving, acceding to and ensuring the execution of MLA requests. The UK has three central authorities:

- UK Central Authority (UKCA)
- Crown Office, Scotland
- Her Majesty's Revenue and Customs (HMRC)

The Crown Office deals with MLA requests for Scotland. HMRC deals with requests for some customs matters. The UKCA deals with all other requests for England, Wales and Northern Ireland, including MLA requests relating to the smuggling of prohibited and restricted items and direct tax¹. Contact details for central authorities are in Section 2 of these guidelines.

Requests for the Crown Dependencies and the UK Overseas Territories:

The Crown Dependencies, namely the Channel Islands (Guernsey and Jersey) and the Isle of Man, and the UK Overseas Territories (Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falklands, Gibraltar², Montserrat, St Helena and the Turks and Caicos Islands) are not part of the United Kingdom. The Crown Dependencies and the Overseas Territories are wholly responsible for executing requests within their own jurisdictions. Requests should usually be sent to the Attorney General of the Crown Dependency or Overseas Territory from where the assistance is required. The contact details for these jurisdictions can be found at Annex B.

UK Executing Authorities:

There are a number of organisations that are involved in the execution of MLA requests. Please see Annex C for a glossary of different organisations in the UK and their role in MLA.

Confidentiality:

In line with established international practice, the Central Authorities will neither confirm nor deny the existence of an MLA request, nor disclose any of its content outside government departments, agencies, the courts or enforcement agencies in the UK. Requests are not disclosed further than is necessary to obtain the co-operation of the witness or other person concerned. Where public statements are made by an overseas authority about the assistance it is requesting from the UK, the Central Authorities should be notified so that they may respond appropriately to any media or public enquiries.

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

¹ MLA requests for customs matters which UKCA deal with include: drugs; firearms and offensive weapons; chemical, biological, radiological and nuclear hazards; products of animal origin; plant health; cash at the border and the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The UKCA will also receive MLA requests for the whole of the UK if this is stated in a treaty under which a request is made

² Requests to and from EU/ Schengen Member States for Gibraltar must be sent via the UK Government/ Gibraltar Liaison Unit in the Foreign & Commonwealth Office.

requirements make execution of a request difficult or impossible, the Central Authorities will consult the requesting authorities. In cases where disclosure of a request or part thereof is required by UK domestic law in order to execute the request it will normally be the case that the Requesting State will be given the opportunity to withdraw the request before disclosure to third parties is made.

Section 2: How to make a request for MLA

Requests for MLA must be sent to one of the UK's central authorities. This section gives information on what should be contained within a Letter of Request and where it should be sent. However, this section should be read in conjunction with Section 3 of these guidelines (Types of MLA the UK can provide) as what is contained within the Letter of Request is dependent on the type of assistance required by the requesting authority.

Prior to making an MLA request:

It is possible, and very often desirable, for overseas authorities to use police to police enquiries (intelligence) or other intelligence sharing networks prior to making an MLA request. This can help improve the quality of the MLA request and the subsequent service received. Please refer to Section 6 (Requests for Intelligence).

Proportionality: Please also ensure that the request is proportionate (i.e. the request for assistance is proportionate to the level of crime being investigated). Police forces in the UK are operationally independent and prioritise the execution of MLA requests alongside domestic work. Thus, in two different cases Requesting Statements from witnesses, but where one relates to a murder and the other relates to small-scale shoplifting, the murder case will be prioritised. Consequently, and given the limited resources available to UK law enforcement, requesting countries are urged to consider the need for the evidence in question.

Who can send a Letter of Request (LOR):

Any competent body under the law of the requesting country may make a request to the UK, but this must comply with Section 13 of the Crime (International Co-operation) Act 2003.

Format of a request:

These must always be made in writing.

- LORs to the UKCA: should be sent via the post / courier or fax in urgent cases.
- LORs to HMRC can be sent via post or email.
- LORs to the Crown Office can be sent via post or email.

Language of requests:

All LORs should be in English³. Requests not in English must be accompanied by translated copies. If an English translation is not provided the request will be sent back to the issuing authority.

³ EU Countries that have ratified the 2000 MLAC should note Article 5(3) in relation to translations.

What must be included in a Letter of Request:

Please observe the following conditions when sending a request to the UK:

- Headed notepaper of the issuing authority must be used
- The request must be signed by the issuing authority
- If the request is not in English a translated version into English must be provided
- For requests made in the English language: One signed hard copy **and** one copy of this must be provided
- For requests not made in the English language: One signed hard version of the non-English request **and** one translation of the request into English.

In the content of the letter the following information must be included (where applicable):

1. Details of the authority making the request, including the name, telephone number and email address (where available) of a contact person
2. Purpose for which assistance is sought
3. The type of assistance being requested (for example, if this is a request for evidence, service of process or enforcement of restraint and confiscation, etc) and any additional information that is required for requests of this type of assistance (see Section 3 of these guidelines)
4. A description of the offences charged or under investigation and sentence or penalty
5. A copy of the legislation that criminalises the conduct in the requesting country and gives information on the offence, penalty and rights a person may be afforded.
6. A summary of the facts giving rise to the request and connection this case has to the UK
7. Details of the person or persons (including legal) named in the request including, where available, address, date of birth and nationality
8. Details of the location of a company / person evidence is needed from
9. If a person needs to be visited, state whether they are a witness or a suspect
10. The name of the suspect and what they are being charged with.
11. Connection between evidence requested and the offence under investigation / proceedings. A clear nexus (direct link) must be established between the facts of the case as detailed in the request and the evidence requested. This goes further than just stating that the requested material is relevant to the case and should specify how it is relevant and will advance the case
12. Relevant dates e.g. date of court hearing (reason for special urgency or attention should be included in the covering letter of request)
13. Details, including the telephone number and e-mail address if available, of any British law enforcement agency or officers who are familiar with the investigation (including, if relevant, the names of any UK based operations which the Requesting State is aware of)
14. The title of the relevant Convention etc. under which the request is being made. Please see Annex A for conventions which the UK is party to.
15. If this is a request for evidence, specify exactly what evidence is required (e.g. not just 'banking evidence' but which bits of banking evidence).
16. Confidentiality - the extent to which confidentiality applies

17. Details of any media attention or reasons for high profile interest in the case in the Requesting State.

Failure to provide the fullest information possible may result in delays or in a request not being executed in whole or in part.

Please see Annex D for an example structure of a letter of request for evidence. Please see Annex E for an example structure of a letter of request for service of process.

Where to send MLA requests:

Formal requests for assistance for England, Wales and Northern Ireland should be directed to:

UK Central Authority
5th Floor Fry Building
2 Marsham Street
London
SW1P 4DF
Fax: +44 20 7035 6985
Telephone: +44 20 7035 4040

Formal requests for assistance in Scotland should be directed to:

International Co-operation Unit
Crown Office
25 Chambers Street
Edinburgh
EH1 1LA
Tel: +44 131 243 8152
Fax: +44 131 243 8153

Requests for assistance in customs matters (including indirect tax matters such as Value Added Tax fraud) should be sent direct to HM Revenue and Customs⁴:

HM Revenue and Customs
Law Enforcement & International Advisory Division
HM Revenue and Customs - Solicitor's Office
Room 2/74
100 Parliament Street
London
SW1A 2BQ
Fax: +44 (0)20 7147 0433
Email: mla@hmrc.gsi.gov.uk

For requests for assistance from the British Crown Dependency or British Overseas Territory these can be sent directly to the relevant authority listed in Annex B.

Requesting more than one form of MLA where restraint or confiscation is involved:

⁴ However, requests relating to the smuggling of prohibited and restricted items and matters related to direct tax (income tax, corporation tax and capital gains tax) should be sent to the UKCA (please see earlier section on the role of UKCA).

Consideration should be given as to whether it is appropriate to separate out requests for restraint and confiscation in the same case. In the UK it is often easier to prepare the court papers when the request for restraint or confiscation is separate from the others forms of MLA requested. However, if it is made as a separate request this should be sent at the same time as the initial request (if possible).

Timescales in executing a request

This will depend on the nature of the request. Central Authorities will take into account any reasons for urgency such as statutory and/or custody time limits, pre-trial court appearances or trial dates which are clearly stated in the request. The Requesting State should also update the Central Authority on any changes to these which will impact on the request.

We aim to take initial action as quickly as possible. Initial actions will include acknowledging receipt of the request and providing the requesting authority with the name of the executing authority, the Central Authority caseworker and their contact details. Failure to adhere to the advice in these guidelines may also cause delay to the execution of the request.

Urgent requests for assistance

If a LOR is urgent the UKCA will deal with the request as quickly as possible. Please adhere to the following when submitting an urgent request:

- **Do not mark a request as urgent unless it is urgent**
- Detail why a request is urgent. Examples of why a request may be urgent include: somebody is being detained in custody; somebody is due to be released from custody; there is an immediate risk to individuals; risk of dissipation of assets.
- Clearly state any dates which need to be met.
- Please inform the Central Authority if the assistance is no longer needed so we can prioritise the use of our resources

Costs for MLA Requests

Ordinarily, the UK authorities will meet the costs of executing an MLA request. The exceptions include:

- (a) fees and reasonable expenses of expert witnesses;
- (b) the costs of establishing and operating video-conferencing or television links, and the interpretation and transcription of such proceedings;
- (c) the costs of transferring persons in custody; and
- (d) costs of an extraordinary nature agreed with the Requesting State. These will be agreed before costs are incurred.

Notification where assistance is no longer required:

Should the requested assistance no longer be required, the Central Authority should be informed immediately, quoting the Central Authority's reference number.

Direct transmission:

The UK does not require requests to come via diplomatic channels and Central Authorities are happy to receive requests directly. However, the Requesting Authority will clearly need to comply with its own domestic laws relating to the transmission of requests.

UK law allows the Requesting State to serve procedural documents on affected individuals directly by post. (Please see further details on this in Section 3, under the Service of Process section).

Supplementary Requests:

MLA requests which relate to a previous LOR can be sent to the Central Authority as a supplementary request. Any supplementary requests should include the following:

- State that this is a request for supplementary information
- Give the Central Authority's reference number for the previous request
- Give all the information relevant to a standard MLA request (see earlier section in these guidelines), plus any further information relating to the specific type of request that it is.

Requesting authorities must include the original Central Authority reference number on all follow-up correspondence or supplementary documents.

Queries about Requests:

Once the Central Authority has received a request for MLA the request will be logged and given a reference number and a UKCA caseworker will be assigned to the case. The requesting authority will be written to with these details. Any subsequent correspondence relating to the MLA request should be sent to the correct caseworker and should always quote the UKCA reference number.

Section 3: Forms of MLA the UK can provide

This section details the form of the assistance the UK can provide and the specific information which should be included in requests from foreign authorities according to the form of assistance sought.

Direct Transmission of Procedural Documents:

UK domestic law permits procedural documents to be sent directly by the Requesting State to the persons in the UK to whom they are addressed. The UK strongly encourages direct transmission of procedural documents to persons by post, unless this is not legally possible under the domestic law of the Requesting State.

Requests for Service of Process / Procedural Documents

A request may be made to the UK Central Authority and the Crown Office for the service of procedural documents (e.g. a summons or judgement) issued by a court or authority in that state in relation to criminal proceedings. HMRC is not a Central Authority for the purposes of the service of documents.

Please note: The UK reserves the right not to serve process or procedural documents where to do so could place a person's safety at risk. (For example: if the procedural documents reveal the address of a key witness in a murder trial). Requesting Authorities should therefore always consider if it is necessary to include details relating to witnesses or victims in such documents.

Additional information to include in an MLA Service of Process request:

There are particular requirements which must be included in a request for service of process:

- a) Specific instructions as to whether the documents **must** be served by hand. If no such instruction is provided the documents will be served by post. Where personal service is specifically requested, the Central Authority may arrange for the document to be served by the police.
- b) The documents should be received by the central authority at least six weeks prior to court hearings or other deadlines involved; otherwise there is a possibility that responses will not be received in time to be of use to the requesting authority. If the documents are not received in a timely manner the request may be returned. All dates of hearings or other deadlines should be stated clearly within the request.
- c) Details of any allowances and expenses to which a person asked to appear in proceedings abroad is entitled.
- d) The address of the court where the proceedings are to take place.
- e) The name and telephone number of an official of the court from whom the person asked to appear can seek further information if necessary.

The person on whom a summons or judgement is served is asked to sign a receipt and return it to the UKCA to send to the requesting authority. The UKCA will advise the

requesting authority whether the document has been delivered or whether it was not possible to serve the document.

Witness and Suspect Evidence

Requests can be made to the UK for witness and suspect testimony (the taking of a statement) to be taken with or without an oath being administered. Unless the request specifically requires that evidence be given on oath testimony will be taken without an oath being administered. This is considerably quicker and less resource intensive

Where a witness 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 until a court in the Requesting State rules on the matter.

Witness and suspect evidence not required to be given under oath:

If the requesting country's legal system does not require evidence to be taken on oath (i.e. before a court), the letter of request should ask for the evidence to be obtained by UK law enforcement agencies (normally the police).

Police interviews require the consent of witness or suspect. In cases where a witness or suspect refuses to give a statement this result will be forwarded to the Requesting State who can decide whether to send a formal MLA request for the witness / suspect to be summonsed before a court. Where possible, the original request should state whether a person who does not agree to provide a statement should subsequently be compelled to court.

Please refer to section 6 (Requests for Intelligence) for information on contacting witnesses via police channels.

Additional information to include in a request for witness / suspect evidence (testimony) to be taken by the Police:

- a) A list of questions to be asked should be provided if possible.
- b) Details of the prerequisites of any procedure to be followed in taking the evidence, including any rules on privilege which a witness or suspect may be entitled to claim. This will be complied with as far as is possible under UK law.
- c) Any caution or formal notification of rights which should be given to the witness under the law of the Requesting State. The giving of such caution or formal notification will be complied with as far as is possible under UK law.

Please note that police officers are not normally authorised to administer oaths in the UK.

Witness / Suspect evidence (testimony) to be taken on oath:

Requests for evidence may need to be 'sworn' or taken on oath by a court. UK courts have the power to secure the attendance of suspects and witnesses for the purposes of MLA requests under section 15 of the Crime (International Co-operation) Act 2003. However, while section 15 of CICA allows a witness or a suspect to be compelled to appear before a court, CICA also makes it clear that a person cannot be compelled to give any evidence before a nominated court which he could not be compelled to give in criminal proceedings in the UK. Of particular relevance in this context are:

- The privilege against self-incrimination; and
- The provisions in UK domestic law that a person *charged* with an offence cannot be compelled to give evidence in his own trial.

Requesting authorities should consider if it is worth making a request to compel a suspect to court if they are likely to remain silent. Ultimately it is a decision for the Secretary of State whether to nominate a court and the Central Authority will take into account all the circumstances when making this decision.

Additional information to include in an MLA request for evidence (testimony) to be taken before a court:

- a) Expressly state that the evidence is required to be taken on oath before a court.
- b) A list of questions to be asked should be provided, if possible.
- c) Expressions such as "**to hear**" or "**to examine**" witnesses or suspects should be avoided as they have no precise meaning in UK law and will result in delay in the execution of the request whilst clarification is sought as to whether a court needs to be nominated or not.
- d) Details of the requirements of the Requesting State's procedure to be followed in taking the evidence, including any rules on privilege which a witness or suspect may be entitled to claim. This will be complied with as far as is possible under UK law. A person cannot be compelled to give any evidence which he could not be compelled to give in the UK or in the Requesting State (where such privilege is conceded by the Requesting State or court).
- e) Any caution or formal notification of rights which should be given to the witness or suspect under the law of the Requesting State. This will be complied with as far as is possible under UK law.

Third Party material held in confidence - Telecommunications

Requests for telecommunications data such as subscriber checks and telephone billing for use as evidence should be sent to the relevant Central Authority. The Central Authority will then nominate a court to receive the evidence. It is also possible to request this information as intelligence via Interpol, - please see Section 6 (Requests for Intelligence).

Additional information to include in a request for telecommunications data:

- a) information concerning the source of the telephone numbers;
- b) the exact date, time and place of the incident under investigation;
- c) full details of individuals involved in the incident and the roles they played;
- d) why it is necessary to obtain the data and what is sought to be achieved from so obtaining it;
- e) why the objectives of the investigation cannot be achieved by other means;
- f) Information must also be available to allow for consideration of the possibility of intrusion into the privacy of third parties and allow for the detailing of plans to minimise this.

Telephone and address information:

If authorities require telephone numbers for businesses or people for non evidential purposes it may be possible to locate information on the website: www.192.com. This can provide information on a person or business phone number or address.

Third Party material held in confidence – Banking Evidence

As there is no central record of bank accounts held in the UK, as much identifying information as possible should be given to identify the financial institution believed to be in possession of information. Requesting authorities should be aware that the retention policies of banks vary around the 5 year mark. Evidence relating to financial institutions will usually be obtained by means of testimony given before a nominated court by a member of that institution's staff (who will produce any relevant documents as exhibits to his or her statement).

Additional information to include in a request for banking evidence (if known):

- a) Name of the account holder and number of the account
- b) The address and/or number ("sort code") of the branch of the bank where the account is held
- c) The time period over which the information is sought. (An explanation must be given for any period that falls outside the time framework for the investigation)
- d) What grounds they believe that banks in the UK holds account(s) and to the extent available, which banks may be involved
- e) Specific documents required (e.g. account opening information, bank statements, etc).

Evidence via Videolink and Telephone

Requesting countries will be charged for video conferencing and are therefore required to provide a UK billing address within the letter of request. It is important to note that the UK will not assist with requests to hear evidence from suspects via video or telephone conferencing.

Additional information to include in a request for evidence via video conferencing (television link):

- a) A minimum of eight weeks notice given prior to the date of the video conferencing hearing
- b) Written confirmation of a UK billing address.
- c) Email address of someone in the requesting country that can be contacted at short notice who will provide technical assistance
- d) Sufficient information to enable the Central Authorities to identify and contact the witness(es).
- e) A list of questions to be asked if possible.
- f) Details of the requirements of your procedure to be followed in taking the evidence, including any rules on privilege which a witness may be entitled to claim.
- g) Any caution or formal notification of rights which should be given to the witness under the law of the Requesting State.
- h) Details (if known at the time) of the technical requirements for establishing the link to ensure compatibility.

Additional information to include in a request for evidence via telephone link (telephone conference):

- a) A minimum of eight weeks notice given prior to the date of the telephone link hearing
- b) Confirmation that the witness has expressly agreed to give evidence via telephone link.
- c) The name and address of the witness to be questioned.
- d) A list of questions to be asked should be provided, if possible.
- e) Details of the procedure to be followed in taking the evidence, including any rules on privilege which a witness may be entitled to claim.
- f) Any caution or formal notification of rights which should be given to the witness or suspect under the law of the Requesting State.

Restraint and Confiscation of Assets:

Requests for the restraint and confiscation of assets require dual criminality and a full justification as to why it is necessary. Without this information a court will be unable to give an order to effectively freeze assets or register an order to confiscate assets to allow it to be enforced. Once the assets have been identified, the central authority will decide who will execute a request and will refer it to the relevant authority accordingly.

The UK authority dealing with the request will make the appropriate applications before the Court for the assets to be restrained and will inform the requesting authority as soon as this has been done. The Requesting State must serve a copy of the restraint order upon the suspect and any other person known to be affected by it once it receives it from the UK. The UK Courts will require an acknowledgement that this has been completed otherwise the Court may discharge the order.

The order to freeze assets can be obtained by a court on behalf of a foreign jurisdiction at the investigative stage of criminal proceedings. See Annex F for an example Letter of Request in a restraint and confiscation case.

Additional information to include in a request for restraint of property:

- a) The name, address, nationality, date and place of birth and present location of the suspect(s) or defendants whose criminal conduct has given rise to anticipated confiscation or forfeiture proceedings.
- b) Details of the criminal investigation.
- c) Details of the law applicable to the investigation and current evidence against the suspects.
- d) 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 suspect 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).
- e) 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.
- f) Where applicable, details of any court orders already made in the Requesting State against the suspect 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.
- g) If possible, brief details of all known property held by the suspect outside the United Kingdom.
- h) A certificate or statement issued by or on behalf of the Requesting State's Central Authority, stating:
 - that an investigation has been instituted in that country and has not concluded, or that proceedings have been instituted and are ongoing in the Requesting State;
 - that the order which it is expected the court of the Requesting State will make will have the purpose of recovering property or has the purpose of ordering the forfeiture of instrumentalities of crime.

- that any future order that is made can be enforced outside the jurisdiction of the Requesting State;
- an undertaking to serve a copy of the order once it has been made upon the suspect and other persons known to be affected by the order.

Additional information to include in a request for confiscation or forfeiture of property in the UK:

- a) The information as outlined above for restraint applications.
- b) An original confiscation or forfeiture order or a duly authenticated copy of the order.
- c) A certificate or statement issued by or on behalf of the Requesting State's Central Authority stating:
 - That the order was made consequent on the conviction of the person named in the order
 - that the 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 un-recovered there;
 - that the confiscation order has the purpose of recovering property, or the value of property received in connection with the commission of crime, or in the case of a forfeiture order has the purpose of ordering the forfeiture of instrumentalities of crime;
 - that the order made can be enforced outside the jurisdiction of the Requesting State.

A court has to be satisfied that giving effect to a confiscation order would not be incompatible with any rights under the European Convention on Human Rights. Requesting States should, where possible, consider their request against the Convention.

Search and Seizure:

Requests for search and seizure require dual criminality and a full justification as to why it is necessary. Central and executing authorities must be in a position to convince a court to issue a search warrant or production order. Central and executing authorities do not have the authority to issue warrants themselves. Assistance will not be possible if the letter of request does not contain all the information required. It is not sufficient that a request is accompanied by a search warrant issued by an authority in the Requesting State. The UK reserves the right to execute requests which specifically request search warrants be issued in other ways such as via the nomination of a court to take testimony.

Additional information to include in a request for search and seizure of evidence:

- a) The full address or a precise description of any place to be searched.
- b) Details of how the place to be searched is connected with the case or the suspected person.
- c) Any information available which indicates that the material requested may be held on computer.
- d) Full details of the specific material or type of material to be seized (it will not usually be sufficient to simply state "evidence relevant to the investigation").
- e) A full description of the criminal conduct concerned. (Requests for search and seizure are subject to a need for dual criminality).
- f) An explanation why the material requested is considered both relevant and important evidence to the investigation or proceedings.
- g) Why the evidence is thought to be on the particular premises or in the possession of the particular person concerned.
- h) 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 by means of a witnesses summons. (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.)
- i) Appropriate undertakings for the safekeeping and return of any seized evidence.
- j) If it is anticipated that law enforcement officers may come across special procedure materials⁵ during the course of a search.
- k) Any other information which would be of operational use to the executing authority in connection with the execution of the request.

Please note the search template form at Annex G. This is of great use when completing a letter of request for search and seizure of evidence as it shows all the information that the UK executing authority will require.

Please also refer to section 4 on attendance of overseas law enforcement officers.

⁵ Special procedure material or materials subject to 'Legal and Professional Privilege' include three categories of material to which different rules apply:

- "excluded material" which includes confidential journalistic records, medical records and samples, counselling records
- "legally privileged" which includes material relating to advice provided by a solicitor to his client unless this material is held with the intention of furthering a criminal purpose
- "special procedure material" which includes other confidential business records and non-confidential journalistic material

Execution of search and seizure requests

Where further information is required about the offence or the material to be seized, depending on the particular circumstances, the central authority will inform the requesting authorities without delay. Notification of interested parties is not required where an application is made for a search warrant.

Temporary Transfer of a Prisoner for purposes of investigation

UK law allows for the temporary transfer abroad of UK prisoners who consent to assist with overseas 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 appropriate Central Authority, although this type of assistance cannot be authorised by HMRC.

Before agreeing to the transfer the relevant Central Authority must be satisfied that the presence of the prisoner is not already required in that part of 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 Central Authority arranges for:

- the prisoner in custody to be taken to a departure point in the UK and to be delivered into the custody of a person representing the requesting authority;
- for the prisoner to be escorted back to the UK by the requesting authority;
- 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 met by the requesting authority.

Additional information to include in a request for temporary transfer of prisoners to the Requesting State to assist in the Requesting State's investigation (as provided for in the Criminal Justice (International Co-operation) Act 1990):

- a) 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;
- b) 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.

Non-MLA Prisoner Transfer Requests

The Central Authorities do not deal with requests for the transfer of prisoners for other purposes other than in MLA requests. The correct authority for other types of requests relating to Prisoner Transfers is:

Cross Border Transfer Section
National Offender Management Service

Room G18
Abell House
John Islip Street
London SW1P 4LH

Tel: 0044 (0)207 217 8681/5092
Fax: 0044 900207 217 2243

Passport Information and Immigration Status

Requests for this information can be sought through intelligence routes (please see section 6). If this information is sought for evidential purposes an MLA request should be made to the relevant Central Authority. Both Central Authorities and agencies acting in an intelligence capacity will apply to the Passport and Identity Service for this information. In both cases the following information should be provided:

Additional Information required:

- Details of person (name, date of birth and place of birth if known)
- Passport number
- State whether the request relates to the prevention and detection of crime or apprehension of prosecution of an offender
- How the data being sought links to the offence being investigated.

Other Requests for Mutual Legal Assistance (MLA)

Joint Investigation Teams

A Joint Investigation Team (JIT) is an investigation team set up for a set period, based on an agreement between two or more States and/or competent authorities, for a specific purpose. A JIT can be considered in cases where close and co-ordinated co-operation between countries is required to effectively and efficiently investigate crime. Formation of a JIT is possible where a legal framework is in place between countries.

Article 21 Council of Europe 1959 Convention

The UK will consider information laid with a view for proceedings under Article 21 of the 1959 European Convention on Mutual Assistance in Criminal Matters on a case by case basis. These requests will not be automatically accepted.

Transfer of Proceedings

The UK is not a signatory to the European Convention on the Transfer of Proceedings in Criminal Matters.

Spontaneous Exchange of Information

If a UK Central Authority has information relating to a criminal offence which may lead or relate to an MLA request by a country, the UK may exchange this information with country without the need for a request. Spontaneous exchange of information is also possible via police cooperation routes and will be channelled through SOCA International.

Permission to Use Evidence for Other Purposes

Evidence / information provided by the UK should only be used for the investigation or proceedings stated in the request. If a requesting country wishes to use evidence for different purposes or to share the evidence with a third country a new request must be submitted to the Central Authority that dealt with the original request. This request should explain what the Requesting Country wishes to use the information for and why.

Additional information to include in a request to use evidence for other purposes:

- The central authority's reference number for the original request
- What evidence is to be used
- How this evidence will be used
- Why this evidence is needed in this investigation / court proceedings.

Section 4: Officers present from the Requesting State and Transmission of Evidence

Officers from the Requesting Country present at the execution of the LOR:

If an authority from the Requesting State wishes to be present during execution of the LOR this must be requested. The Central Authority in conjunction with the authority executing the request in the UK will determine whether this is appropriate.

The Requesting State must give reasons as to why someone from the requesting country should be present. For example, if it is a very complex case it may be beneficial to have the investigating officer present. However, if it is not justified for a member of the Requesting State to be present this request will be refused.

Notifying the UK of law enforcement officers travelling to the UK:

The relevant local police force in the UK must be made aware in advance if law enforcement officers for the Requesting State are due to travel to the UK.. However, if the Requesting State is unable to contact / identify the local Police force the SOCA International can assist and pass on notification.

Transmission of evidence:

Evidence will not automatically be given to foreign officers who may have been present during the execution. However, it may on occasion be practical to transfer the evidence through accompanying officers. In this case UK police will seek authorisation from the Central Authority.

Section 5: MLA requests from the UK

UK legislation allows all authorities that have been designated as a prosecuting authority under the Crime (International Cooperation) Act 2003 to make MLA requests to other countries. As well as the Central Authorities this includes:

1. Magistrates' courts, the Crown Court and the High Court;
2. the Attorney General for England and Wales;
3. the Director of Public Prosecutions and any Crown Prosecutor;
4. the Director and any designated member of the Serious Fraud Office;
5. Secretary of State for Business, Innovation & Skills in respect of his function of investigating and prosecuting offences;
6. the Director of the Revenue and Customs Prosecutions Office and anyone within that Office authorised by him;
7. District Courts and Sheriff Courts and the High Court of Justiciary;
8. the Lord Advocate;
9. any Procurator Fiscal;
10. the Attorney General for Northern Ireland;
11. the Director of Public Prosecutions in Northern Ireland;
12. the Financial Services Authority.

Direct Transmission:

The above authorities are able to send requests for MLA directly to states. However, when the requested state's domestic legislation does not allow for this all requests will come via a Central Authority. Direct transmission is not possible for restraint and confiscation requests. .

Section 6: Requests for Intelligence

This form of assistance may be referred to as Police Cooperation, Mutual Assistance or Mutual Administrative Assistance. It entails police and other law enforcement officers in a Requesting State asking for the assistance of law enforcement agencies in the UK to gather intelligence for an investigation. Intelligence can be an easier and quicker way to obtain information, as it does not require an LOR, and in many countries intelligence collected by UK law enforcement agencies will constitute as admissible evidence in criminal trials. Countries which do not require evidence to be sworn by witnesses in a court under their domestic law can consider using intelligence routes to request information.

UK law enforcement agencies which can assist in relation to intelligence requests:

The following agencies can receive intelligence enquiries directly from law enforcement officers in foreign jurisdictions:

- Europol via SOCA International
- Interpol via SOCA International
- UK Border Agency⁶
- HMRC
- Police Forces

Please see Annex C for contact details for the above authorities.

How to make requests for intelligence or law enforcement agency to the UK:

If direct contact between a foreign police force and a UK police force has not already been established, SOCA International should be contacted with the request. SOCA International act as the gateway for all incoming and outgoing police to police enquiries. SOCA International will forward requests through the Interpol network to the relevant police force or other law enforcement agency who will then execute the request.

Assistance which can be requested from the UK via Police to Police enquiries:

Examples of requests that may be submitted directly to the UK National Central Bureau of Interpol without involving the central authorities include:

- interviewing witnesses 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;
- telecoms data (only if this is being used as intelligence – an LOR must be made for any telecommunications information to be used as evidence);
- 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.

⁶ Assisting foreign authorities on an intelligence basis will be dependent on whether UKBA has a data sharing agreement or memorandum of understanding with that country.

- Obtaining information from publicly available sources, such as for example Land Register in relation to ownership of properties.

Such requests do not need to be made via a formal LOR and sent to the central authorities unless it is a requirement of the domestic law of the judicial authority making the request.

Assistance which cannot be requested from the UK via Police to Police enquiries:

Most requests for coercive measures, (for example: confiscation and restraint; search and seizure), require authorisation by the relevant central authority, so a formal LOR must be sent.

Contacting witnesses in the UK

Subject to the provisions of relevant Treaties, Conventions or other international instruments, contact may be made directly to witnesses by letter, fax or telephone without informing the Central Authorities. If the witness is willing to assist the enquiry voluntarily, an approach may be made through SOCA or Interpol to record his or her statement or to the Central Authorities if testimony on oath is required.

Intelligence requests for the Crown Dependencies and the UK Overseas Territories

Interpol London is the Interpol office for the Crown Dependencies and Falklands and St Helena. The other Overseas Territories host Interpol Sub-bureaux).

Section 7: Requests for Criminal Records

Although requests for criminal records may form part of a wider formal MLA request, Requesting States do not always have obtain criminal record information in this way. Requests for this information should be made by contacting the following organisations:

- For EU member states: via the United Kingdom Central Authority for the Exchange of Criminal Records (UKCA-ECR)
- For non-EU member states: SOCA International

Requests for Criminal Record Information from EU Member States:

The primary function of the UKCA-ECR is to notify EU Member States of any convictions imposed in the UK on a national from that EU Member State. The UKCA-ECR will also receive notifications of convictions of UK nationals in other EU Member States.

EU Member States should directly contact UKCA-ECR to request criminal record information regarding an EU National subject to criminal proceedings in the UK or UK National subject to criminal proceedings in the EU.

Requests should be sent to the UKCA-ECR by fax, post or email. Requests should include information on the requesting authority, the reason for the request and details on the identity of the person concerned in the request (including their name, birth name, aliases, sex, nationality, date of birth, place of birth, parent's names, residence or known address, fingerprints where available, other identification data where available).

Forms for requests can be found in the Official Journal of the European Union, 9.12.2005, L 322/36. This can be found at: http://www.ejn-crimjust.europa.eu/publications%5C2007/3/Forms/criminal_rec_en.pdf

The UKCA-ECR can be contacted in the following ways:

Telephone: 01489 569 805 / 807

Fax: 023 8074 5427

Email: UKCA@ACRO.pnn.police.uk

For more information on UKCA-ECHR please visit:

<http://www.acpo.police.uk/acro/UKCAECR.asp>

Requests for Criminal Record Information from Non- EU Member States:

These should come via SOCA International (see annex C for contact details).

Section 8: Civil matters

Mutual legal assistance requests to the UK relating to civil matters are dealt with by different authorities than those dealing with MLA requests in criminal matters.

Assistance with international civil matters can be sought from:

Consular Directorate
Passport and Documentary Service Group
Legalisation Group
Centrepoint
c/o Old Admiralty Building
London
SW1A 2PA

Royal Courts of Justice

Information on Civil Procedure Rules can be found on the Royal Courts of Justice website:
http://www.justice.gov.uk/civil/procrules_fin/index.htm

European Judicial Network in Civil and Commercial Matters:

There is a European Judicial Network (EJN) for Civil and Commercial Matters website where a large quantity of information about the Member States, Community law, European law and various aspects of civil and commercial law can be found.

Website: <http://ec.europa.eu/civiljustice/>

Annexes:

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Annex A: List of the international conventions and bi-lateral treaties the UK is party to

This list is correct as of February 2010, but will be subject to change.

International Conventions the UK has ratified:

- the 1959 European Convention on Mutual Assistance in Criminal Matters and its Additional Protocol of 1978;
- the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention);
- the 1990 European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime;
- the Convention implementing the Schengen Agreement⁷;
- the Convention on Mutual Assistance in Criminal Matters between Member States of the European Union 2000 and its Protocol thereto;
- The United Nations Convention against Transnational Organised Crime 2000;
- The United Nations Convention against Corruption 2003.

The UK uses the Commonwealth Scheme Relating to Mutual Assistance in Criminal Matters (also known as the Harare Scheme).

Countries party to a bilateral treaty with the UK*:

Algeria	Libya
Antigua & Barbuda (R&C)	Mexico
Argentina (DT)	Nigeria (R&C)
Australia (R&C)	Netherlands (Supplementing Council of Europe 1990 Convention)
The Bahamas (DT)	Panama (DT)
Bahrain(DT)	Paraguay (DT)
Barbados(DT)	Romania (R&C and DT MoU)
Bolivia (DT)	Saudi Arabia (DT and Security MoU)
Canada	South Africa (DT)
Cayman Islands	Spain (DT)
Chile (DT)	Sweden (R&C)
Columbia	Thailand
Ecuador (DT)	Trinidad & Tobago
Grenada (DT)	Ukraine (R&C)
Guyana (DT)	United Arab Emirates
Hong Kong	USA
India (R&C)	Uruguay (DT)
Ireland	Vietnam
Italy (DT and R&C)	

****Types of treaties:***

R&C (Restraint and Confiscation)

DT (Drug Trafficking)

MoU (Memorandum of Understanding)

⁷ The UK does not participate in all parts of the Schengen Agreement. The parts of the Schengen Agreement in which the UK participate are listed in the Council Decision of 29 May 2000 (2000/365/EC)

Annex B: Contact details for authorities in the Channel Islands, the Isle of Man and the British 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

Isle of Man

Attorney General's Chambers
3rd Floor ,
St Mary's Court
Hill Street
Douglas
ISLE OF MAN
IM1 1EU
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 British Overseas Territories:

Anguilla

The Attorney-General
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
Joshua Hassan House
Secretary's Lane
Gibraltar
Tel: + 350 70723 Fax: + 350 79891

MLA requests to and from EU/ Schengen Member States for Gibraltar must be sent via:

“UKGGLU”
UK Government/ Gibraltar Liaison Unit
Foreign & Commonwealth Office
King Charles St
London
SW1H 2AH
Tel: +44 20 7 008 2502
Fax: +44 207 008 3629

Montserrat

The Attorney-General
The Attorney-General's Chambers
#3 Farara Plaza
Brades
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 33
Tel: + 1 649 946 2308 Fax: + 1 649 946 2903

Annex C: Glossary of the role of different organisations in MLA requests

UK Central Authority (UKCA)

UKCA is the central authority for England, Wales and Northern Ireland. The UKCA is based in the Home Office and receives incoming and outgoing MLA requests for England, Wales and Northern Ireland⁸. Determines if there is adequate information contained in an incoming request to accede to it and decides who will be responsible for executing it.

UK Central Authority
5th Floor Fry Building
2 Marsham Street
London
SW1P 4DF
Fax: +44 20 7035 6985
Telephone: +44 20 7035 4040

Crown Office and Procurator Fiscal Service

The Crown Office is the central authority for Scotland. Receives incoming and transmits outgoing MLA requests for Scotland. Determines if there is adequate information contained in an incoming request to accede to it and decides who will be responsible for executing it.

International Co-operation Unit
Crown Office
25 Chambers Street
Edinburgh
EH1 1LA
Tel: +44 131 243 8152
Fax: +44 131 243 8153

Her Majesty's Revenue and Customs (HMRC)

HMRC is the central authority for England and Wales for requests for MLA for some customs matters, including indirect tax matters, alcohol and tobacco smuggling and excise fraud. Requests relating to the smuggling of prohibited and restricted items⁹ and matters related to direct tax¹⁰ (income tax, corporation tax and capital gains tax) should be sent to the UKCA. Requests relating to Scotland should all be sent to the Crown Office.

HM Revenue and Customs
Law Enforcement & International Advisory Division
HM Revenue and Customs - Solicitor's Office
Room 2/74
100 Parliament Street
London
SW1A 2BQ
Fax: +44 (0)20 7147 0433

⁸ The UKCA will also receive MLA requests for the whole of the UK if this is stated in a treaty under which a request is made.

⁹ Including: drugs; firearms and offensive weapons; chemical, biological, radiological and nuclear hazards; products of animal origin; plant health; cash at the border and the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Such requests will be forwarded to the UK Borders Agency to deal with.

¹⁰ The UKCA may then forward requests relating to direct tax to HMRC for execution.

Email: mla@hmrc.gsi.gov.uk

Crown Prosecution Service (CPS)

The Crown Prosecution Service is the Government Department responsible for prosecuting criminal cases investigated by the police in England and Wales.

As the principal prosecuting authority in England and Wales, they are responsible for:

- advising the police on cases for possible prosecution;
- reviewing cases submitted by the police;
- determining any charges in all but minor cases;
- preparing cases for court;
- presenting cases at court.

The majority of outgoing MLA requests from the UK are sent from the CPS.

The Revenue and Customs Prosecution Office (RCPO) merged with the CPS in April 2009. RCPO prosecutes cases in England and Wales investigated by Her Majesty's Revenue and Customs (HMRC) and the Serious Organised Crime Agency (SOCA).

CPS Head Offices:

50 Ludgate Hill
London
EC4M 7EX
Tel: 020 7796 8000

United House
Piccadilly
York
YO1 9PQ
Tel: 01904 545400

Further details can be found at: <http://www.cps.gov.uk>

Serious Fraud Office (SFO)

The SFO executes MLA requests, as referred to them by the UKCA. The SFO deals with cases relating to serious and complex fraud. This is defined as:

- Sums exceeding £1 million
- A significant international dimension
- Likelihood of widespread public concern
- A need for highly specialised market or commercial knowledge
- The request and assistance required brings accountancy, legal and investigative skills together
- The use of section 2 powers of the Criminal Justice Act 1987 is appropriate.

The SFO also have information making MLA requests which can be found on their website: <http://www.sfo.gov.uk/about-us/what-we-do-and-who-we-work-with/international-collaboration/guide-to-obtaining-evidence-from-uk.aspx>

Serious Fraud Office
Elm House

10-16 Elm Street
London
WC1X 0BJ
Tel: 020 7239 7272 (Switchboard)
Fax: 020 7837 1689

Metropolitan Police Service (Met Police)

The Met Police is the largest police force in Greater London and is responsible for the execution of a large number of MLA requests. The Met Police is also plays a large role in the receipt and submissions of requests for information via police cooperation (intelligence) routes.

Metropolitan Police Service
New Scotland Yard
Broadway
London
SW1H 0BG
Non-urgent telephone enquiries: 0300 123 1212.
Website: <http://www.met.police.uk/>

The Serious Organised Crime Agency (SOCA)

SOCA is an Executive Non-Departmental Public Body sponsored by, but operationally independent from, the Home Office. SOCA is an intelligence-led agency with law enforcement powers and harm reduction responsibilities. In terms of MLA requests, SOCA is heavily involved in requests that involve operational policing matters, such as covert investigations and cross-border surveillance. SOCA hosts the Europol National Unit and Interpol National Central Bureau. SOCA is also the UK's Financial Intelligence Unit (FIU).

Serious & Organised Crime Agency (SOCA)
PO Box 8000,
London SE11 5EN
Tel: +44 (0) 20 7238 8115

Interpol / Europol

Interpol is the world's largest international police organization, with 188 member countries. It facilitates cross-border police co-operation, and supports and assists all organisations, authorities and services whose role is to prevent or combat international crime. Interpol aims to facilitate international police co-operation even where diplomatic relations do not exist between particular countries. Europol is the European Union law enforcement organisation that handles criminal intelligence. Its aim is to improve the effectiveness and cooperation between the competent authorities of the member states in preventing and combating serious international organised crime and terrorism. The mission of Europol is to make a significant contribution to the European Union's law enforcement action against organised crime and terrorism, with an emphasis on targeting criminal organisations.

Within MLA, Interpol and Europol's role is to improve the sharing of intelligence between law enforcement agencies across the European Union and globally.

UK National Central Bureau of Interpol,

c/o Serious & Organised Crime Agency (SOCA)
PO Box 8000,
London SE11 5EN
Tel: +44 (0) 20 7238 8115

UK Border Agency (UKBA)

The UKBA is the Non Departmental Government Agency responsible for the detection and prosecution of cross border crime in the UK. The UKBA deal with a high number of MLA requests as well as Mutual Administrative Assistance requests for intelligence. MLA requests to UKBA must be sent via a Central Authority. The UKBA can receive intelligence requests directly, but only from countries with which they have a data sharing agreement or memorandum of understanding. The UKBA deals with criminal investigations relating to cross border trafficking in:

- Drugs
- Immigration
- Weapons
- Indecent / Obscene material
- Money seizures.
- CITES
- Other Prohibitions and Restrictions (including drugs; firearms and offensive weapons; chemical, biological, radiological and nuclear hazards; products of animal origin; plant health; cash at the border and the Convention on International Trade in Endangered Species of Wild Fauna and Flora)

UK Border Force Mutual Assistance Team
WG2 Customs House
Lower Thames Street
London
EC3R 6EE
Tel: +44 (0)870 785 7419/7699
Fax: +44 (0)870 785 3029

Organised and Financial Crime Unit (OFCU)

OFCU has responsibility for providing advice on organised and financial crime including drug trafficking, people smuggling, hi tech crime, fraud and money laundering. It also has responsibility for the Government's strategy on asset recovery and the Proceeds of Crime Act 2002 and acts as the sponsor unit for the Serious Organised Crime Agency (SOCA).

Organised and Financial Crime Unit
5th Floor Fry Building
2 Marsham Street
London
SW1P 4DF
Telephone: +44 20 7035 1567

Annex D: Example of structure of a letter of request for evidence to be sent to the UK

From: *<Insert sender's address and contact details>*

To: Judicial Co-operation Unit

United Kingdom Central Authority
5th Floor, Fry Building,
2 Marsham Street,
London SW1P 4DF

Our Ref: *(if you already have one or is a supplementary request)*

Your Ref: -----

Date: -----

Dear Sir/Madam

LETTER OF REQUEST FOR LEGAL ASSISTANCE IN THE MATTER OF *<insert case name (where possible, case names should relate to the person that the MLA request relates to)>*

Name and address of the issuing authority:

State that the request is for **Evidence**

Give this information in the following order:

- a) Describe the nature of offence
- b) Give the facts of the case including connection between evidence requested and crime and how this connects to the UK.
- c) State what type of evidence is needed, specifying exactly what evidence is required (e.g. not just 'banking evidence' but which bits of banking evidence).
- d) State who evidence is needed from
- e) Details of the location of company / person need evidence from
- f) If a person needs to be visited, state whether they are a witness or a suspect
- g) The name of the suspect and what they are being charged with.
- h) Relevant dates e.g. date of court hearing
- i) State under what treaty or convention this is being requested under
- j) State the law that makes the behaviour described above a criminal matter in the requesting country and include a copy of that law. Highlight the sentence or penalty for the offence.
- k) Details of any media attention or reasons for high profile interest in the case in the Requesting State.

Yours sincerely

*<Insert name
and contact details>*

Annex E: Example of structure of a letter of request for service of process to be sent to the UK

From: *<Insert sender's address and contact details>*

To: Judicial Co-operation Unit
United Kingdom Central Authority
5th Floor, Fry Building,
2 Marsham Street,
London SW1P 4DF

Our Ref: *(if you already have one or is a supplementary request)*

Your Ref: -----

Date: -----

Dear Sir/Madam

LETTER OF REQUEST FOR LEGAL ASSISTANCE IN THE MATTER OF *<insert case name (where possible, case names should relate to the person that the MLA request relates to)>*

Name and address of the issuing authority:

State that the request is for **Service of Process**.

Give this information in the following order:

- a) What the offence is
- b) What needs to be served
- c) If there is a court date, or other deadline, state this date
- d) Details of person to receive service of process (name, date of birth, gender)
- e) Address details of person to receive service of process
- f) Specific instructions as to whether the document must be served by hand
- g) State under what treaty or convention this is being requested under
- h) State the law that makes the behaviour described above a criminal matter in the requesting country

Yours sincerely
*<Insert name
and contact details>*

Annex F: Example Letter of Request for Restraint of Proceeds of Crime to the UK

From: <Insert sender's address and contact details>

To: Judicial Co-operation Unit
United Kingdom Central Authority
5th Floor, Fry Building,
2 Marsham Street,
London SW1P 4DF

Our Ref: (if you already have one or is a supplementary request)

Your Ref: -----

Date: -----

Dear Sir/Madam

LETTER OF REQUEST FOR LEGAL ASSISTANCE IN THE MATTER OF <insert case name (where possible, case names should relate to the person that the MLA request relates to

Name and address of the issuing authority:

State that the request is for **Restraint of Proceeds of Crime**.

I [Judge/Prosecutor/ other authority competent under domestic law to make the request] have responsibility in [state territory outside the United Kingdom] for [delete as appropriate]:

making a request to an authority in another country or territory (including the United Kingdom) to prohibit dealing with relevant property,
or

for carrying out an investigation into whether property has been obtained as a result of or in connection with criminal conduct,
or

for carrying out an investigation into whether a money laundering offence has been committed,

and am duly empowered to make this request pursuant to [insert relevant domestic law authorising you to make this request].

I wish to request your assistance in relation to [insert details of criminal investigation or prosecution] being conducted by [insert details] for offence(s) of [brief description of offence(s)].

Criminal Proceedings

[Provide details of the stage of the investigation or prosecution and, as appropriate, the court, date of next hearing and any date by which the assistance requested is required – if the request is urgent, explain the reasons].

Suspects

[Insert the below information about any suspects]

Name of suspect:

Date of Birth:

Place of Birth:

Nationality:

Passport Number:
Address:
Present location:
Brief details of property held by suspect outside the UK:

Suspected offences

[Supply information on the charge or proposed charge. State the maximum penalty. Annex extracts of relevant domestic law.]

Assets to be restrained

The request seeks the restraint of the following assets which are suspected to represent *[or to represent in part]* the proceeds of crime of the suspects / suspected offences.

[It is better to specify the assets such as land, shares bank account balances which you wish to restrain rather than to request a value order. If specific assets are restrained you will need to disclose as much information as possible about the identity of the assets, the person or persons who hold the assets and the nature of any person other than the suspect's interest in those assets. If a value order is sought this will usually be in the same amount as the value of the proceeds of the crime such that if the victim lost say £3m as a result of the suspect's crime the English court will make a restraint order up to £3m. If the £3m is invested and the investment is worth £10m then the restraint order can be up to £10m].

[If there is a large amount of assets this can be included in an asset schedule]

Basis of the Request

I make this request pursuant to *[Cite legal base – for example: Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime 1990 – or state that it is made on an ad hoc basis]*.

Summary of Facts relevant to this Request

[Give a clear, concise, considered summary of the case. This information will be considered by a judge or other judicial authority. Include:

- a legitimate and clear nexus between the investigation/proceedings*
- link between the suspect and the property*
- the funds which may be the subject of forfeiture / confiscation at the conclusion of the trial and the assets in the schedule.*

Please also annex any documents which may be necessary to enable the execution of the request.]

Risk of Dissipation

[If applicable, state why it is thought that if the order is not made there is a risk that the funds will be transferred out of the jurisdiction or otherwise dissipated].

Domestic Restraint and Confiscation Regime

[It is sometimes useful to provide a brief explanation of your domestic regime for restraint and confiscation].

Overseas Assets and Orders

[Here state the relevant domestic law concerning confiscation and/or forfeiture appending relevant legislation. Also state whether and what steps have been taken or why it is thought that such steps are not expedient to obtain a restraint order in the requesting state. Also state what if any proceedings for restraint or prior assistance (such as asset tracing assistance) have been taken in other jurisdictions and what the result was]

Any other Material Facts

[If the request fails to disclose facts which the court considers relevant in deciding whether to restrain or not the suspect may apply to discharge the order.]

[Confidentiality]

[The entirety of this request will be disclosed to the Judge at the restraint hearing and will be disclosed to the suspect when the restraint order is served on them. If there are particular matters which must be kept confidential it is suggested that these are put in a confidential annex and the reasons for not disclosing the information once the restraint order is served is explained]

Contacts

[Insert contact details of persons in the Requesting State and any law enforcement officers in the Requested State who have been involved in the case].

Yours sincerely

<Insert name

and contact details>

Annex G: Search warrant template

This is included for information only so that requesting authorities can see the information the UK executing authorities require.

Instructions for UK executing authorities when completing the form:

When considering the application for a search warrant the court will consider this form.

Section 1 must be completed in every case. In it Requesting States must give details of the persons to be present during the search, the premises, items to be searched for, their relevance to the investigation and the grounds for believing they are on the premises.

Either Section 2 or Section 3 must also be completed.

Section 2 should be completed where the search is required during the investigation of an indictable offence. There is a power under UK law for a court to issue a search warrant when a “indictable offence” as defined under UK law is under investigation if the consent of the occupier or person controlling the premises cannot be obtained, is likely to be refused or if informing the person of the intended search would lead to the destruction of the material sought.

Section 3 should be completed where the search is after arrest or commencement of proceedings. This power is to issue a search warrant in very particular circumstances:

- where there has been an arrest or proceedings have commenced; and
- the offence under investigation is an “indictable offence”; and
- where the premises to be searched is under the control of or occupied by the person who has been arrested or against whom proceedings have been commenced.

Search warrant template

This is included for information only so that requesting authorities can see the information the UK executing authorities require.

	<p style="text-align: center;">PLEASE ONLY COMPLETE SECTIONS 1 & 2 OR 1 & 3 (DEPENDING UPON THE STAGE IN WHICH YOU INVESTIGATION OR PROCEEDINGS HAVE REACHED)</p> <p>SECTION 1</p> <p>INFORMATION REQUIRED IN EVERY CASE WHERE A SEARCH WARRANT IS REQUESTED</p>
1.1	CONTACT DETAILS
1.1.1	Please provide the name and telephone and fax number of the judge, prosecutor or police officer who can be contacted if further information is required concerning this application.
1.1.2	Please provide the name and telephone and fax number of the person who has issued the letter of request, if this is different from the person named in 1.1 above.

1.2	PERSONS TO BE PRESENT DURING THE SEARCH
1.2.1	<p>Please provide the names of all persons (investigators, judges or prosecutors from your country) you wish to present during the search with the UK officers who will conduct the search.</p> <p>Please explain why these persons should be present at the search (<i>For example if they could assist in the search for documents by identifying or translating</i>)</p> <p><i>Only persons named in the warrant may be present when the search is conducted. It is therefore essential to provide this information at an early stage. Please note that the court will not automatically name foreign investigators in a warrant to be present during a search but if there is good reason why they should be present please include details</i></p>

1.2	PREMISES
1.2.1	<p>Please provide the precise postal address of the premises in respect of which search is to be applied for. Please include postcode if you have it.</p> <p><i>NB If the address given is a block of flats, or other multi-occupancy building, a search can be carried out only if the flat number is known.</i></p> <p><i>If any outhouses of the address are to be searched or any vehicles or boats (kept on the drive for example) please say so.</i></p> <p><i>Please attach to this form a copy of any documents seized in your investigation that show this address and explain their relevance to the investigation.</i></p>

1.3	ITEMS TO BE SEARCHED FOR
1.3.1	<p>Specify to the extent possible the items to be searched for.</p> <p><i>It is necessary to state which items are to be searched for, general descriptions such as “invoices relating to the fraudulent transaction” are permissible. If necessary please annex a list of all the types of items that need to be searched for. Please note: only items listed may be searched for and once these items have been found the search must stop even if certain rooms in the premises have not yet been searched.</i></p>
1.3.2	<p>What is the likely relevance of these items to the investigation?</p> <p><i>Please give a full explanation including, if possible, copies of documents or other evidence already gathered which supports your answer.</i></p>

1.3.3	<p>What grounds are there for believing that these items are on the premises?</p> <p><i>Please give a full explanation including, if possible, copies of documents or other evidence already gathered which supports your answer.</i></p>
1.3.4	<p>Where the application for a search does not immediately follow the commission of the offence or the arrest of the suspect, specify what grounds there are for believing that the items will still be on the premises?</p> <p><i>Please give a full explanation including, if possible, copies of documents or other evidence already gathered which supports your answer.</i></p>

1.3.5	<p>Do the items to be searched for consist of or include:</p> <p>Legally privileged material <i>-includes communications between a legal advisor and his client. See section 4 for a full definition.</i></p> <p>Excluded material <i>-includes medical or counselling records, medical samples, confidential journalistic material. See section 4 for full definition.</i></p> <p>Special procedure material <i>-includes other confidential business documents and non-confidential journalistic material. See section 4 for full definition.</i></p>	<p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p>
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2.2.	<p>IMPOSSIBILITY OF SEARCH WITH CONSENT</p> <p><i>A search warrant can only be obtained if it is necessary to conduct the search without the consent of the occupier.</i></p>
2.2.1	<p>Is it practicable to communicate with the person entitled to grant entry to the premises?</p> <p>Yes/No. <i>If “no” please explain why this is the case.</i></p>
2.2.2	<p>Is it practicable to communicate with any person entitled to give access to the evidence?</p> <p>Yes/No. <i>If “no” please explain why this is the case.</i></p>
2.2.3	<p>Would entry to the premises be granted without a warrant?</p> <p>Yes/No. <i>If “no” please explain why this is the case.</i></p>
2.2.4	<p>Is the purpose of the search likely to be frustrated or seriously prejudiced unless a constable arriving at the premises could secure immediate access to them?</p> <p>Yes/No. <i>If “yes” please explain why this is the case.</i></p>

	<p>SECTION 3</p> <p>Search once proceedings have commenced or after the arrest of the suspect for an indictable offence where the premises are occupied or controlled by the suspect</p>
3.1	<p>DETAILS OF INDIVIDUAL AND PROCEEDINGS</p>
3.1.1	<p>Please provide full identifying details of the person who has been arrested or against whom proceedings have been commenced? Please include full name, date of birth, passport number etc where these are known.</p> <p><i>If possible annex a copy of their passport or driving licence to this application.</i></p>
3.1.2	<p>If proceedings have been commenced what stage have they reached?</p>
3.2	<p>LINK BETWEEN THE PREMISES TO BE SEARCHED AND THE SUSPECT</p> <p><i>In order to obtain a search warrant under this heading the premises to be searched must be under the control of, or occupied by, the suspect.</i></p>
3.2.1	<p>Are the premises to be searched under the control of, or occupied by, a person against whom criminal proceedings have been commenced or who has been arrested in the course of a criminal investigation?</p> <p>Yes/No</p> <p><i>If yes, give details of link between premises and this person please explain how this is known or believed to be the case.</i></p>

3.3	<p>DETAILS OF THE OFFENCE</p> <p><i>The offence must fall under the definition of an “indictable offence” under English law. The following questions are to ascertain this.</i></p>
3.3.1	<p>Please provide full details of the offence in respect of which the suspect has been arrested or the proceedings have been commenced.</p>

	<p>SECTION 4</p> <p>DEFINITIONS</p>
4.1	<p>Items subject to legal privilege</p> <p>1. “Items subject to legal privilege” means:</p> <p>(a) Communications between a professional legal adviser and his client made in connection with the giving of legal advice to the client;</p> <p>(b) Communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client and any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purpose of such proceedings; and</p> <p>(c) Items enclosed with or referred to in such communications and made-</p> <p style="padding-left: 40px;">(i) in connection with the giving of legal advice; or</p> <p style="padding-left: 40px;">(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,</p> <p>When they are in possession of a person who is entitled to possession of them.</p> <p>Items held with the intention of furthering a criminal purpose are not items subject to legal privilege.</p>
4.2	<p>Excluded material</p> <p>1. “Excluded material” means:</p> <p>(a) Personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence;</p> <p>(b) Human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence;</p> <p>(c) Journalistic material which a person holds in confidence and which consists of documents or of records other than documents.</p> <p>2. “Personal records” means documentary and other records concerning an individual whether living or dead who can be identified from them and relating to-</p> <p>(a) His physical or mental health;</p>

	<p>(b) Spiritual counselling or assistance given or to be given to him; or</p> <p>(c) To counselling or assistance given or to be given to him, for the purposes of his personal welfare, by any individual who-</p> <ul style="list-style-type: none"> (i) by reason of his office or occupation has responsibilities for his personal welfare; or (ii) by reason of an order of a court has responsibility for his supervision. <p>3. "Journalistic material" means material acquired or created for the purposes of journalism provided it is in the possession of a person who acquired or created it for the purposes of journalism.</p> <p>4. A person holds material other than journalistic material in confidence if he holds it subject to an express or implied undertaking to hold it in confidence or if he holds it subject to a statutory restriction on disclosure or an obligation of secrecy contained in any enactment.</p> <p>5. A person holds journalistic material in confidence if he holds it subject to such an undertaking, restriction or obligation and it has been continuously held (by one or more persons) subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism.</p>
4.3	<p>Special procedure material</p> <p>1. "Special procedure material" means journalistic material other than excluded material and:</p> <p>(a) Material, other than items subject to legal privilege and excluded material, in the possession of a person who-</p> <ul style="list-style-type: none"> (i) Acquired it or created it in the course of any trade, business, profession or other occupation or for the purpose of any paid or unpaid office; and (ii) Holds it subject to an express or implied undertaking to hold it in confidence or to a restriction or obligation of secrecy imposed by law. <p>(b) Where material is acquired-</p> <ul style="list-style-type: none"> (i) By an employee from his employer and in the course of his employment; or (ii) By a company from an associated company, <p>It is only special procedure material immediately before the acquisition.</p> <p>(c) Where material is created by an employee in the course of his employment, it is only special procedure material if it would have been special</p>

procedure material had his employer created it.

(d) Where material is created by a company on behalf of an associated company, it is only special procedure material if it would have been special procedure material had the associated company created it.