

Obtaining Assistance from the UK in Asset Recovery: A Guide for International Partners

Contents

Section 1: Overview

Section 2: Tracing the Assets

Section 3: Gathering the evidence

Section 4: Freezing and Confiscation

Section 5: Asset Disposal and Return

Points of Contact

Section 1: Overview

1.1 Obtaining assistance from the United Kingdom

Recovering assets in the UK that are the proceeds of crime can be considered as a four stage process. The first two stages – *tracing the assets* and *gathering the evidence* – may not require assistance from the UK. The third stage – *freezing and confiscation* – is achieved through requests for mutual legal assistance (MLA). The fourth and final stage of asset recovery – *asset disposal* – can begin once the asset confiscation process is complete. The assets may be available to be returned to the foreign jurisdiction. This is dealt with in **section 5: Asset Disposal and Return**.

This guide has been written to assist foreign jurisdictions seeking MLA to recover the proceeds of crime and covers the final two stages in detail. The first two stages (*tracing the assets* and *gathering the evidence*) are dealt with in summary and further guidance is available from the **Points of Contact** at the end of this guide.

At all stages, requesting states should make themselves available to deal expeditiously with queries from the UK Central Authority or the relevant investigator or prosecutor. The UK does not want to be in a position where it is unable to assist because of for example a lack of clarity in the request or the omission of points vital to taking the case to UK courts. Many of these cases have critical issues relating to the timing of their execution both in the UK and the requesting state.

As an alternative to recovering assets on behalf of a foreign jurisdiction via MLA, the UK authorities can conduct their own investigations into the proceeds of crime held or moved through the UK. This could be either a criminal investigation into offences committed within the UK's jurisdiction with the intention of obtaining a confiscation order after conviction, or a non-conviction based asset recovery investigation aimed at forfeiting assets believed to be the proceeds of crime. The UK authorities will often expect foreign jurisdictions to share all relevant evidence in order to determine whether a UK investigation is both feasible and then to enable a prosecution.

Another alternative open to foreign governments is to undertake private proceedings through the civil courts to regain ownership of stolen assets. This route does not require the involvement of UK law enforcement or the UK Central Authority as the UK would not be a party to the case. However, taking proceedings through the civil courts may undermine criminal investigations being undertaken by the UK. It is usually more effective for foreign governments to work together with law enforcement and UK authorities to recover stolen assets.

The four stages of asset recovery

1. Tracing the assets

Intelligence about the type, location, and value of the assets is a key to identifying them and, subsequently, to securing their confiscation and recovery. Good intelligence, such as that from Financial Intelligence Units, through Interpol, can help develop more accurate and effective mutual legal assistance requests.

Interpol have a series of databases available *via* their i/24/7 platform that have basic asset tracing databases.

For requests that are solely for tracing assets, EU members may submit a request *via* the national Asset Recovery Office (ARO), or non-EU jurisdictions *via* the Asset Recovery Inter-agency Network (ARIN) if available.

There are a series of international collaboration networks that law enforcement can approach on an intelligence only basis prior to submitting MLA requests.

Two key networks for the UK are:

- CARIN (www.carin.network) - an informal network of law enforcement and judicial practitioners in the field of asset tracing, freezing, seizure and confiscation of assets.
- The International Anti-Corruption Co-ordination Centre ('IACCC') (www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/bribery-corruption-and-sanctions-evasion/international-anti-corruption-centre). – whose stated aims are to improve fast time intelligence sharing, assist countries that have suffered from grand corruption, bring corrupt elites to justice and assist in asset recovery.

The UK National Crime Agency has a number of international liaison officers based in strategic locations around the world where their expertise can help in tracing assets in the UK **but only** if it is linked to serious and organized crime. The network covers more than 130 overseas jurisdictions.

All UK Government public data can be found at data.gov.uk. , whilst a link to guide more worldwide portals can be found at dataportals.org

There are many of open research sources on the internet to add an investigator in tracing the assets including

- published or broadcast media content
- public data such as Companies House or Census Data
- industry journals
- work by investigative journalists

- ethically hacked data (such as the Panama Papers)

There are also a number of paid for services in fraud, risk management and compliance used by governments and banks and a number of companies providing threat intelligence platforms, usually for a fee. These combine a variety of open and paid for feeds into a single, easily accessible location.

2. Gathering the evidence

UK prosecutors cannot use financial intelligence in applications for freezing and confiscation orders - they need evidence identifying the assets. If a foreign jurisdiction has evidence identifying UK assets that are said to be the proceeds of crime (or equivalent to the value of such) then information about this should be provided with the MLA request. Alternatively, the UK can gather the evidence on behalf of the foreign jurisdiction if asked to do so within the MLA request. However, please note that a vague request to trace assets is not within the scope of MLA. Foreign jurisdictions are permitted to refer within an MLA request to financial intelligence they have received from the UK in order to request the necessary evidence providing that the source of the intelligence is not referenced within the MLA request.

3. Freezing and confiscation

Recovering the proceeds of crime through requests for MLA falls broadly into two categories:

- **Freezing:** protecting or preserving assets in the UK so they are available to pay the requesting state's confiscation order. This could be at an interim stage before the confiscation order has been made or may be used as an enforcement technique to enforce a confiscation order. A freezing order at an interim stage is known as a "restraint order" if made in relation to a conviction-based confiscation case and a "prohibition" in respect of non-conviction confiscation.
- **Confiscation:** registering the requesting state's order and enforcing it against assets in the UK. In UK domestic law, the term "confiscation" applies specifically to conviction-based cases. Recovery of assets may also be achieved by means of civil action in non- conviction-based cases.

Any state may request MLA from the UK, whether to recover the proceeds of crime or to gather evidence. The UK does not require reciprocity and MLA requests do not need to rely upon a bilateral treaty or multilateral convention although the requesting state should cite any relevant international agreements within the MLA

request. However, there is a requirement for dual criminality test.

Requests for freezing and confiscation must be made by a formal request for assistance, sometimes referred to as a Letter of Request (LoR) or MLA request or Commission Rogatoire. The request may be sent electronically. Requests and any supporting documents must be in English or submitted with an English translation. Note that there are forms (in place of LoRs) for requests under the UK:EU Trade and Cooperation Agreement.

It should always be remembered that the UK has three judicial systems: England and Wales; Scotland; and Northern Ireland. Although the systems are similar, there are some variations. Which jurisdiction is engaged will depend on the location of the relevant property.

4. Asset disposal and return

The UK disposes of confiscated assets in accordance with its domestic law and any applicable treaty obligations.

The UK is a party to a number of treaties which provide for cooperation on matters of tracing, freezing, seizing and confiscating the proceeds of crime. Some of those treaties, for example, the United Nations Convention Against Corruption (UNCAC) and the UK/EU Trade and Cooperation Agreement make provision for the disposal of confiscated assets. .

In cases which do not fall within the framework of a multilateral treaty, assets can still be shared with the requesting state if it enters into an asset sharing agreement with the UK. The UK seeks to establish asset sharing agreements wherever possible. If there is no formal agreement with a state or territory, there are administrative arrangements that allow assets to be shared on a case-by-case basis.

It should also be noted that the UK can, and may, make requests for asset sharing or return of other states.

In the absence of either a treaty framework or an asset sharing agreement, the UK will retain the assets and dispose of them according to domestic law.

1.2 Central Authorities for Mutual Legal Assistance (MLA)

The UK Central Authority (“UKCA”) acts as a central point for the receipt of requests for mutual legal assistance in England and Wales, in Northern Ireland and, in some cases, in Scotland. It is responsible for:

- reviewing incoming requests to assess whether assistance can be provided in accordance with UK law, public policy and international obligations.
- providing advice and guidance on how to request assistance from the UK.
- deciding how, and by which agency (police or other investigation agency, courts, and prosecuting authority) requests might most appropriately be executed.

If the UKCA accepts the request for execution, it can refer it to the relevant agency to execute.

In Scotland, the Crown Office’s International Co-operation Unit (“ICU”) performs a similar function to the UKCA where the requesting state recognises Scotland as having a separate central authority. The UKCA will forward requests to the ICU that are suitable to be dealt with in Scotland.

Requests for the Crown Dependencies and the UK Overseas Territories

The Crown Dependencies (Guernsey, Jersey and the Isle of Man) and the UK Overseas Territories (Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falklands, Gibraltar, Montserrat, St Helena and the Turks and Caicos Islands) are not part of the United Kingdom. The Crown Dependencies and the UK 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.

Section 2: Tracing the Assets

Intelligence about the type, location and value of the assets is a key to enabling the preservation of criminal proceeds and to ensuring the successful recovery of the assets through a court process.

A common mistake is for a foreign jurisdiction to submit an MLA request to the UK to recover stolen assets before ascertaining exactly what assets exist and who controls them. If the UK receives a request of this nature it will be returned so that the requesting state can obtain the necessary information.

Informal channels can often provide a timely and effective method of tracing stolen assets and the intelligence provided can be used to make more accurate and effective MLA requests.

In the UK, the primary law enforcement agency to which to send international requests for assistance in tracing proceeds of crime is the National Crime Agency (NCA) which contains the UKFIU (Financial Intelligence Unit).

The UKFIU International Team services the international obligations of the UKFIU under the Financial Action Task Force (FATF) and Egmont Group requirements. It is also a single point of contact for UK law enforcement wanting to identify and trace assets abroad. The team deals with foreign law enforcement wanting to identify/trace assets held in the UK.

The team processes inbound and outbound requests for criminal asset tracing intelligence through the:

- Asset Recovery Office (ARO), which aims to make it easier for law enforcement to trace the foreign-based assets of criminals and to share information with other AROs across the EU on where criminals keep their assets.
- Asset Recovery Inter-Agency Network (ARIN), an informal network of law enforcement and judicial contacts aimed at assisting criminal asset identification and recovery.

The NCA (primarily in its role at the UKFIU) will act as a single reference point for all international requests for tracing stolen assets or the proceeds of criminal activity. The UKFIU assists investigators in tracing and identifying, where possible, the proceeds of crime and other crime related property which may become subject to subsequent restraint, freezing, seizure or confiscation orders. These subsequent orders would be made by a competent judicial authority in the course of criminal proceedings. They can also be made, as far as possible under the national law of the jurisdiction concerned, in civil proceedings. UKFIU International, where allowed, facilitates the sharing of information from other states relating to the funding of serious organised crime and money laundering

How to make a request for asset tracing

Requests to trace assets on behalf of other states must satisfy certain criteria to permit the tracing to be undertaken. All tracing has to meet the requirements of legality, necessity and proportionality. Speculative tracing will not be conducted. The requestor needs to satisfy the UK agency (e.g. primarily the NCA/UKFIU) that there are valid reasons for making the request and must supply the following minimum information.

- Confirmation that an official investigation is being undertaken (or has been undertaken) by the competent authorities within the requesting state against the named individuals or corporate entities.
- Start and end dates of the alleged offending.
- Identity of the requestor including name, role, organisation, official status and contact details (telephone, email, postal address).
- The nature of the criminality. In conviction based confiscation, this would include the allegations against the suspects including brief background facts and a brief description of the alleged offences committed or where convicted, details of that conviction) It is not necessary to supply information which might be of a confidential nature or where the requestor feels disclosure of sensitive information is inappropriate.
- The sections of the relevant legislation covering the offence, plus the penalties in question.
- The full name of the individual or corporate entity against which searches are requested. Identification details should be as comprehensive as possible and include dates and place of birth, national ID references, passport numbers, home address, official position held. Details of aliases or alternative spellings of true names should be included.
- For corporate entities details of company officials, address of registered offices and names of beneficial owners should be included, if known.
- Details of any specific assets, and source of that knowledge (for example, property, vehicles, companies, or bank accounts) if suspected of being within the UK, or controlled or administered within the UK, should be provided in order that their existence can be verified.
- Details of any enablers, experts or third parties involved.
- Where details of specific assets are not known but are merely suspected the requestor should, if possible, indicate why they suspect such assets exist.

All intelligence supplied by the UK in response is provided on the strict understanding that the information is for intelligence purposes only, it may only be used for the purpose for which it was requested and must not be used as evidence in any court proceeding or otherwise made public. If the intelligence is subsequently wanted for use for another purpose, permission must be sought and obtained from the NCA/UKFIU.

The information must not be disseminated beyond the requestor unless the express prior permission of NCA/UKFIU has been obtained. Where express permission is granted for such information to be shared with a public prosecutor, or other competent judicial authority, for the purpose of submitting an MLA request then no reference should be made in the MLA request to the fact that intelligence has been provided or the source of that information. It is permissible to refer to the information itself but not its source.

Enquiries to trace assets believed to be held in the UK, should be initiated by request through the requestors' national ARO, CARIN or Financial Intelligence Unit through the recommended secure networks used by these offices. Please note that all Crown Dependencies and Overseas Territories have their own independent financial intelligence units and enquiries regarding those jurisdictions should be made with those jurisdictions directly.

When it is necessary to transmit material of a sensitive nature then the IT security offered by use of SIENA or EGMONT should be considered. If this is not practical, then the communication should be sent to Interpol Manchester (email address?).

Section 3: Gathering the Evidence

In order to apply to court to recover the proceeds of crime on behalf of other states, the UK requires evidence identifying the assets to be frozen or confiscated. If a state does not already have such evidence, or only has financial intelligence, it may submit a MLA request asking for the evidence, such as bank or property records, to be gathered. States need the express prior permission of UKFIU (within the NCA) to share financial intelligence provided by the UK with their prosecutors or other competent judicial authorities.

Information held by financial institutions usually is held in confidence on behalf of an account holder, and therefore, the UK authorities can only gather it with a court order or equivalent.

Further guidance on what to include within an MLA request to gather evidence of assets can be found at **section 4.3: Drafting Requests for Mutual Legal Assistance**.

Section 4: Freezing and Confiscation

4.1 Preserving property for confiscation

The internationally recognised term of “freezing order” has different terminology in UK law depending on the nature of the order. In conviction based cases there are known as “restraint orders”. In non-conviction based cases where the UK is providing assistance to another state, these are known as “prohibition orders” where the case is at an interim stage.

Conviction based cases - restraint orders

The UK court may make a restraint order prohibiting any specified person from dealing with relevant property which is identified in the request to freeze property (see **section 4.4 Restraint and Confiscation: Key Concepts**) if the following conditions are satisfied:

- the request identifies relevant property (see **section 4.4** below) of the defendant/accused (in Scotland, the accused) in the UK jurisdiction from which assistance is sought.
- either (1) a criminal investigation has been started in the state in which the request was made or (2) court proceedings for an offence have been started and not concluded
- there is reasonable cause to believe that the defendant/accused named in the request has benefited (by obtaining money or other property or advantage) from their criminal conduct (see **section 4.4** below). Note that if the case is still at the criminal investigation stage, then there only has to be reasonable grounds to suspect (rather than believe) that the defendant/accused has benefited.

Only property that may be needed to satisfy (or pay) an external order (see **section 4.4** below) may be made subject of a restraint order. Therefore it will not be possible to restrain assets unless there are reasonable grounds to believe that the proceedings in the requesting state will result in a confiscation order being made.

In addition, the courts will not make orders unless they are satisfied they are necessary. This determination is within the discretion of the courts and will depend on the facts of an individual case. It is also important to note that to grant a restraint order, the court has to be satisfied there is a real risk of dissipation of the property.

Only property in the UK may be subject to a restraint order; the courts have no jurisdiction in a MLA case to prevent a defendant from dealing with assets held overseas.

A restraint order may:

- be made only on an application by the person to whom the request was referred or a prosecutor to whom they have delegated the power to make the application.
- be made without notice to the defendant/accused or alleged offender on an application to a judge in a private sitting. make provision for the defendant's/accused's reasonable living expenses and their reasonable legal expenses in the case; but not legal expenses relating to the offence under investigation or proceedings instituted.
- make provision for the purpose of enabling the defendant/accused to carry on any trade, business, profession or occupation.
- provide that certain property is seized and detained.
- include such orders as the court believes is appropriate for the purpose of ensuring that the restraint order is effective for example, disclosure orders.

The restraint order will continue in force until it is **varied or discharged** by a further order of the court. The court must discharge the order if the requesting state's criminal proceedings are not started within a reasonable time, if the requesting state's criminal proceedings end without an external order being made or if any confiscation order is not registered in the UK for enforcement within a reasonable time. Where a restraint order is made during the investigation stage of the criminal case there will be a requirement on UK prosecutor who obtained the order to provide the court with regular reports about the progress of the case and if these are not provided, or if the court is not satisfied that there is sufficient progress the restraint order may be discharged by the UK court.

A receiver (in Scotland, an administrator) can be appointed to manage property if required; this may be required in the case where the assets of a business are being frozen but the business needs to be actively managed in order to maintain its value.

England and Wales and Northern Ireland

As the application is often made without notice (that is, without the person whose assets are being frozen being made aware that the application is being made) there are certain duties on the person making the application (the applicant). The applicant is under a duty when they make the application to tell the court about any known defence or other facts which may cause the court to refuse to make a restraint order. This duty, known as full and frank disclosure, extends to facts within the applicant's knowledge and facts which would have been known on the making of reasonable inquiries.

The duty of full and frank disclosure is a continuing one which does not come to an end when the restraint order is made. The requesting state must let the UK prosecutor know immediately of any material developments. In particular, the UK prosecutor should be told immediately if the prosecution or investigation is discontinued, if there are any changes in the charges that a defendant faces, if the defendant is acquitted or if no confiscation order is made in the proceedings.

The court may also make any ancillary orders it considers necessary to ensure the restraint order is properly enforced. For example, the court may require the defendant to make a witness statement (in Northern Ireland, an affidavit) listing all the assets in the UK in which they have an interest and specifying their current location.

If granted, the restraint order and witness statement in support must be served as soon as is practicable on the defendant and any other person affected by the order. It is therefore likely that the prosecutor dealing with the request will contact the requesting state to discuss the best way of effecting service.

If a restraint order is granted, the accused, or anyone else who is affected by the order, can apply to the court to for it to be varied or discharged. These applications can be made on as little as two days' notice to the UK prosecutor. It is therefore important that requesting states respond promptly to any requests from the UK prosecutor for information or assistance to oppose such an application.

If any person served with or notified of a restraint order disobeys its terms, they may be sent to prison for up to two years or receive an unlimited fine. In Northern Ireland, such a person may be sent to prison, fined or have their assets seized.

Scotland

The prosecutor sets out in his application to the court a summary of the accused's criminality and why they believe that the accused has benefitted from their criminality. For an investigation, the prosecutor must also set out that there are reasonable grounds to suspect the alleged offender has benefitted from their criminality. If granted, the restraint order must be served as soon as is practicable on the accused and any other person affected by the order. It is therefore likely that the prosecutor dealing with the request will contact the requesting state to discuss the best way of effecting service. If a restraint order is granted, the accused or anyone affected by that order can apply to the court to vary or revoke the order.

Non-conviction based cases – prohibition order

By a similar to process to that detailed above, property can be frozen in relation to a non-conviction-based asset recovery case. This is done by obtaining from the High Court, a prohibition order ver the relevant property in England, Wales or Northern Ireland. There is a similar process In Scotland. Orders are obtained by CRU from the Court of Session, Edinburgh, Scotland. The order will prohibit a person to whose property it applies from in any way dealing with property. The order is not dependent on there being, having been or there being in contemplation a criminal investigation, proceeding or conviction.

The UK court may make a prohibition order in relation to property if it is satisfied that:

- it is relevant property identified in the request, and

- proceedings have not been taken in relation to the property to recover the property by way of civil recovery in the UK.

Property is considered to be “relevant property” if there are reasonable grounds to believe that it may be needed to satisfy a non-conviction based confiscation order which has been or may be made. A non-conviction based confiscation order must be based on alleged criminal conduct that is also recognised as a criminal offence in the UK.

The application for a prohibition order can be made without notice. Any person affected by such an order can apply to vary the order, or to have the order removed. The court may also exclude property from the prohibition order to enable reasonable living expenses or reasonable legal expenses to be met, or to enable a person’s business or trade to continue. Should the prohibition order be set aside or varied, the court may order that the enforcement authority pays compensation to the affected person.

4.2 Enforcing a confiscation order – conviction and non-conviction based cases

UK law (see **section 4.4 Freezing and Confiscation: Key Concepts**) is broad enough to cover orders relating to specified property, orders made in a monetary amount and orders made outside of criminal proceedings. UK courts will focus on the *purpose* of the order rather than the nature of the proceedings in which it was made.

It is of note that the courts are guided to refuse to entertain evidence or arguments directed at the substantive basis for the making of the order. Only the courts of the issuing state should have the jurisdiction, and be better placed, to consider such arguments.

Giving effect to conviction based confiscation orders

An application may be made by a UK prosecutor to the court to give effect to a confiscation order arising from a criminal conviction outside the UK. The following points should be noted:

- any authenticated overseas order, judgment or related document is admissible as evidence.
- the application may be made without notice to the defendant/accused to a judge in a private sitting.
- the court must order that any person affected by the confiscation order be given notice of the registration of that confiscation order.

Where all the following conditions are satisfied, the court must give effect to a conviction based confiscation order by registering it::

- the confiscation order was made consequent on the conviction of the person named in the order and no appeal is outstanding in respect of that conviction.
- the confiscation order is in force and no appeal is outstanding in respect of it.
- giving effect to the confiscation order would not be incompatible with any of the rights contained in the European Convention on Human Rights of any person affected by it.
- where the confiscation order specified property other than money that property is not subject to a charge under UK legislation.

If a confiscation order is registered and not satisfied (paid) voluntarily, the prosecutor may ask the court to appoint an **enforcement receiver** (in Scotland, an enforcement administrator) to take possession of and to sell the defendant's property in such manner as the court may specify. The court must not confer the power to sell property unless it gives any person who may hold interests in the property a reasonable opportunity to make representations to the court.

The receiver will pay the proceeds of realisation to the relevant prosecutor (in Northern Ireland, to the relevant Chief Clerk of the Crown Court) towards satisfaction (payment) of the confiscation order. The prosecutor's / Chief Clerk's receipt of the proceeds reduces the amount payable under the order but they must apply the sums received as follows:

- in payment of the remuneration and expenses of a management receiver/administrator appointed, to the extent they have not been met out of the realisation of property during the management receivership.
- in payment of the remuneration and expenses of the enforcement receiver/administrator.

In Scotland the enforcement administrator pays the proceeds of realisation to the relevant clerk of court towards satisfaction of the confiscation order. If the Lord Advocate has reimbursed the enforcement administrator in respect of remuneration or expenses then the clerk of court must reimburse the Lord Advocate and then they must pay the enforcement administrator's remuneration and expenses before the proceeds are applied to reduce the amount payable towards the confiscation order.

Giving effect to non-conviction based confiscation orders by way of civil recovery (non- conviction based confiscation)

Any requests for assistance in non-conviction based confiscation should be made to the UKCA and will be referred to an appropriate agency to progress on behalf of the requesting state.

The UK authorities can apply through the civil courts to register a confiscation order in relation to property thought to be recoverable property. This will enable the appropriate agency to realise recoverable property for the purpose of giving effect to a non-conviction based confiscation order.

In UK law, "recoverable property" is property that is or represents property obtained through unlawful conduct. Conduct is regarded as unlawful if it is contrary to the criminal law of the state in which it took place and would also be unlawful in the UK, were it to have occurred in the UK. It must be demonstrated by appropriate evidence, that the property that is sought to be recovered or confiscated, was obtained by or in return for that (unlawful) conduct.

The property must be specified in the confiscation order and the UK need to identify whether the property is recoverable property or associated property. Associated property is any property other than the recoverable property itself but is inextricably linked. This could be any legitimate interest in the property, for example, the interests of a tenant.

Should a prohibition order not have been obtained already, it is possible for the UK to apply for a property freezing order as part of the enforcement process.

Should the registration of a non-conviction based confiscation order through civil recovery proceedings be successful, the High Court will make a recovery order for the property. This will have the effect of transferring the rights, interest or title in the property to a 'trustee for civil recovery'. The trustee is appointed by the Court to realise the value of the property for the benefit of the enforcement agency. A UK recovery order may not be granted in certain circumstances, for example, if the holder of the property can demonstrate that he/she acquired the recoverable property in good faith.

In 2018, the UK also introduced two new schemes of non-conviction based confiscation. There is now a bespoke power to freeze and forfeit bank accounts, and freezing of an account is available at an interim stage. Also, there is the power, on the basis of a final confiscation order from the requesting state, to seize and forfeit certain assets such as precious metals, precious stones and artistic works. It is for the UK to decide, based on the facts and circumstances of the case, which is the most appropriate power to be used in execution of a non-conviction based confiscation order.

4.3 Drafting Requests for Mutual Legal Assistance (MLA)

The content of the request will vary depending on the type of assistance required – i.e. whether it is for a conviction based or non-conviction based matter or and whether it is for evidence, freezing or confiscation. The UK has published guidance entitled *Mutual Legal Assistance Guidelines for the United Kingdom* publically available on the UK Home Office website ([Mutual legal assistance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/mutual-legal-assistance)).

The following list is indicative of the type of information and material the UK will require before it can take forward freezing, receivership or enforcement proceedings on behalf of a foreign jurisdiction:

- full details of the defendant (in Scotland, the accused) – including aliases, residence, nationality, date and place of birth.
- details of the criminal investigation – details of suspected offences and nature and circumstances of the offences?investigation.
- details of the criminal proceedings – offences charged and summary of evidence to support each offence charged.
- the grounds for belief that the defendant/accused has benefited from their criminal conduct.
- identified, relevant property in UK – including details of link to the defendant/accused and any third party interests.
- authenticated copies of freezing, confiscation or other relevant orders.
- the basis upon which the confiscation order will be calculated and the maximum amount in which it can be made.
- fetails of property restrained in other jurisdictions together with their values;
- the grounds for belief that there is a risk of dissipation of the assets located in the UK.

This list is most relevant for a criminal investigation or prosecution where confiscation on conviction is in contemplation. In non-conviction based confiscation cases, early contact with the Central Authority will enable it to guide requesting states on what may be required in a formal MLA request.

It is also important to note in conviction based confiscation cases involving Member States of the EU, there is a mandatory form provided for in the UK:EU Trade and Cooperation Agreement that must be completed.

Requests to obtain evidence of UK assets such as bank accounts should be made by letter of request (there is no UK:EU form for this type of assistance) and should include:

- the purpose for which assistance is sought.
- the type of assistance being requested. For example, if this is a request for banking evidence.
 - the name of the account holder and number of the account.

- the address of the branch of the bank where the account is held.
 - the IBAN. The International Bank Account Number (IBAN) and Bank Identifier Code (BIC) are the account number and sort code written in a standard, internationally recognised format.
 - 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.
 - the grounds for believing that banks in the UK holds account(s) and to the extent available, which banks may be involved.
 - the specific documents required, for example account opening information, bank statements etc.
- an explanation of the connection between the evidence requested and the offence being investigated or prosecuted.
 - confidentiality - the extent to which it is required and why.

The UK authorities are happy provide specific advice on the contents of requests for mutual legal assistance. Requesting states needing advice on drafting requests for asset recovery should contact the Central Authorities or prosecutors listed as Points of Contact at the end of this document.

4.4 Freezing and Confiscation: Key Concepts

The UK is committed to providing the widest possible measure of MLA in accordance with domestic law and international obligations. The UK can give effect to requests from foreign states for freezing and confiscation through domestic legislation contained in sections 444 and s447 of the Proceeds of Crime Act 2002 and the **Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005** (“the Order”) as amended. There are several key concepts in the Order which are defined below:

External Request

A request by an overseas authority to prohibit dealing with **relevant property** which is identified in the request.

External Order

An order which is made by an overseas court where property is found or believed to have been obtained as a result of or in connection with **criminal conduct**, and is for the recovery of specified property or a specified sum of money.

The definition of an external order is wide enough to capture a variety of overseas orders so long as they are for a specified sum of money or property and made in relation to the proceeds of crime. The UK courts will look at the *purpose* of the confiscation order rather than what it is called when deciding whether it satisfies this definition.

Criminal Conduct

Conduct which constitutes an offence in any part of the United Kingdom, or would constitute an offence in any part of the United Kingdom if it occurred there.

The UK court will look at the conduct which constitutes the offence in the state making the request and then decide whether there is a UK offence which covers that conduct. In summary, the UK courts look at the conduct rather than what the offence is called when deciding whether this requirement is met.

Relevant Property

Assets, in any form, that there are reasonable grounds to believe may be needed to satisfy an **external order** which has been or which may be made. In conviction based confiscation this can include pecuniary advantage.

Section 5: Asset Disposal and Return

The UK disposes of confiscated assets in accordance with its domestic law and any applicable treaty obligations.

The UK is a party to a number of treaties which provide for cooperation on matters of tracing, freezing, seizing and confiscating the proceeds of crime. Some of those treaties make provision for the disposal of confiscated assets. Such treaties include, for example, UNCAC and the UK/EU Trade and Cooperation Agreement.

In cases which do not fall within the framework of a multilateral treaty, assets can still be shared with the requesting state if it enters into an asset sharing agreement with the UK. The UK seeks to establish asset sharing agreements wherever possible. It should also be noted that the UK can, and may, make requests of other states for asset sharing or return.

In the absence of either a treaty framework or an asset sharing agreement, the UK will retain the assets and dispose of them according to domestic law.

Return of funds in UNCAC cases (in England, Wales and Northern Ireland)

The UK is fully committed to recovering and returning corruptly obtained assets. This must be done in accordance with legal due process, which can take time, but ensures a fully fair and transparent process.

For the long-term credibility of efforts for asset recovery and return, and to ensure the building of confidence for future co-operation on further recovery efforts, the UK strongly believes that it is in the mutual interest of 'returning' and 'receiving' states to work towards agreements that demonstrate transparently that returned funds are subsequently used productively and not re-corrupted. The UK will seek to work closely with all requesting states to establish mutually satisfactory agreements for the return of assets in the event that they are successfully confiscated.

In January 2022, the UK published its Framework for Transparent and Accountable Asset Return, which applies across England, Wales, and Northern Ireland. The purpose of the Framework is to ensure consistency, transparency, and accountability in the UK's process for returning assets. The framework can be found at:

[Framework for transparent and accountable asset return - GOV.UK \(www.gov.uk\).](https://www.gov.uk/government/frameworks/asset-recovery/transparent-and-accountable-asset-return)

This approach is fully in line with the UN Convention Against Corruption (UNCAC) which urges parties to reach such agreements (at Article 57(5)).

In 2006, the UK ratified UNCAC and committed to its implementation. The UNODC has assessed the UK as having 'a comprehensive legal and regulatory framework for asset recovery and has demonstrated effective interagency coordination

leading to international cooperation on asset recovery’.

The UK will also give the appropriate level of consideration to the discretionary return of confiscated assets within the framework of other treaties, such as the UN Convention Against Transnational Organized Crime, Council of Europe Convention CETs 198 and the Commonwealth Schemes for International Cooperation in Criminal Matters.

Agreements on the return of confiscated assets should be arranged through contact with the **Home Office Criminal Finances and Asset Recovery Unit** – see the **Points of Contact** section at the end of this document.

Asset sharing agreements

In cases which do not fall within the framework of a relevant treaty, states have, in the past, retained the assets. In recent years, there has been increasing international recognition of the value of asset sharing agreements (these can be between governments or provided for in multilateral agreements such as the UK:EU Trade and Cooperation Agreement). Under these agreements, the two states agree to share any confiscated assets, usually on the basis of a 50/50 split. It should also be noted that there is a developing presumption that assets should be returned to the extent required to settle any related compensation claims.

The UK is keen to encourage asset sharing agreements to recognise the resources and effort jointly dedicated to the recovery of assets, and to foster good international cooperation.

The sharing of confiscated assets is an administrative process based on an agreement between the Home Office and the government of the requesting state. Assets are usually shared equally. However, the UK may decide to negotiate different proportions, for example, if there are victims in the requesting state. Note that assets should be returned under the terms of UK:EU Trade and Cooperation Agreement if there are related compensation claims.

The Home Office is responsible for negotiating and implementing asset sharing agreements in the UK. The Home Office will only deal with cases in England, Wales and Northern Ireland. The Ministry of Justice is responsible for managing the UK’s constitutional relationship with the Crown Dependencies and issuing Letters of Entrustment authorising Crown Dependency Governments to negotiate and conclude international agreements.

Before asset sharing can take place, a confiscation order must have been made, or recognised and enforced, in the courts and assets recovered as a result. The

UK does not necessarily have to wait until the final order is realised before negotiations can start. Early contact between the Home Office and international counterparts can greatly assist the process particularly where there is no previous history of asset sharing.

Requests may also come through asset recovery advisers, liaison magistrates, or criminal justice advisers, as well as through formal judicial channels or through central authorities. In all cases however, it is the Home Office who will make the final agreement.

Once agreed, bank account details are exchanged to enable the exchange of funds.

The UK can asset share without the need for a formal agreement with the state concerned – sharing can be done on the basis of an exchange of letters. However, the UK recognises that a formal agreement may be required.

Asset sharing agreements with the UK should be arranged through contact with the **Home Office Criminal Finances and Asset Recovery Unit**– see the **Points of Contact** section at the end of this document.

Points of Contact

Central Authorities

England and Wales/Northern Ireland/ Scotland (Note that Scotland has a Central Authority for some cases)

UKCA

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Home Office Criminal Finances and Asset Recovery Team

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Prosecutors

England and Wales

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