

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

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Section 1: Overview

1.1 Obtaining assistance from the United Kingdom

Recovering assets in the UK that are the proceeds of crime falls into four stages. The first two stages – *tracing the assets* and *gathering the evidence* – may not require assistance from the UK if a foreign jurisdiction already has proof of identifiable assets in the UK. The third stage – *freezing and confiscation* – is always necessary and is achieved through requests for mutual legal assistance (MLA) (but see separate arrangements in relation to the EU; these still apply to the UK which on the issuing of this Guidance currently remains a Member State). This guide is directed primarily at foreign jurisdictions seeking MLA to recover the proceeds of crime and therefore covers the final two stages in detail. The first two stages (*tracing the assets* and *gathering the evidence*) are dealt with in summary but further guidance is available from the **Points of Contact** at the end of this guide.

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 (notably money laundering where the predicate offence was committed overseas) with the intention of obtaining a confiscation order after conviction, or a civil recovery investigation aimed at forfeiting assets believed to be the proceeds of crime. The UK authorities will expect foreign jurisdictions to share all relevant evidence in order to determine whether a UK investigation and proceeding is feasible.

Another alternative open to foreign governments would be to undertake private proceedings through the civil courts to regain ownership of stolen assets. This route does not require the involvement of the UK Government as it would not be a party to the case. However, taking proceedings through the civil courts may interfere with criminal investigations and the UK Government would request that it be kept informed of any privately pursued civil proceedings undertaken in the UK courts. The cost of any civil proceedings would of course have to be borne by the parties to those proceedings, and the UK Government would not contribute to those legal costs.

The fourth and final stage of asset recovery – *asset disposal* – can be entered into 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**.

In all these stages, requesting states should make themselves available to deal with queries in cases from the UK Central Authority or the relevant investigator or prosecutor. The UK does not want to be in a position where we are unable to assist because of issues of lack of clarity, omission of points vital to taking the case to our courts and other matters. We are aware that many of these cases have critical issues relating to the timing of their execution both in the UK and the requesting state.

The four stages of asset recovery

1. Tracing the assets

Intelligence as to the type, location, and value of the assets is a key component to identifying them and, subsequently, to securing their confiscation and recovery. Good intelligence, such as through Interpol and Europol, can also help develop more accurate and effective mutual legal aid requests.

2. Gathering the evidence

UK prosecutors cannot rely on financial intelligence when applying to court for freezing and confiscation, they need evidence identifying the assets. If a foreign jurisdiction already has evidence identifying UK assets that are said to be the proceeds of crime (or equivalent to the value of such) then this should be submitted along 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 (if details of the assets are included – vague request to trace assets are often not within the scope of MLA and difficult or impossible to process). 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.

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 orders at an interim stage is known as “restraint” in relation to a conviction based confiscation case and a “prohibition” in respect of non-conviction confiscation.
- **Confiscation:** registering and enforcing the requesting state's order 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 recovery for 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.

It should always be remembered that the UK has three main judicial systems: England and Wales; Scotland; and Northern Ireland. Although the systems are similar, there are some variations depending on the where the relevant property is located.

4. Asset disposal and return

Once the assets have been realised they will be disposed of under one of three processes. Cases that fall under the provisions of the United Nations Convention Against Corruption (UNCAC) will be returned to the requesting state less reasonable expenses. Cases that do not fall under the provisions of UNCAC can be shared with the requesting state if it enters into an asset sharing agreement with the UK (or where there is an existing multilateral international convention or other agreement that has such provisions – notably the EU Framework Decision on the mutual recognition of confiscation orders which requires a 50% share in cases worth more than €10,000).

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. In the absence of any asset sharing agreement the assets will be retained by the UK and disposed of 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 formal 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 ensure that 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.

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. The request may be sent in advance by fax or e-mail but an undertaking should be given to send the original request within a reasonable time. Requests and any supporting documents must be in English or submitted with an English translation.

If the UKCA accepts the request for execution it can refer the request to a relevant prosecution agency, such as the Crown Prosecution Service or Serious Fraud Office to represent the requesting state in court proceedings. In investigation cases, this may be to the police or the National Crime Agency (NCA). There are specific agencies that can execute requests relating to non-conviction based confiscation cases, notably the National Crime Agency (NCA).

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 involving Member States of the European Union

Freezing orders and confiscation orders made in relation to a criminal conviction are made directly to the prosecution agency, the Crown Prosecution Service and the Serious Fraud Office. This is done by way of mutual recognition of the order made in the issuing state, there is no role for the Central Authority.

In relation to the EU, the EIO (European Investigation Order) is available in relation to conviction based confiscation.

Non-conviction cases involving Member States are dealt with by way of MLA as described above.

At the date of issuing this Guidance, the UK remains a member of the European Union and acts in accordance with the terms of the relevant and applicable legislation.

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, Gibraltar, 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 in the **Points of Contact** section at the end of this document.

Section 2: Tracing the Assets

Experience has shown that intelligence as to the type, location and value of the assets is a key component to preserve criminal proceeds and ensure 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 under whose control such assets remain.

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

In the UK the primary law enforcement agency to address 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
- Camden Asset Recovery Inter-Agency Network (CARIN), 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) is uniquely placed to act as a single reference point for all international requests for tracing stolen assets or the proceeds of criminal activity and, where appropriate, to liaise with the relevant competent domestic authorities such as the UKCA, the Crown Prosecution Service, the Serious Fraud Office and other law enforcement partners to ensure that requestors receive an effective and efficient service. The UKFIU assists investigators in tracing and identifying the proceeds of crime and other crime related property which may become subject to subsequent restraint, freezing, seizure or confiscation orders. These 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, civil proceedings. UKFIU International 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. For this reason 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 seek to supply the following minimum information.

- Confirmation that an official investigation is being undertaken by the competent authorities within the requesting state against the named individuals or corporate entities.
- Identification 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. (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). In non-conviction based confiscation, this same amount of detail is not required, although clearly an order would flow from criminality, albeit that a criminal investigation or proceeding may not have happened or be contemplated.
- 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 (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.
- 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 is forwarded on the strict understanding that the information is for intelligence purposes only and must not be used as evidence in any court proceeding or other public purpose. If the intelligence is subsequently wanted to be used for another purpose, permission must be sought and obtained from the UK.

Equally, the information must not be disseminated beyond the requestor unless the express prior permission of NCA 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 to the existence of the intelligence or its source. For example, an acceptable form of words within the MLA request might read “enquiries indicate that [name of subject] has a bank account with [name of bank] Bank located at [address of Bank] Account number [number of account].....”

Enquiries to trace assets believed to be held in the UK, should be initiated by email to the NCA **contact at the end of the document.**

When it is necessary to transmit material of a sensitive nature then the security offered by use of Interpol communication channels should be considered; the communication should be sent to Interpol London. If intelligence needs to be sent this may be sent by Interpol or Egmont routes.

Section 3: Gathering the Evidence

In order to apply to court to recover the proceeds of crime on behalf of a 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. An acceptable form of words for referring to such information within an MLA request is shown in **section 2** above.

In relation to the EU in conviction based confiscation the provisions of the EIO (European Investigation Order) are appropriate. Non-conviction based confiscation cases should follow the more general procedure.

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

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 confiscation order. In conviction based confiscation 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

Within the EU, there is the mutual recognition of freezing orders. The provisions of the Council Framework Decision 2003/577/JHA on the execution in the European Union of orders freezing property or evidence apply between the UK and other EU Member States. This includes the actual order and the accompanying certificate. The UK therefore directly enforces the order without the need to make a separate new domestic UK order (known in UK law as a “restraint order”).

In other cases, 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 whom assistance is sought;
- either (1) a criminal investigation has been started in the state from which the request was made or (2) court proceedings for an offence have been started and not concluded; and
- there is reasonable cause to believe that the defendant/accused named in the request has benefited (by obtaining money or other property) 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 to 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, and this decision 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 he has delegated the power to make the application;
- be made without notice to the defendant/accused 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;
- 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; and,
- (in England and Wales and in Northern Ireland only) include such orders (e.g. disclosure) as the court believes is appropriate for the purpose of ensuring that the restraint order is effective.

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. Restraint orders that are made during the investigation stage of the criminal case will have a requirement of regular reports as to the progress of the case. 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 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 made without notice, the person making the application (the applicant) is under a duty to give full and frank disclosure of any defence or other facts which may cause the court to refuse to make a restraint order. This duty 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 his or her 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. 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

Similar to the process detailed above, property can be frozen in relation to a non-conviction based confiscation case. This is done by obtaining from the High Court, a prohibition order in relation to relevant property in England, Wales or Northern Ireland (note that they are not available in Scotland). This 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 contemplated 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 also important to note that the term “confiscation order” in international law covers court orders made both on a conviction and non-conviction basis; in UK law the term refers specifically to conviction based cases.

It is of note that the courts (and the legislation in relation to the European Union) 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

Within the European Union, there is the mutual recognition of confiscation orders. The provisions of the Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders apply between the UK and other EU Member States. This includes the actual order and the accompanying certificate.

In other cases, an application may be made by the prosecutor to the court to give effect to a confiscation order arising from a criminal conviction. 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.

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

- 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 it.

The receiver pays 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 he 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.

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

The UK can apply through the civil courts to register a confiscation order in relation to property thought to be recoverable property. This will enable the NCA (or other authorised enforcement authority) 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.

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.

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 conviction based confiscation or non-conviction based confiscation and whether it is for evidence, freezing or confiscation. The UK has issued public guidance entitled *Mutual Legal Assistance Guidelines for the United Kingdom (9th Edition)* available on the UK Home Office website (www.homeoffice.gov.uk).

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 investigation;
- Details of the criminal proceedings – offences charged and summary of evidence to support each offence charged;
- 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;
- Details of property restrained in other jurisdictions together with their values;
- Grounds for belief that there is a risk of dissipation of the assets located in the UK.

This list is most relevant for cases where confiscation is being contemplated or pursued in parallel with a criminal investigation or prosecution. In non-conviction based confiscation cases, early contact with the Central Authority will guide requesting states on what precisely 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 certificate that must be completed.

In addition, requests to obtain evidence of UK assets such as bank accounts 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:
 - a) The name of the account holder and number of the account.
 - b) The address of the branch of the bank where the account is held.
 - c) 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.

- d) 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.
 - e) The grounds for believing that banks in the UK holds account(s) and to the extent available, which banks may be involved.
 - f) 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 confidentiality applies.

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 447 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 that determine the circumstances in which the UK can freeze and confiscate assets on behalf of a foreign jurisdiction, 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 has three approaches to disposing of confiscated assets. Assets related to cases which fall under the provisions of the United Nations Convention Against Corruption (UNCAC) will be returned to the state from which they originated. Assets related to cases which do not fall under the provisions of UNCAC will be returned according to the provisions of any asset sharing agreement that exists between the UK and the state of origin (including multilateral instruments, such as the UN Convention Against Transnational Organized Crime and the EU mutual recognition of confiscation orders Framework Decision). In the absence of an asset sharing agreement, the UK will retain the assets and dispose of them according to domestic law. The UK seeks to establish asset sharing agreements wherever possible. It should also be noted that the UK can, and may, make requests for asset sharing or return of other states.

Return of funds in UNCAC cases

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’ states and ‘receiving’ states to work towards agreements that demonstrate transparently that returned funds are subsequently used productively.

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 agreed principles with other G8 partners ‘for disposition and transfer of confiscated proceeds of grand corruption’. These draw a clear connection between asset recovery and the ‘stated purposes’ of UNCAC as set out in Article 1 which “would be frustrated if the circumstances under which assets are transferred were not clear, if their administration is inconsistent with principles of transparency and accountability, or if the transfer was not made in an open manner”.

The UK will seek to work closely with all states that receive returned assets to establish mutually satisfactory agreements for the return of confiscated assets.

Agreements on the return of confiscated assets should be arranged through contact with the Home Office Criminal Finances Team contact given in the **Points of Contact** section at the end of this document.

Asset sharing agreements

In cases which do not fall under the provisions of UNCAC, 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 multilateral agreements such as the EU Framework Decision on the mutual recognition of confiscation orders). Under these agreements, the two states agree to share any confiscated assets, usually on the basis of a 50/50 split.

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.

In all cases, the sharing of confiscated assets is an administrative process based on an agreement between the Home Office and the government of the requesting state. The usual proportion that is shared is 50% depending on the case. The UK may decide to negotiate different proportions if there are victims for example in the requesting state. The Home Office therefore takes the lead in negotiation and dealing with the overseas authority. The Home Office will only deal with cases in England, Wales and Northern Ireland. Scotland and Crown Dependencies such as Guernsey and Jersey, are responsible for their own arrangements.

There must first have been a confiscation order made, or recognised and enforced, in the courts and assets recovered resulting from that order. A request for sharing is made between the two governments concerned. The UK does not necessarily have to wait until the final order is realised before negotiations can start. Particularly in states where there has not been sharing before, early contact between the Home Office and international counterparts can be very productive.

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 exchange so as to enable the exchange of funds.

The UK does not necessarily require a formal agreement with the state concerned – sharing can be done on the basis of an exchange of letters. However, the UK recognises that an agreement may be required.

Asset sharing agreements with the UK should be arranged through contact with **the Criminal Finances Team at the Home Office** see **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
Home Office
2, Marsham Street
London SW1P 4DF

Fax: +44 (0) 207 035 6985

Casework queries –
UKCA-ilor@homeoffice.gsi.gov.uk

Paul Crome
Tel +44 (0) 207 035 3432

Carmen Sobande
Tel + 44 (0) 207 035 4194

Policy and Legislation –

Reema Subhan
Tel:+44 (0) 207 035 3419

Scotland

Malcolm McBain
Head of Mutual Legal Assistance
International Co-operation Unit

Crown Office
Edinburgh
Tel: +44 (0) 131 243 8152
Fax: +44 (0) 131 243 8153

Criminal Finances Team

Home Office
OSCT
Strategic Centre for Organised Crime
2, Marsham Street
London SW1P 4DF

Alison Moore
Tel +44(0) 207 035 1717

Prosecutors

England and Wales

Gary Balch
Deputy Head of CPS Proceeds of Crime

Crown Prosecution Service
Rose Court
2 Southwark Bridge
London SE1 9HS

Tel: +44 (0) 203 357 1407
Fax: +44 (0) 203 357 0388

Elizabeth Baker
Head of Proceeds of Crime and International
Assistance

Serious Fraud Office
2-5 Cockspur Street
London SW1Y 5BS

Tel: +44 (0) 207 004 6338
Fax: +44 (0) 207 084 4733

Northern Ireland

Assistant Director
High Court and International Section

Public Prosecution Service
Belfast Chambers
93 Chichester Street
Belfast BT1 3JR

Tel: +44 (0) 9089 7190
Fax: +44 (0) 9089 7056

Scotland

Laura Buchan
Principal Procurator Fiscal Depute
Serious and Organised Crime Division

Proceeds of Crime Unit

Crown Office

Argyle House
3 Lady Lawson Street
Edinburgh
EH3 9DR

Tel: +44 (0) 131 226 2626

Fax: +44 (0) 131 243 8213

Email: SOCDRestrains@copfs.gsi.gov.uk

**UK Financial Intelligence
Unit/Asset Recovery Office**

National Crime Agency

PO Box 8000

London SE11 5EN

Tel: +44 (0) 207 238 86836

Email: POCInternational@nca.x.gsi.gov.uk

**Contact details for authorities in the Channel Islands, the Isle of Man
and the British Overseas Territories**

**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

Jersey

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

Tel: +44 1534 441200

Fax: +44 1534 441299

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

British Overseas Territories

Anguilla

The Attorney-General
The Secretariat
The Valley
Anguilla

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

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

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

Bermuda

The Attorney-General's Chambers
Global House
43 Church Street
Hamilton
HM12 Bermuda 39

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

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

Montserrat

The Attorney-General
The Attorney-General's Chambers
#3 Farara Plaza
Brades
Montserrat

Tel: + 1 664 491 4686

Fax: + 1 664 491 4687

Gibraltar

Attorney-General
Joshua Hassan House
Secretary's Lane
Gibraltar

Tel: + 350 70723
Fax: + 350 79891

Please note: requests to Gibraltar must be addressed to the Competent Judicial Authority “in” or “at” or “of” Gibraltar” but NOT “for Gibraltar”. If requests are addressed “for Gibraltar” it is likely they will need to be reissued.

Useful Websites

Proceeds of Crime Act 2002	www.legislation.gov.uk/ukpga/2002/29/contents
Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005	www.legislation.gov.uk/uksi/2005/3181/contents
CPS Legal Guidance – money laundering and proceeds of crime work	www.cps.gov.uk
Anti-Money Laundering Strategy (HMT)	www.hm-treasury.gov.uk
The European Convention on Human Rights	www.conventions.coe.int
UKCA – MLA Guidelines	www.homeoffice.gov.uk/publications/police/operational-policing/mla-guidelines-9th-ed
International Association of Prosecutors	www.iap-association.org
United Nations Convention Against Corruption	http://www.unodc.org/unodc/en/treaties/CAC/index.html