



Council of the  
European Union

007395/EU XXVI. GP  
Eingelangt am 10/01/18

Brussels, 10 January 2018  
(OR. en)

9974/1/07  
REV 1 DCL 1

CRIMORG 96  
COPEN 76  
EJN 12  
EUROJUST 26

## DECLASSIFICATION

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of document: ST 9974/1/07 REV 1 RESTREINT UE/EU RESTRICTED

dated: 8 October 2007

new status: Public

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Subject: **EVALUATION REPORT ON THE FOURTH ROUND OF MUTUAL  
EVALUATIONS "THE PRACTICAL APPLICATION OF THE EUROPEAN  
ARREST WARRANT AND CORRESPONDING SURRENDER  
PROCEDURES BETWEEN MEMBER STATES"  
REPORT ON THE UNITED KINGDOM**

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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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# RESTREINT UE



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THE EUROPEAN UNION

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**EVALUATION REPORT ON THE**  
**FOURTH ROUND OF MUTUAL EVALUATIONS**  
**"THE PRACTICAL APPLICATION OF THE EUROPEAN ARREST WARRANT AND**  
**CORRESPONDING SURRENDER PROCEDURES BETWEEN MEMBER STATES"**

**REPORT ON THE UNITED KINGDOM**

# RESTREINT UE

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## 1. INTRODUCTION

1.1. Following the adoption of the Joint Action of 5 December 1997, a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime was established.

1.2. Following the discussion of a proposal introduced by the Luxembourg Presidency concerning the topic of the fourth round of mutual evaluations<sup>1</sup>, the MDG of 11 July 2005 adopted the topic as proposed, namely "the practical application of the European Arrest Warrant and corresponding surrender procedures between Member States". It was also agreed at the MDG of 11 July that the evaluation questionnaire was to be prepared by the UK Presidency.

1.3. Experts with substantial practical knowledge of the European Arrest Warrant were nominated by Member States pursuant to a written request to delegations made by the Chairman of the MDG on 9 September 2005<sup>2</sup>.

1.4. At its meeting on 28 October 2005 the MDG approved the evaluation questionnaire for the fourth round of mutual evaluations. The objectives of the evaluation exercise and the questionnaire itself are set out in document 14272/05 CRIMORG 131 COPEN 175 EJM 57 EUROJUST 77.

1.5. Also at its meeting on 28 October 2005 the MDG discussed and approved document 13824/05, the revised sequence for the mutual evaluation visits. The United Kingdom is the seventh Member State to be evaluated during the fourth round of evaluation.

1.6. The experts charged with undertaking this evaluation were: Ms Marjorie BONN (senior legal advisor, the Netherlands), Ms Ana Maria GALLEGO TORRES (Deputy Director for International Legal Cooperation, Spain) and Mr Seamus CASSIDY (senior prosecution solicitor, Ireland). Two observers were also present: Mr Pavel ZEMAN (Eurojust) and Mr Polyvios PANAYIDES (Commission), together with the General Secretariat of the Council.

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<sup>1</sup> 9602/05 - Orientation debate on a proposed Mutual Evaluation exercise.

<sup>2</sup> 6206/1/06 REV1 - Timetable for 2006 and designation of experts.

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1.7. This report was prepared by the expert team with the assistance of the Council Secretariat, based upon their findings arising from the evaluation visit of 11-15 December 2006, and upon the United Kingdom's detailed and helpful responses to the evaluation questionnaire and a written request for further information.

1.8. The report makes reference to differing processes in respect of prosecution and conviction cases only insofar as there is a divergence of practice between the two procedures.

1.9. The expert team's overarching purpose was to evaluate the distinct practical processes operated and encountered by the United Kingdom both in its role as issuing and executing Member State, to assess relevant training provisions and the views of the defence, before moving on to conclude and to make such recommendations as they felt were appropriate to enhance the means by which the EAW and its corresponding surrender provisions may be further streamlined and improved.

## 2. THE AUTHORITIES AND THE LEGAL BASIS

The UK consist of three distinct legal jurisdictions: England + Wales, Scotland and Northern Ireland<sup>1</sup>, which are governed by the same implementing legislation. Gibraltar, which is covered by the FD (Article 33(2), and which is a separate jurisdiction, has its own implementing legislation. This evaluation has not covered Gibraltar.

### 2.1 THE AUTHORITIES

#### England and Wales

- Judicial Authorities ("JAs") - Issuing Member State role<sup>2</sup>.

In terms of the issue of EAWs the UK has adopted a decentralised approach, designating the following JAs as being competent:

- a District Judge;
- a Justice of the Peace; or
- a Judge entitled to exercise the jurisdiction of the Crown Court.

Notwithstanding this statutory provision a practice has developed whereby EAWs required in

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<sup>1</sup> In this report, reference may for convenience be made to "UK authorities" or to "UK" or similar, although the situation may in fact more specifically refer to one or more of the 3 jurisdictions.

<sup>2</sup> Extradition Act, section 149.

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respect of persons wanted in Wales or the southern parts of England will be issued at the City of Westminster Magistrates' Court. Leeds Magistrates' Court will issue EAWs in respect of the North of England.

- Judicial Authorities (JAs) - Executing Member State role<sup>1</sup>.

The England and Wales have implemented a centralised competence in terms of its activities relating to the execution of EAWs. Six District Judges sitting at the City of Westminster Magistrates' Court undertake all first instance surrender decisions for the territory of England and Wales (this practice area having migrated from Bow Street Magistrates' Court when it closed in 2006).

- The Crown Prosecution Service ("the CPS") is the public prosecution service of England and Wales. Its 2,500 prosecutors work within CPS operational divisions which mirror the 42 Police Force areas. Each area is managed by its own Chief Crown Prosecutor.

EAW competence is concentrated in the Special Crime Division at CPS Headquarters in London with a similar specialist structure being maintained in the City of York (which covers the CPS areas in the North of England). The 4 Special Crime Division lawyers<sup>2</sup> act as in-house specialists in respect of assisting local prosecutors with outgoing EAWs, and as agents and advocates (together with a team of 4 barristers from private practice) for issuing Member States<sup>3</sup> in respect of all aspects of the execution of incoming EAWs. Special Crime Division lawyers are also responsible for drafting, advisory and advocacy work in respect of the UK's traditional (non-EU) extradition business.

Specialist prosecutors with EAW competence also co-exist within the Revenue and Customs Prosecutions Office ("RCPO") and within the Serious Fraud Office ("the SFO"); however, in terms of the volume of EAW business transacted, the CPS undertakes the greatest volume of EAW work by far<sup>4</sup>.

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<sup>1</sup> Extradition Act, section 139.

<sup>2</sup> Consideration is being given to expansion of this team.

<sup>3</sup> Extradition Act, section 190.

<sup>4</sup> 2006 Year-to-date EAW issue figures being CPS=100, RCPO =11, SFO =0 (Crown Office (Scotland) = 7, Crown Solicitors (Northern Ireland) = 2).

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- The Serious Organised Crime Agency ("SOCA") - was formed on 1 April 2006 and has UK wide jurisdiction; it is an intelligence-led agency with law enforcement powers and "harm reduction" responsibilities<sup>1</sup>. SOCA was formed from the amalgamation of the National Criminal Intelligence Service, the National Crime Squad, those from HM Revenue and Customs dealing with drugs trafficking and associated criminal finance, and some of those dealing with organised immigration crime in the UK Immigration Service. The organisation totals 4,500 staff.

SOCA has been designated as the UK's central authority for the purposes of EAW proceedings (these functions specifically being undertaken by the Fugitive Unit). SOCA contains the UK National Central Bureau for Interpol.

It has been decided that SOCA will house the UK SIRENE bureau when the UK accedes to SIS II in the second half of 2010.

As part of its broader remit SOCA is sponsored by, but operationally independent from, the Home Office.

- The International Assistance Unit of the Metropolitan Police Force deals with extradition and mutual legal assistance - This unit is headed by 1 Detective Inspector who leads the 3 Detective Sergeants and 11 Detective Constables who deal with extradition and 2 Detective Sergeants and 10 Detective Constables who deal with MLA. The officers were responsible for 245 arrests and surrenders undertaken from England and Wales in the calendar year to December 2006<sup>2</sup>.

UK police officers are legally competent<sup>3</sup> to apply for the issue of outgoing EAWs but as a matter of practice this procedure is not relied upon.

- The Home Office - The overarching mission of the Home Office is to "build a safe, just and tolerant society by focusing on six key objectives:

- protecting the UK from terrorist attack;

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<sup>1</sup> In this context harm is considered to be the damage caused to people and to communities by serious organised crime.

<sup>2</sup> This figure includes Part I (EAW) and Part II (traditional non-EU extradition) warrants.

<sup>3</sup> Extradition Act, section 142.

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- cutting crime, especially violent and drug-related crime;
- ensuring people feel safer in their homes and daily lives, particularly through more visible, responsive and accountable local policing;
- rebalancing the criminal justice system in favour of the law-abiding majority and the victim;
- managing offenders to protect the public and reduce re-offending;
- securing the UK's borders, preventing abuse of the immigration laws and managing migration to benefit the UK."

The extradition policy section of the Home Office bears specific consultative and drafting responsibility for the Extradition Act (by which the UK implemented the EAW Framework decision<sup>1</sup>). It also hosts a regular trilateral steering group where practical, legislative and training issues may be discussed, focusing in particular on removing delay in the execution of EAWs and extradition requests.

The Home Office is the competent authority to provide guarantees in respect of the return of own nationals pursuant to Article 5(3) of the FD.

- The Administrative Division of the High Court - The jurisdiction on the Administrative Court is varied and consists of the administrative law jurisdiction of England and Wales as well as a supervisory jurisdiction over inferior courts and tribunals. In respect of EAW proceedings the Court will hear appeals as of right from the decision of the District Judges (the JAs).
- The House of Lords - The House of Lords is the highest court in England, Wales and Northern Ireland. It sits as the supreme court of appeal. The judicial work of the House is conducted by the Law Lords. Permission, and a certificate that a point of law of general public importance is involved, is required to appeal to the House of Lords.

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<sup>1</sup> The UK retains the use of the terminology of the pre-existing practice and therefore refers to extradition rather than surrender.

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## Northern Ireland

- Judicial Authorities - the designation of JAs in Northern Ireland mirrors the practice adopted in England and Wales. Due to the differing structures certain aspects of the nomenclature differ, namely:
  - for "District Judge" read "Resident Magistrate";
  - for "a Judge entitled to exercise the jurisdiction of the Crown Court" read "a Crown Court Judge".
- The Public Prosecution Service<sup>1</sup> - has the equivalent functions to the Crown Prosecution Service in England and Wales.
- The Crown Solicitors Office - has the equivalent function to the Treasury Solicitors office in England and acts as the principle legal adviser to the government.
- The Police Service of Northern Ireland<sup>2</sup> - the extradition business undertaken by the Police Service of Northern Ireland is conducted by 1 Detective Inspector, 1 Detective Constable and 1 designated civilian investigator. Operational functions of this unit mirror those of the Metropolitan Police Service Extradition Unit.

## Scotland

- Judicial Authorities (JAs) - although EAWs may be issued by any Sheriff<sup>3</sup>, the first instance executing judicial functions under this Act are undertaken by 4 designated Sheriffs of the Lothian and Borders (the Edinburgh Sheriff) Court<sup>4</sup>.
- The Procurator Fiscal Service - is the sole independent public prosecution authority in Scotland. The Crown Office (of the Procurator Fiscal Service) in Edinburgh is its departmental headquarters.
- The Crown Office - is the designated Central Authority of Scotland; the staff of the Crown Office perform the same roles as SOCA staff, save for translation and transmission matters in respect of which SOCA retains primacy.

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<sup>1</sup> Formerly the DPP.

<sup>2</sup> Formerly the Royal Ulster Constabulary (the RUC).

<sup>3</sup> Extradition Act, section 149.

<sup>4</sup> Extradition Act, section 139.

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- The Lord Advocate - is the Ministerial head of the Crown Office and Procurator Fiscal Service and the head of the system of prosecution. The Lord Advocate represents issuing authorities in EAW proceedings.
- Crown Counsel – The Lord Advocate, Solicitor General and Advocates Depute are collectively known as Crown Counsel. Crown Counsel must give authority before an outgoing EAW can be issued. They also appear in any appeal proceedings in the High Court relating to incoming requests.
- The Crown Agent - is the Lord Advocate's principal advisor on criminal prosecution policy and operational matters.
- International Cooperation Unit ("the ICU") - the functions of the Lord Advocate in representing requesting authorities, and the functions of the Crown Agent, Crown Office, as designated authority for EAW cases are carried out by the International Cooperation Unit. This is an operational unit within the Crown Office. It is staffed by 5 lawyers, together with administrative support. The lawyers of the International Cooperation Unit retain exclusive competence for the drafting of outgoing EAWs.
- The High Court - hears appeals on points of law in respect of Scotland's executing Member State functions.

The Privy Council hears appeals in respect of all challenges involving "devolution issues"<sup>1,2</sup>

## 2.2 THE LEGAL BASIS

- The Extradition Act 2003 ("the Extradition Act") is the UK's comprehensive FD implementing legislation which entered into force on 1 January 2004. The Act is divided into 5 distinct sections:

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<sup>1</sup> A devolution minute is a challenge to any act by the Crown which is alleged to be incompatible with the ECHR or Community law.

<sup>2</sup> The Scotland Act 1998, section 57(2).

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- Part 1 (sections 1 - 68) - Extradition to "*Category 1 territories*" (details the UK's practices as an executing Member State);
- Part 2 (sections 69 - 141) - Extradition to "*Category 2 territories*" (those outside the EU);
- Part 3 (sections 142 - 155) - Extradition from "*Category 1 territories*" (details the UK's practices as an issuing Member State) and from "*category 2 territories*";
- Part 4 - (sections 156 - 176) Police powers; and
- Part 5 - (sections 177 - 227) Miscellaneous and General.

Statutory references to "Part I warrants" and to "Part III warrants" should therefore be construed as references to incoming and outgoing EAWs respectively.

This single legislative instrument is not a devolved Act and it therefore governs the application of the EAW across the entirety of the UK.

- Serious Organised Crime and Police Act 2005 - The act by which the SOCA was established and which provides, inter alia, for the designation of SOCA as the UK's central authority.
- The Police and Justice Act 2006<sup>1</sup> was the first Act amending the Extradition Act 2003. This law entered into force on 15 January 2007.
- The Human Rights Act 1998 - Overarching domestic legislation that ensures compliance with fundamental rights.
- The Bail Act 1976 - Particularises the general right to bail and the statutory basis for remands in custody, in England and Wales only.
- The Bail Amendment Act 1993 (England and Wales only) - Introduced the prosecution's right to appeal against the grant of bail in designated circumstances.

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<sup>1</sup> Flowing from a consultation exercise with all of the UK agencies involved with the issue and execution of EAWs.

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- The Police and Criminal Evidence Act 1984 - Domestic legislation governing the rights and treatment of individuals arrested and detained by the police and other investigating bodies. It defines also categories of search and seizure material, in England and Wales only.
- The Criminal Justice Act 1991 - Defines the detention credit to be allowed for remand time (pre 04/04/05), in England and Wales only.
- The Criminal Justice Act 2003 - Defines the detention credit to be allowed for remand time (post 04/04/05), in England and Wales only.
- The Criminal Justice and Police Act 2001 - Confers seizure powers over and above those prescribed by the Extradition Act, in England and Wales only.
- The Rules of the Supreme Court, practice direction 52 - Prescribes Court of Appeal regulations, in England and Wales only.
- The Appellate Jurisdiction Act 1876 - Sets out the regulations pertaining to proceedings before the House of Lords, in England and Wales only.
- The Access to Justice Act 1999 (as amended) and the Legal Aid (Scotland) Act 1986 (as amended) - These Acts amend domestic legislation and extend the provision of Legal Aid to EAW surrender proceedings.
- Inter-agency memorandum of understanding between the Crown Prosecution Service, the Association of Chief Police Officers and SOCA - This MOU sets out the service level agreements between the named participants.
- Member States may also refer for assistance to the UK's "Fiche Française" - which sets out the practices issuing Member States must adopt when seeking to obtain a surrender from the UK.
- The Scotland Act 1998 - Extends the right for a requested person to pursue a devolution minute challenge to the Privy Council.

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- Not all statutes apply to Northern Ireland, e.g. The Bail Act 1976, The Criminal Justice Act 1991 and the Criminal Justice Act 2003. Some others have been given Northern Ireland equivalents such as the Police and Criminal Evidence (Northern Ireland) Order 1989 and Order 61 A of the Rules of the Supreme Court (Northern Ireland) 1980 which is the equivalent to the Rules of the Supreme Court, practice direction 52.

### 3. ORGANISATION AND PRACTICES - ISSUING MEMBER STATE ROLE

The expert team was advised that, during the calendar year to 31 October 2006, the appropriate JAs of the UK had issued 126 EAWs, in respect of which 90 arrests had been made and 76 surrenders undertaken. The UK reported that 10 surrenders had been refused.

#### 3.1. THE DECISION TO ISSUE

##### England and Wales

The following are competent to apply for a Part III warrant:

- The Director of the Revenue and Customs Prosecutions Office;
- Any member of the Serious Fraud Office, designated by the Director of the SFO under Section 1 (7) of the Criminal Justice Act 1987;
- The Director of Public Prosecutions, a Crown Prosecutor and any counsel or solicitor instructed by the CPS for the purposes of the case concerned.

In England and Wales the initiator of a Part I warrant ("an EAW") will be the officer in charge of the criminal investigation ("the OIC").

No application for an EAW may be presented to the court for issue without the prior consent of a CPS or RCPO prosecutor. Once a prosecutor has been approached by the OIC with a request to apply for an EAW he will review the current EAW guidance posted on the CPS intranet/RCPO prosecution manual, or more usually, make direct contact with extradition practitioners in CPS/RCPO respectively who will advise on the practical steps to be taken to progress the matter.

The extradition practitioners in CPS/RCPO will make the application to the Court when the necessary paperwork is in order.

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This guides referred to above sets out the legal basis for any application<sup>1</sup> it also directs the attention of the prosecutor to the necessary practical steps/contact points required to progress the matter.

If the prosecutor is satisfied that:

- a domestic warrant exists;<sup>2</sup>
- there are reasonable grounds for believing that the requested person has committed an "extradition offence"<sup>3</sup>; or
- that the requested person is unlawfully at large following conviction,

he proceeds to apply the sequential tests (valid for prosecution cases) set down in the Code for Crown Prosecutors, namely (1) that there is a realistic prospect of a conviction at trial<sup>4</sup> (a 51% test) and thereafter (2) that it is in the public interest that a prosecution be brought.

The expert team was advised that the public interest test will involve an assessment of the proportionality of the case and so the UK's partner Member States were unlikely to be required to locate, arrest and surrender requested persons in respect of matters which, in the view of the prosecutors, were trivial. The test would however also include a review of the antecedents of the requested person which, in aggravated circumstances, may offset considerations of triviality.

The expert team was advised that the authorities in England and Wales do not request provisional arrests because their issue procedures are such that they are confident that they can issue same day EAWs<sup>5</sup> and because there is a general acceptance that the UK may not be able to extend reciprocity in this area.

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<sup>1</sup> Extradition Act, section 142.

<sup>2</sup> He may apply for a domestic warrant if necessary.

<sup>3</sup> Extradition Act, section 148.

<sup>4</sup> A continuing evidential assessment and one taken in view of the fact that a surrender made pursuant to an EAW request would virtually preclude a subsequent evidential interview in the UK.

<sup>5</sup> The Specialist Crime Division of the CPS operate a 24/7 on call rota.

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## Northern Ireland

The position in Northern Ireland substantially mirrors that in England and Wales. The Police Service of Northern Ireland serve as initiators who forward the domestic criminal files to the Public Prosecution Service for a review and an opinion as to evidential sufficiency and public interest considerations.

Following the review the Public Prosecution Service will advise on any outstanding evidential or associated matters that are required to be rectified or enhanced by the Police Service of Northern Ireland. Once content that the necessary tests have been satisfied, the Public Prosecutions Service will issue a direction for the extradition process to proceed. The Police Service of Northern Ireland will then provide all relevant information to the Crown Solicitor's Office. The Crown Solicitor's Office will then draft the application.

## Scotland

The Scottish authorities advised the expert team that their practice is not to issue what they consider to be speculative EAWs; as a matter of historical fact, fugitives from justice in Scotland were said to be more likely to flee to America than to Europe.

Once the investigating officer has information or intelligence as to the location of the requested person, Scotland's International Cooperation Unit will be contacted for a view as to the evidential and proportionate nature of the proposed measure.

The team was further advised that at the time of the introduction of the European Arrest Warrant a review of all outstanding extradition cases was undertaken and conversion exercises put in place to transpose those cases which were felt to be appropriate.

### 3.2. VERIFYING THE POSSIBLE EXISTENCE OF MULTIPLE REQUESTS

The UK is not a party to the SIS. The target date for SIS II to be operational across the entirety of the UK was said to be the second half of 2010<sup>1</sup>.

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<sup>1</sup> Estimate provided by the SIS II programme team at the Home Office.

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SOCA reviews its circulations through Interpol on a regular basis, at least every five years for notices and twelve months for Interpol diffusions. At the time of these reviews they contact the appropriate prosecuting authority to confirm the currency of the request.

## England, Wales and Northern Ireland

The Special Crime Division of the CPS, RCPO and the Crown Solicitor's Office seek to ensure that if possible all recorded matters against the requested person are set out in one EAW. To this end, and as part of the development of the initial evidential package, the OIC and the Police Service of Northern Ireland will search the Police National Computer ("the PNC") to ascertain the status of the individual.

The discovery of a pre-existing EAW will not deter a subsequent application.

## Scotland

Verification of outstanding matters is not mandatory practice in Scotland; however, checks may be made on the instruction of a lawyer within the International Cooperation Unit acting on behalf of the Crown Agent if that is deemed to be appropriate. Searches are made of the Scottish Criminal Records Office ("the CRO"), the Scottish equivalent of the PNC.

### 3.3. THE COMPLETION OF THE FORMS/COURT PAPERS

#### England and Wales

Once the investigating officer has ascertained information as to the location of the requested person through domestic or Interpol-based enquiries, he will advise the public prosecutor who will initiate contact with the Special Crime Division of the CPS specialist unit at CPS headquarters.

The Special Crime Division of the CPS or an RCPO extradition Practitioner will prepare the EAW in draft form consulting with the local prosecutor or OIC as necessary to obtain information in support of the application. Photographs and fingerprints will be attached where available.

The specialists at the Special Crime Division of the CPS will consult the "country file" maintained at headquarters as required.

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The country file is an amalgam of historical data gathered by the unit and dealing with the practical requirements of specific Member States<sup>1</sup>. Specific examples of content provided to the team were:

- The requirement of the Irish authorities to require the insertion at paragraph (e) of the EAW of the following statement, "I am satisfied that a Crown Prosecutor in the CPS, whose function it is to decide whether or not to prosecute an individual for the alleged criminal offences, has decided to charge the person named herein and to try him for the offences specified above and for which this warrant is issued." This requirement has now been removed from the Irish EAW legislation.
- The requirement of the Spanish and Portuguese authorities to require express confirmation that offences punishable by a life sentence are subject to an appropriate review/clemency.

All "extradition offences" will be particularised on one EAW unless the country file states that that practice is not to be followed.

## Northern Ireland

Following the issue of the "direction for extradition" the Police Service of Northern Ireland package the criminal case and present it to the Crown Solicitors Office, who draft the EAW. The Crown Solicitors Office and police will liaise as required to undertake this exercise to the satisfaction of the Crown Solicitors Office.

## Scotland

A significant volume of Scottish fugitives are ultimately located in Ireland and as such the Scottish authorities have entered into a bilateral agreement with the Irish Central Authority whereby draft EAWs are systematically transmitted to Ireland prior to the documentation being finalised for presentation to the Scottish issuing JAs.

The stated purpose of this bespoke review is to ensure that EAWs to Ireland are "correctly framed to meet with the requirements of Irish domestic legislation".

The drafting of the EAW itself is undertaken by the lawyer of the International Cooperation Unit.

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<sup>1</sup> Most specifically those requirements which are not set out in the FD.

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## 3.4. THE APPLICATION PARTIES/PROCESS

In each UK jurisdiction, with the exception of Northern Ireland, an application for the grant of an EAW will be an *ex parte* application to the court. In each instance the police have a statutory competence to make the application<sup>1</sup> but this power is not exercised; in view of the specialised nature of the EAW all applications will be made by the prosecution who are also competent to make a combined application<sup>2</sup> for a domestic warrant and an EAW if necessary. In Northern Ireland applications are made by the Police Service of Northern Ireland with the assistance of a lawyer from the Crown Solicitor's Office.

### England and Wales

By virtue of the centralised nature of the EAW process in England and Wales a practice has developed whereby the Special Crime Division lawyer or the RCPO lawyer with conduct of the (EAW aspect of the) case will transmit an electronic application to the clerks at the City of Westminster Magistrates' Court<sup>3</sup>.

The request and the draft EAW will be printed off and placed before one of the District Judges ("the JAs") for consideration, amendment (if required) and signature. Personal attendance before the JA is only necessary if the domestic precursor warrant is required to be issued as part of the same application.

Applications made by the CPS at York are *ex parte* attendances to the designated District Judges at Leeds Magistrates' Court.

Each court operates a 24/7 on call rota to facilitate emergency applications.

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<sup>1</sup> Extradition Act, section 142.

<sup>2</sup> Should this not have been obtained by the police or local prosecutor at an earlier stage of the proceedings.

<sup>3</sup> As a matter of law any District Judge, Justice of the Peace or Judge entitled to exercise the jurisdiction of the Crown Court may issue an EAW.

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The JAs confirmed to the expert team that they were entirely content with the drafting quality of the "paperwork" presented to them; they considered the fact that they received few requests for additional information from executing JAs to be a testament to the completeness of the outgoing documentation.

## Northern Ireland

The Crown Solicitors Office and the police OIC will attend upon the Resident Magistrate or Crown Court Judge to make an oral application for the issue of an EAW.

On issue the signed EAW will be transmitted to SOCA via the Police Service of Northern Ireland.

## Scotland

The International Cooperation Unit, having produced the necessary court application papers, will submit the file to the local Procurator Fiscal who will attend upon a Scottish issuing JA and make an oral *ex parte* application in the same manner as in domestic proceedings.

The oral application may also be made by the International Cooperation Unit if required.

The Scottish authorities confirmed that it was their usual practice to seek one EAW per domestic warrant.

## 3.5. TRANSLATION OF THE EAW

### England and Wales

Once an EAW has been issued it is transmitted to SOCA whereupon a review of the requirements of the executing Member State is undertaken<sup>1</sup>. At that time (unless English is an accepted language) SOCA will have the EAW translated in accordance with the appropriate language regime.

SOCA maintains a 24/7 translation capacity in both French and Spanish; other Member State languages can be facilitated during normal working hours.

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<sup>1</sup> The location of the requested person having been established by police activity prior to the application.

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## Northern Ireland

The Police Service of Northern Ireland will forward the EAW to SOCA together with any country specific intelligence to facilitate translation into the necessary language.

## Scotland

In Scottish cases the International Cooperation Unit will review the language requirements of the executing Member State prior to undertaking the necessary translation. They will then retain the original EAW and transmit the copy plus any necessary translation to SOCA to facilitate onwards transmission to the identified executing Member State.

### 3.6. TRANSMISSION OF THE EAW

#### Centralised function

SOCA is the designated CA<sup>1</sup> of the UK for the purposes of all EAW transmissions.

Directly targeted transmissions in compliance with executing Member State requirements are the norm; however, it is open to SOCA to issue an Interpol diffusion if the individual case merits such a course.

Transmission will be via Interpol channels except in the case of transmissions to Ireland where direct transmission is required<sup>2</sup> to the Ministry of Justice, Equality and Law Reform<sup>3</sup>.

All original EAWs transmitted to SOCA by the various bodies throughout the UK concerned with the conduct of the application will be retained in a specific case file.

SOCA is of course a key stakeholder in the SIS II project team managed by the Home Office<sup>4</sup>.

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<sup>1</sup> Extradition Act, section 2(9), as amended by the Serious Organised Crime and Police Act 2005.

<sup>2</sup> A requirement of the Irish Central Authority.

<sup>3</sup> Ireland's designated Central Authority.

<sup>4</sup> The project team is working to a targeted launch in the second half of 2010.

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## 3.7. ISSUES RAISED BY EXECUTING MEMBER STATE, COMMUNICATION CHANNELS RELIED UPON AND REQUESTS FOR FURTHER INFORMATION

### England, Wales and Northern Ireland

The CPS reported that their main experience of EAW challenges to date had arisen with requests to Ireland (their principal EAW partner). A range of specific challenges were cited; these included requests for clarification/further information relating to:

- The delay between the offence and the obtaining of the domestic warrant;
- The delay between the issue of the domestic warrant and the EAW;
- Failure to comply, in exact terms, with the drafting format of the EAW form;
- Perceived errors in the body of the EAW - in this case the issuing judicial authority had ticked a framework list offence but the Irish Central Authority considered that the facts of the offence better suited a different framework offence. In that case the CPS was required to reissue the EAW indicating that the requested person was required for the offence preferred by the Irish Central Authority; and
- A requirement that the CPS provide affidavit evidence as to the facts of the case or to rebut assertions raised by the defence (e.g. alleged breaches of the requested person's constitutional rights, detail as to the nature of the allegations etc).

The initial CPS dealings with the Irish Central Authority were principally by fax, but in order to comply with the requirements affidavit evidence is frequently necessary. The expert team was advised that in one case where delay was said to be in issue a Special Crime Division lawyer was required to fly to the High Court in Dublin<sup>1</sup> to provide oral evidence to the tribunal; this evidence was the subject of cross-examination.

At the time of the evaluation visit the expert team was also advised that the RCPO had a recent problem with the Belgian authorities in a conviction matter. The UK EAW alleged that the requested person had escaped from lawful custody, a legal formulation not recognised in Belgium; the matter was ultimately resolved by the UK authorities issuing a second EAW.

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<sup>1</sup> Ireland's executing JA.

# RESTREINT UE

The UK also reported experiencing problems concerning the execution of EAWs issued to Cyprus in respect of Cypriot nationals. Such surrenders are deemed by the Supreme Court to be unconstitutional and therefore the UK authorities have no effective recourse against Cypriot nationals who have absconded but are wanted in connection with criminal proceedings in the UK.

The communication option preferred by SOCA is for the executing Member State to route all such requests through them.

## Scotland

The Scottish authorities reported that they had satisfactorily resolved an issue with the Netherlands in which list and non-list offences were particularised against a requested person in a single EAW. Notwithstanding the lack of double criminality necessary in the case of the non-list offence, the surrender proceeded in an acceptable fashion in respect of the remaining offences.

The Scottish authorities considered the level of telephone communication between the respective parties was both appropriate and proportionate.

### 3.8. LEGAL REGIME GOVERNING THE RETURN OF OWN NATIONALS FOR THE ENFORCEMENT OF A SENTENCE

The UK has a unified practice in this regard and no specific issues relating to corresponding guarantees were reported to the evaluation team.

The UK accepts that some Member States continue to transfer prisoners under the 1983 Council of Europe Convention on the Transfer of Sentenced Persons ("the 1983 Convention") rather than using the FD itself as a legal basis<sup>1</sup>.

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<sup>1</sup> The UK enabled the EAW regime as a specific legal basis of surrender by virtue of EA, ss.144 and 145.

# RESTREINT UE

The UK authorities<sup>1</sup> adopt a flexible approach to the return of own nationals of executing Member States and will issue different types of assurance depending on the instrument to be relied on:

- Under the 1983 Convention - The Home Office transmit an assurance to (1) HM Prison Service who are under a duty to supply detailed custody information to the executing Member State in due course<sup>2</sup> and (2) to SOCA stating that the terms of the Convention will apply (SOCA additionally notes the domestic criminal file so that it is evident that return conditions apply to the requested person on his ultimate surrender). In such cases the issuing Member State may convert the sentence following the eventual transfer.
- Under the FD<sup>3</sup> - The Home Office transmits assurances to HM Prison Service and SOCA (as above) so that the fact of the guarantee is recorded. Under these provisions however the executing Member State is required to undertake the sentence imposed by the UK as issuing Member State, and the assurance expressly recites this fact.

## 3.9. YOUTH SURRENDERS AND CORRESPONDING GUARANTEES

At the time of the evaluation visit no EAW requests had been issued in respect of minors.

### England, Wales and Northern Ireland

The absolute age of criminal responsibility is 10.

### Scotland

The absolute age of criminal responsibility is 8.

## 3.10. EVOLVING BEST PRACTICES

The expert team felt that the development of Member State specific "country files " was an aid to drafting and an effective and considerate way in which the ultimate surrender of requested persons could be expedited. Conversely however the team considered that there is a real risk that the drafting benefits that the country files brought to the process would lead to acceptance of non-FD requirements of certain executing Member States.

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<sup>1</sup> The Home Office.

<sup>2</sup> Although no statistics were available in this regard the UK authorities were of the view that some delays were implicit in the gathering of the package of information necessitated by this mode of surrender.

<sup>3</sup> No such returns have been undertaken to date.

## RESTREINT UE

They were also struck by the efficiency of the developing practice surrounding electronic applications to the JAs of England and Wales for the issue of EAWs.

The UK authorities have also established a "Court Users Group" in which a range of EAW professionals, including representatives from the Home Office, the CPS and EAW court clerks meet on a quarterly basis to review developing trends and issues and seek to agree best practices in this area.

### 3.11. GENERAL COMMUNICATIONS WITH EXECUTING MEMBER STATES

The expert team was advised that as a general rule if it was felt that some difficulty or special issue might arise and bilateral discussions were not appropriate, or perhaps had not been successful, contact would be made with either the appropriate EJM contact point or the National Member at Eurojust for assistance.

It was the experience of the UK authorities that the frequency of communications in respect of final surrender decisions varies very widely both between the Member States<sup>1</sup> and the executing authorities within Member States (if decentralised in structure).

#### England, Wales and Northern Ireland

The following mechanisms were available to the UK authorities to facilitate such communication:

SOCA - SOCA is the designated central authority for receipt and transmission of UK EAWs. It is the most common and effective means of transmitting requests for further information and updates on the progress of a case;

Liaison Magistrates - The UK has exchanged Liaison Magistrates with France, Spain and Italy. Where there are particular complications or a need to provide detailed explanations of UK law, or to understand the relevant foreign laws or procedures, CPS and the RCPO has found the Liaison Magistrate network to be particularly useful;

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<sup>1</sup> The Irish Central Authority was commended for its use of succinct and regular e-mail updates.

# RESTREINT UE

Eurojust - The CPS/Special Crime Division regularly uses the services of Eurojust. In the main this is to establish an appropriate contact point in the requesting territory where this has not been possible through other means. Eurojust's collegiate system and the influence of its members in their own countries means that it can provide very rapid responses in urgent situations;

Bilateral meetings - The UK holds regular bilateral meetings with a number of its extradition partners<sup>1</sup> These improve working relationships between relevant personnel and focus on individual casework issues as well as aiming to improve understanding of each Member State's requirements so as to improve the quality of EAW requests generally. At a bilateral meeting the UK was informed by Ireland that it intended to amend its EAW legislation to remove its requirement for undertakings (on specialty and onward extradition).

European Judicial Network - Although the CPS has a number of EJM representatives, the effectiveness of the above-mentioned mechanisms has meant that to date it has not been necessary to use the services of the EJM.

## Scotland

In relation to requests to Ireland the expert team was advised that the International Cooperation Unit had a dialogue with the Irish authorities regarding the form, content and drafting of EAWs. This led to a general improvement of relations between the Scottish and Irish EAW authorities (and the practice of draft EAWs being submitted for consideration).

## 3.12. THE MECHANICS OF THE SURRENDER (INCLUDING TEMPORARY SURRENDER) OF REQUESTED PERSONS

### England and Wales

In all cases SOCA receives surrender information concerning requested persons via Interpol channels. This information is then passed to the Metropolitan Police Extradition Unit and the issuing prosecutor.

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<sup>1</sup> Namely: France, Belgium and Ireland.

# RESTREINT UE

Once advised that a prisoner is ready for collection, the Extradition Unit submits a travel plan to SOCA who pass that information on to the executing Member State to confirm its suitability. Officers either liaise with authorities in the Executing Member State directly or via SOCA to finalise collection arrangements.

On arrival in the executing Member State officers from the Extradition Unit arrange to meet with police with custody of the requested person who will usually expedite them through the airport and help them arrange for the pre-boarding of prisoners wherever possible.

On arrival in the UK the requested person is met by uniformed officers<sup>1</sup> who will take him to the nearest police station where he will be charged before being transported to the relevant court<sup>2</sup> to appear before a magistrate.

The expert team was advised that there have been some linguistic difficulties but that these issues at the transportation stage of the process were not insurmountable.

Temporary surrenders are governed by statute, although the UK's domestic legislation<sup>3</sup> only allows for the provision of undertakings where the requested person is serving a UK sentence rather than where there is a trial in process in the UK. At the time of the evaluation visit there had been no temporary or conditional surrenders to the UK. One such surrender was attempted in respect of a Dutch national located in the Netherlands but the UK was logistically unable to provide the required undertaking to the Dutch authorities<sup>4</sup>.

## Northern Ireland and Scotland

The expert team was advised that similar procedures are operated by the officers of the Police Service of Northern Ireland and of the Borders and Lothian Police although no temporary surrenders had been undertaken at the time of the evaluation visit.

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<sup>1</sup> If necessary he will be seen by an immigration officer first.

<sup>2</sup> That is to say the court that issued the originating domestic arrest warrant.

<sup>3</sup> EA section 143 - "undertaking in relation to person serving a sentence."

<sup>4</sup> Namely that the requested person would be available to attend court hearings there in respect of an ongoing domestic criminal matter.

# RESTREINT UE

## 3.13. THE MECHANICS OF THE SURRENDER IN RESPECT OF REQUESTED PROPERTY

The UK practice in respect of requested property is that such requests should be particularised in a separate MLA request. The UK authorities reported no examples of property being surrendered as part of an EAW request.

## 3.14. CONFLICT OF EAWS/EXTRADITION REQUESTS/ONWARD SURRENDER

### England and Wales

RCPO reported one instance in which it had subsequently been advised by the Belgian authorities that a requested person had been surrendered pursuant to a competing EAW.

On that occasion the CPS had received no notice of the review date and so was unable to make representations as to priority.

### Northern Ireland and Scotland

No issues regarding competing EAWs were reported as being experienced by the authorities of Northern Ireland or of Scotland.

## 3.15. EXPENSES

### England and Wales

One issue was reported to have arisen in respect of a Portuguese national surrendered to the UK on the basis of a prosecution EAW. In that case the issuing JA had provided an undertaking to the Portuguese authorities that the requested person was to be returned to Portugal for the service of any sentence arising from the UK domestic trial.

As a matter of UK law however the Home Office has exclusive competence to issue undertakings of this kind, and the fact of this undertaking was not communicated to them. This breakdown of communication resulted in a dispute between the two Member States in respect of the associated costs of repatriation. Unbeknownst to the parties, the period of imprisonment imposed was served prior to resolution of the costs dispute and the individual was released. This was described as a one-off failing with the system and the expert team was invited to view this in a historical context.

# RESTREINT UE

## Northern Ireland and Scotland

The authorities of Northern Ireland and Scotland reported no matters arising contrary to Article 30 of the FD.

## 4. ORGANISATION AND PRACTICES - EXECUTING MEMBER STATE ROLE

The expert team was advised that for the calendar year to 31 October 2006 a combined total of 5986 EAWs and Interpol diffusions had been received. From this total the UK has undertaken 409 arrests, with 210 persons having been surrendered and 47 surrenders having been refused. At 1 December 2006 there were 14 absconders at large.

### 4.1. RECEIPT PROCEDURES

SOCA is the designated CA for EAW<sup>1</sup> receipts throughout the UK.

## England and Wales

The expert team was expressly advised that the UK does not require receipt of original EAWs<sup>2</sup>. Such surrender requests may be received in hard copy, by fax or in electronic form<sup>3</sup>. Receipt must be in English or in the language of the issuing Member State and accompanied by a translation into English. Although not a statutory requirement, the UK authorities consider it to be best practice that translated EAWs should be endorsed by the translator with a statement declaring that they are qualified as such and that the document has been translated to the best of their abilities.

Because of the UK's established practice of only arresting requested persons on the basis of certified<sup>4</sup> EAWs<sup>5</sup>, no issues have arisen in respect of the timeliness of the provision of language compliant documents. Where provisional arrests have been undertaken the service of the English language EAW is deemed to coincide with the requirement to produce the requested person before the JA within a period of 48 hours<sup>6</sup>.

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<sup>1</sup> Extradition Act, section 2(9).

<sup>2</sup> The expert team advised SOCA that certain MSs were in the practice of issuing "duplicate originals" specifically for the UK because they believed that course to be mandatory. The UK authorities confirmed that any such practices were superfluous.

<sup>3</sup> E-mailed or scanned.

<sup>4</sup> As to certification see section 4.2 of this report.

<sup>5</sup> Save for the 20 provisional arrests conducted to date.

<sup>6</sup> Although the Extradition Act itself is silent in respect of the appropriate time limit for the provision of English language EAWs.

# RESTREINT UE

The expert team was advised that the vast majority of EAW receipts are in the form of Interpol diffusions<sup>1</sup>, although such notifications may be circulated on a locate/trace basis and will bear no associated power of arrest.

## Northern Ireland

The Police Service of Northern Ireland receive EAWs once they have been certified by SOCA or (infrequently) directly from the issuing Member State by post or by fax.

## Scotland

Crown Office receives EAWs either from SOCA, before or, sometimes, after they have been certified or directly from the issuing Member State by post or fax.

## 4.2. THE FORM OF THE WARRANT AND REVIEW PROCEDURES.

### England and Wales

Prior to arrests being undertaken, SOCA undertakes a review<sup>2</sup> of the form and content of all EAWs transmitted to the UK in order to "certify" them. Domestically this is referred to as an "administrative assessment". The expert team has asked the UK authorities to provide an average time for this administrative assessment to be completed, but they have been unable to provide any figures.

The expert team noted that it was not possible for an Interpol diffusion to be certified.

The statutory basis for this review is said to flow from the provisions of section 2(7) of the Extradition Act 2003:

*"The designated authority may issue a certificate under this section if it believes that the authority which issued the part 1 warrant has the function of issuing arrest warrants for the category 1 territory."*

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<sup>1</sup> The UK not being a party to the SIS.

<sup>2</sup> In exceptional cases SOCA will seek the advice and assistance of a Specialist Crime Division of the CPS prosecutor in undertaking this review.

# RESTREINT UE

The expert team was advised that the statutory certification as to the competence of the issuing JA is taken to imply that the EAW must, in the opinion of SOCA, be a valid document *ab initio*.

Further, the view is held that core details<sup>1</sup> of the EAW may not be subsequently amended; rather they must be set out within the body of the EAW to be certified. The expert team noted that this review is conducted in accordance with "accusation" and "conviction" checklists that follow the statutory requirements mandated in the introductory sections of the Extradition Act<sup>2</sup>.

This non-statutory extension of the certification process was stated to flow from a developing line of jurisprudence spanning the period governed by the Extradition Act of 1989 (the pre-existing extradition regime) and the 2003 Extradition Act.

The jurisprudence reviewed with the expert team in this regard included the following cases:

- R(Guisto) v Governor of Brixton Prison [2003] UKHL<sup>3</sup>
- Augusto Pinto v Governor of Brixton Prison and another [2004] EWHC 2986 (Admin) – at paragraphs 9 and 11,
- R (on the application of) Bleta v Sec. of State for the Home Department [2004] EWHC 2034 (Admin)<sup>4</sup>
- Office of the King's Prosecutor, Brussels v Aramas [2005] UKHL 7 - at paragraphs 9, 42,44 and 56,
- Kuprevicius v Minister of Justice, Lithuania [2006] EWHC1518 (Admin) – at paragraph 15, and
- Boudhiba v Central Examining Court No 5 of the National Court of Justice, Madrid [2006] 3 All ER 574<sup>5</sup>
- Dabas v High Court of Madrid [2007] UKHL 6.

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<sup>1</sup> Further particulars may be relied on to "resolve ambiguities".

<sup>2</sup> Extradition Act, section 2.

<sup>3</sup> Arising from the 1989 Extradition Act - Measures resulting in the deprivation of liberty must be subjected to "intense scrutiny".

<sup>4</sup> "...The court should not make good any deficiencies by guesswork..."

<sup>5</sup> "...From their position in the Act, it appears that they are preliminary matters which should be considered before the warrant is given a certificate by the designated authority in this country pursuant to section 2(7)..."

# RESTREINT UE

Following an arrest a Special Crime Division prosecutor will examine the EAW to seek to pre-empt any possible legal challenges and to confirm that it complies with section 2 of the domestic law. Should any discrepancies come to light the prosecutor will e-mail a written advice via SOCA to the issuing Member State specifying the remedial steps considered necessary. The purpose of this examination is to advise the issuing JA as to the case's prospect of success and to identify at the earliest possible stage any further information which may be considered prudent to obtain to afford the best possible chance of winning at court. It will then be a matter for the issuing JA to follow the advice given. CPS practitioners stressed that this practice lessens the possibility of extradition the hearing to be adjourned.

In many instances, and notwithstanding statutory provision allowing the admissibility of "*any other documentation*"<sup>1</sup> in surrender proceedings, during the on-site visit the CPS and SOCA accepted that this request may in accordance with the practice of England and Wales result in the requirement to reissue an EAW.

This review duty is ongoing and therefore this process may be repeated at a later stage to take into account any directions made by the JA or any salient representations made by the defence<sup>2</sup>.

## Northern Ireland

Once certified by SOCA, an EAW directed to Northern Ireland is transmitted to the extradition Unit of the Police Service of Northern Ireland. On receipt the EAW would be subjected to a further scrutiny by the police officers and would, concurrently, be forwarded to the Crown Solicitors Office for a review for flaws on the face of the document. The expert team was advised that the Crown Solicitors generally forward a copy of the EAW to the public prosecution service so that they can review the document from a criminal law perspective.

Prior to the apprehension of the requested person any issues arising from these reviews will be transmitted by the Police Service of Northern Ireland back to SOCA, who would then consider whether the matter requires further clarification from the issuing Member State.

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<sup>1</sup> Extradition Act, section 200(2) - "Any other document issued in a category 1 territory may be received in evidence in proceedings under this Act if it is duly authenticated".

<sup>2</sup> These reviews and reports are not a statutory requirement but are believed to be implicit in the CPS professional duty to the issuing JA.

# RESTREINT UE

## Scotland

Where the Crown Office receives an EAW, either from SOCA without certification or from the issuing Member State, the EAW is considered by a lawyer from the International Cooperation Unit to ensure that the statutory criteria are met. It is then certified in conformity with the Act. In the exceptional case where SOCA has already certified the EAW, that certification is accepted in Scotland. During the evaluation visit, the expert team was informed that a certificate issued by Scotland was valid in England and Wales and in Northern Ireland and vice versa.

The expert team was advised that such checks verify, inter alia:

- The disclosure of an extradition offence - in this regard it was observed that in accusation cases the provisions<sup>1</sup> of the Extradition Act state:

*"The conduct constitutes an extradition offence in relation to a category 1 territory if these conditions are satisfied -*

*(a) the conduct occurs in the category 1 territory and no part of it occurs in the United Kingdom;... "*

- The sufficiency of identification information pertaining to the requested person,
- The sufficiency of information pertaining to the conduct of the requested person,
- The existence of a domestic arrest warrant,
- The competence of the issuing JA<sup>2</sup>.

The expert team was further advised that the reviewing International Cooperation Unit lawyer will have in mind the statutory "bars to extradition" (refusal grounds) that the executing JA will, in due course, have to consider as part of the substantive extradition hearing.

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<sup>1</sup> Extradition Act, section 64(2).

<sup>2</sup> The statutory purpose of the certification.

# RESTREINT UE

## 4.3. REQUESTS AND RESPONSES TO REQUESTS FOR FURTHER INFORMATION

### England, Wales and Northern Ireland

Precise statistics were not provided to the expert team during the evaluation visit; however, the clear view was expressed by SOCA<sup>1</sup> that the principal sources of requests for further information included:

- Uncertainties surrounding the identity of requested persons - namely the failure to provide photographs or fingerprint data;
- Issues arising from insufficiently clear particulars of the conduct of the requested person;
- The failure to sufficiently detail the underlying reasons for delay/passage of time<sup>2</sup>; and
- Detail concerning the statutory requirement<sup>3</sup> that the requested person in any conviction case is declared to be unlawfully at large.

The UK accepted that because of the reasoning said to flow from the jurisprudence set out at 4.2 above, requests for further information could not be used to fill substantive gaps in the initial EAW.

In this regard the expert team's attention was drawn to the conviction case of Augustus Pinto<sup>4</sup> in which the argument in respect of Pinto's return to Portugal revolved around the EAW failing to particularise that he was "unlawfully at large", the language of the EAW referring instead to "*a precarious and prolonged exit*". In that case the purpose for the issue of the EAW was held to be unclear. The team noted that the amending provisions of the Police and Justice Act 2006 are believed to have rendered null and void issues surrounding the historical requirement that the requested person is stated to be unlawfully at large.

The authorities in England and Wales acknowledged that the practical consequence of such requirements were that issuing Member States may be required to reissue EAWs (although it was recognised that some Member States were as a matter of their own domestic law unable to reissue unexecuted EAWs for this purpose).

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<sup>1</sup> SOCA being the conduit for judicial requests in addition to their own.

<sup>2</sup> The passage of time such that surrender by the UK would be unjust or oppressive has been introduced as an express refusal ground by virtue of the Extradition Act, section 14.

<sup>3</sup> Extradition Act section 2(5)(a) – abolished by the Police and Justice Act 2006 on 8 January 2007.

<sup>4</sup> Augustus Pinto v Governor of Brixton Prison and another [2004] EWHC 2986 (Admin).

# RESTREINT UE

The UK Courts accepted also that issuing JAs should:

*"... be aware that it may be necessary to provide information to the English Court beyond that contained in the warrant itself."*<sup>1</sup>

The expert team was advised of one current matter in respect of receipt of a German EAW for the offence of murder that had been certified by SOCA and transmitted to the Police Service of Northern Ireland who then conducted a review of the facts on the EAW. The Police Service of Northern Ireland determined that the offence described was, as a matter of the law of Northern Ireland, one of attempt rather than the substantive act. After consultation with the Crown Solicitor's Office they returned the EAW to SOCA asking that clarification be sought from the issuing Member State. At the time of the evaluation visit there had been no reply from Germany.

During the visit, the expert team was given to understand that, as a matter of practice, all requests for information are routinely routed via SOCA (Interpol) channels. In cases of urgency where there is direct contact between the Special Crime Division and the issuing JA, such requests may be transmitted directly and copied to SOCA for information.

## Scotland

The expert team was advised that the Scottish executing JAs had taken a more flexible stance by allowing EAWs to be amended by the provision of subsequent information, that will be attached to the EAW <sup>2</sup>.

The International Cooperation Unit took the view that such issues were properly a matter for the executing JA to determine<sup>3</sup>. Given that the adversarial system effectively precluded direct judicial contact in the absence of all parties to the litigation, the JA's would issue necessary requests in open court for the Lord Advocates Office to consider<sup>4</sup>. Scotland's executing JAs confirmed that, dependent on the nature of the clarification concerned, they would probably be minded to allow faxed or e-mailed details to stand together with the original EAW so the totality of the information could be considered, rather than merely the form of the EAW itself.

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<sup>1</sup> Kociukow v District Court Bailystok III Penal Division [2006] EWCH 56 (Admin).

<sup>2</sup> As foreseen by Article 15(2) of the FD.

<sup>3</sup> The Sheriffs would of course determine whether such information was in fact necessary and by when it should be provided.

<sup>4</sup> The Lord Advocate is the sole prosecuting authority in Scotland and may not be directed to act by the court.

# RESTREINT UE

One specific instance was reported to the expert team in respect of an Italian request. In that matter confusion had arisen over the status of the criminal process in Italy. The Scottish view was that a level of knowledge of Italy's criminal justice system<sup>1</sup> had been assumed rather than the matter having been explained from basic principles. The confusion was resolved without undue difficulty.

## 4.4. CIRCULATION PROCEDURES AND INVESTIGATIONS CONCERNING THE LOCATION OF THE REQUESTED PERSON

### England and Wales

Requests transmitted to the UK will be processed as follows:

- All of the 5,986 surrender requests (EAWs and Interpol diffusions) received up until the time of the evaluation visit were allocated to SOCA case officers from one of the EAW administrative teams (there being 23 officers spread through the 4 teams comprising the Fugitive Unit) and *searched*<sup>2</sup> against their intelligence database to discover potential links to the requested person;
- Any requests accompanied by an EAW is allocated as a case for proactive enquiries (referred to domestically as "intelligence development") and *circulated* on the Police National Computer within 24 hours of receipt and on the Immigration computer system as soon as practicable;
- Any request for surrender through the Interpol channels without an EAW copy which details a UK connection is also allocated as a case for proactive enquiries to be made and is also *circulated* on the Police National Computer within 24 hours of receipt and on the Immigration computer system as soon as practicable;

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<sup>1</sup> The finality or otherwise of the trial phase.

<sup>2</sup> Rather than circulated on the Police National Computer.

## RESTREINT UE

- Any requests for surrender through the Interpol channels without an EAW copy which do not detail a UK connection are assessed against specific list of 22 "seriousness indicators". If any of the criteria are met, the details will be *circulated* on the Police National Computer and on the Immigration computer system as soon as practicable. If the criteria are not met no such *circulation* takes place. Therefore these requests will not be pursued in the UK and will not come to notice if the requested person is subsequently searched.

Those requests that are entered onto the Police National Computer will be entered either as a certified EAW (in which case they bear an attendant power of arrest) or as an uncertified EAW<sup>1</sup> (namely a locate/trace notification). Similar circulations take place on the immigration computer systems. The expert team noted that as it was not possible for an Interpol diffusion to be certified, arrests can only be undertaken in consequence of an EAW actually issued and transmitted to the UK<sup>2</sup>.

The expert team was advised that whereas a search against the PNC can be conducted very rapidly indeed, to input that same data in the manner prescribed by the system (that is to say as a circulation) would take SOCA operatives between 5 - 10 minutes per file.

### Northern Ireland

The expert team was advised that in addition to the above central searches and given small size of the jurisdiction of Northern Ireland it was generally the case that discrete local enquiries would initially be undertaken by the extradition unit of the Police Service of Northern Ireland and a broader local circulation only put in place if the efforts to locate the requested person failed.

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<sup>1</sup> Included in this category are all Category A Interpol diffusions.

<sup>2</sup> Save for the 20 cases in which provisional arrests had been undertaken.

# RESTREINT UE

## Scotland

In addition to the searches undertaken by SOCA the detail of a request linked to Scotland will be transmitted to the Lothian and Borders Constabulary<sup>1</sup> at the same time as the matter is being considered by the lawyer from the International Cooperation Unit (that lawyer being the one who may ultimately plead the case before the Sheriff on behalf of the issuing Member State). On completion of the International Cooperation Units further review the EAW will be scanned and e-mailed to the appropriate international liaison officer who is thereby directed to enter an alert on the PNC<sup>2</sup>.

The police then undertake an immediate enquiry of national databases to confirm the location of the requested person. All Scottish Police forces have an international liaison officer responsible for the conduct of such searches<sup>3</sup> and they do not operate a specialist Extradition Unit; the expert team was advised that this option is under consideration.

## 4.5. ARREST PROCEDURES/FIRST HEARING

An Interpol Red Notice has no status under UK law; it is however possible that in urgent cases a Red Notice or Interpol diffusion could serve as the basis for a provisional arrest. In such an instance section 5 of the EA provides:

- (1) A constable, a customs officer or a service policeman may arrest a person without a warrant if he has reasonable grounds for believing –
- (a) that a Part 1 warrant has been or will be issued in respect of the person by an authority of a category 1 territory, and
  - (b) that the authority has the function of issuing arrest warrants in the category 1 territory.

Persons provisionally arrested must be produced before an appropriate judge within 48 hours of their arrest, not to the City of Westminster Magistrates' Court. If necessary, the judge would go to the person, rather than the person be brought to the Court.

The expert team was advised that provisional arrests have been undertaken in England and Wales on 20 occasions since 1 January 2004.

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<sup>1</sup> 1 of 8 Scottish Police forces whose force area encompasses the Edinburgh Sheriff Court.

<sup>2</sup> In Scotland officers of HMRC have no access to the PNC.

<sup>3</sup> The search methodology is unconnected to the mode of receipt of an EAW.

# RESTREINT UE

## England and Wales

Police officers<sup>1</sup>, officers of HMRC and key immigration officers<sup>2</sup> have access to either the PNC or the immigration information system and all are empowered to undertake an arrest in respect of certified EAWs.

As a matter of practice however it will be the officers of the Metropolitan Police Extradition Unit who undertake locate and arrest duties in respect of requested persons believed to be in England and Wales. This applies in respect of requested persons located as a result of their own enquiries or those who come to light during the course of domestic proceedings, border or domestic control checks.

Once the certified EAW has been received by the Extradition Unit from SOCA it will be the subject of further scrutiny by one of the 3 Detective Sergeants so that file allocation can be determined and to ensure:

- The accuracy of the certification;
- The completeness of the EAW form;
- The correspondence of the dates on the EAW and the certificate;
- The adequacy of identification information.

If errors are observed (and the expert team was advised that occasional issues had arisen in respect of each of these categories) the EAW will be resubmitted to SOCA for renewed consideration.

The officers of the Extradition Unit have developed an extensive list of police contacts throughout Member States so they considered that they are able to undertake rapid telephone risk assessments of requested persons to determine the appropriate complement for the arresting group (the use of armed response or specialist surveillance units may for example be deemed to be appropriate). The officers of the Extradition Unit confirmed that no scheduled arrests would proceed until an adequate risk assessment had been put in place.

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<sup>1</sup> Including service police officers.

<sup>2</sup> Those at ports, airports and entry clearance desks in British diplomatic posts overseas.

# RESTREINT UE

In addition to this the expert team was advised that if the arresting officers were of the view that the facts of the offence were insufficiently described in the EAW (in this context insufficiency relates to the EAW providing the police with insufficient information to relay an appropriate level of detail of the facts of the case to the requested person on arrest), they would telephone the issuing Member State police force for information which would allow them to better outline the reasoning of the arrest.

The arresting officers will seek to provide the requested person with a copy of the EAW at the time of arrest or as soon as is practicable thereafter<sup>1</sup>.

Once arrested pursuant to a certified EAW<sup>2</sup> the Extradition Unit officers (or officers from another force area acting following coordination with them) must ensure that the requested person is produced before an "appropriate judge" as soon as practicable<sup>3</sup>.

Those requested persons provisionally arrested<sup>4</sup> must be produced before the City of Westminster Magistrates' Court within 48 hours of their arrest together with a certified EAW and an English translation thereof. The Extradition Unit officers will also prepare an arrest dossier containing a cover form, a domestic (administrative) charge, a report on the facts, a bail form and an arrest statement for the prosecutor. They will then usually accompany the requested person to court and remain present for the duration of the initial hearing.

In either instance the police will be responsible for the provision of linguistic assistance during the period prior to the first hearing<sup>5</sup>; thereafter the court assumes responsibility for this service.

The JA will undertake an initial enquiry into the facts and the chronology of the case to ensure that the appropriate statutory time limit has been adhered to. A failure to produce the requested person in compliance with the statutory regimes will result in a mandatory discharge of the proceedings.

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<sup>1</sup> Extradition Act, section 4(3).

<sup>2</sup> Extradition Act, sections 3-4.

<sup>3</sup> An appropriate judge being a District Judge designated by the Lord Chancellor, and usually sitting at the City of Westminster Magistrates' Court in London.

<sup>4</sup> Extradition Act, sections 5-6.

<sup>5</sup> Lists of interpreters are kept at all police stations authorised to deal with detained persons.

## RESTREINT UE

The expert team was advised that in one case<sup>1</sup> the High Court upheld an appeal for first instance discharge on the basis that the requested person was not produced as soon as practicable. In that case he had been arrested on a Friday and produced to Court the following Monday.

The JAs are required by statute to examine a number of additional factors at this initial hearing, namely:

- Given that the JAs' powers in this regard are restricted to part 1 warrants (only) it is necessary to determine that the EAW is a "Part 1 Warrant" (EAW) for the purposes of the Act<sup>2</sup>. In this regard the expert team's attention was drawn to the case of *Hunt v Court of First Instance, Antwerp, Belgium* [2006] All ER (D) 198 (Feb). The facts in that matter were stated to be as follows:
  - The Belgian warrant referred to the circumstances as "the money ... originated out of cigarette smuggling" and identified with a mark X that the conduct amounted to "money laundering and the proceeds of crime"; it did not however refer to the specific provision which rendered the conduct an offence under Belgian law.
  - The offence was alleged to have been committed between 24 March 1997 and 5 June 1998. Hunt was interviewed in December 1999. The EAW was not issued until 15 October 2004. The Belgian authorities were said to have given no explanation for the delay.
  - The Appeal Court held that section 2(4) (c) Extradition Act 2003 requires the relevant provision of the requesting territory's law under which the conduct constitutes an offence to be identified in the warrant. Failure to do so meant that the EAW could not amount to a Part 1 warrant under the Extradition Act 2003.
  - The appeal was upheld and the warrant quashed.
- The question of identity must then be determined to the satisfaction of the court;
- Thereafter the court must consider the competence of the issuing JA (The statutory certification<sup>3</sup>);
- Whether the EAW contains a statement of purpose (prosecution or conviction case); and
- Whether the EAW contains the necessary information as specified in the Act (identity, particulars of the offence, degree of participation and details of sentence etc).

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<sup>1</sup> *Nikonovs v The Governor of HM Prison Brixton* [2005] EWHC 2405 (Admin).

<sup>2</sup> The UK JAs expressed a willingness to be guided by specific jurisprudence on the issue of the interaction of FD Article 15(2) with the current line of High Court judgements that seem to state that such additional information may not be used to remedy a defective EAW.

<sup>3</sup> Extradition Act, section 2(7).

## RESTREINT UE

On being satisfied as to the above factors the substantive extradition hearing must be fixed to commence no later than 21 days from the date of the arrest of the requested person<sup>1</sup>. Additionally the issue of irrevocable consent<sup>2</sup> will be explored by the JA with the requested person being advised that, in the case of a contested surrender, subsequent consent may be given at any future hearing.

The court will also determine the remand status of the requested person<sup>3 4</sup>. Both the prosecution<sup>5</sup> and the defence<sup>6</sup> have recourse to appeal an unfavourable bail decision to the High Court. The expert team was advised by the JAs that bail in EAW cases, even after an adverse surrender decision, was "not uncommon".

The expert team was advised that on 2 October 2006 substantive changes were made to the entire England and Wales criminal legal aid system and that those changes had significantly hampered the ability of requested persons to obtain ongoing legal aid (although duty solicitor representation still covered initial hearings, that representation was limited to a single appearance only). At the time of the evaluation visit requested persons and their partners were required to complete a mandatory 26 page form of means, submit annual accounts (in the case of the self-employed), and provide a National Insurance number. The team was advised that unrepresented clients were now making bail applications, considering consents to surrender and seeking to adjourn substantive surrender hearings in person.

### Northern Ireland

The practice in Northern Ireland is that intelligence led arrests will be undertaken by the officers of the Extradition Unit of the Police Service of Northern Ireland who will then take the requested person to a designated police station to be held pending the first court appearance. Whilst in custody the police will provide the requested person with a copy of the EAW and with access to legal representation.

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<sup>1</sup> Extradition Act, section 8(1)(a).

<sup>2</sup> Extradition Act, section 8(1)(b)(c).

<sup>3</sup> Extradition Act, section 8(1)(d).

<sup>4</sup> Bail considerations are the same as those taken into consideration in respect of standard domestic proceedings (i.e. subject to exceptions, defendants enjoy a general right to bail).

<sup>5</sup> Extradition Act, section 201(9).

<sup>6</sup> Rules of the Supreme Court, Order 79 rule 9.

# RESTREINT UE

Notice of the arrest will be passed to the Crown Solicitor's Office and the court is requested to hold the initial hearing as soon as practicable.

## Scotland

As a matter of practice the arrest of the requested person will be undertaken by the appropriate international liaison officer in cooperation with sufficient officers from the force area in which the requested person has been located.

Again, prior to arrest the officers will have undertaken police-to-police style risk assessments as to the nature of the individual sought<sup>1</sup>. The expert team was advised that this is an issue of critical importance to them and one that must be satisfactorily completed before further planned action<sup>2</sup> is taken.

The Scottish authorities reported no examples of cases being discharged due to perceived delay in the initial production before the Sheriff (the 4 Sheriffs, together with necessary court staff operate a 24/7 on call rota to service the EAW list).

At the first hearing (and following the resolution of any matters pertaining to identity) the issue of irrevocable consent will be examined in open court and, if given, a record of the signed form of consent will be prepared.

The initial hearing serves to deal with case management issues by the Sheriff issuing of case directions and the identification of preliminary points of law, although the current procedure is that Practice Directions (such as a direction that the parties serve skeleton arguments within a designated period) are restricted to the High Court.

Scottish arrangements for language assistance effectively mirror those in England and Wales. Legal Aid will be available for the initial representation and thereafter a separate paper application will be required. The expert team noted that legal aid certificates for counsel in addition to solicitors were not uncommon even in respect of fundamental first instance surrender arguments.

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<sup>1</sup> Previous conduct, antecedents, contagion and the like.

<sup>2</sup> Arresting officers would consult with the legal staff of the International Cooperation Unit prior to undertaking a provisional arrest.

# RESTREINT UE

The files of the Scottish Legal Aid Board ("SLAB") were reviewed and the statistics examined. The expert team noted that in respect of all applications SLAB were able to deliver the following decisions as to the grant or refusal of legal aid: 44% within 2 days, 79% within 4 days, 99% within 9 days and, in respect of sanction cases (counsel) 94% within 2 days.

The issue of bail is stated to be a matter for the court and dependant on all the circumstances of the particular case<sup>1</sup>. However in terms of a statement of general practice the evaluation team was advised that bail was more likely to be withheld in a conviction case than in a prosecution matter where a range of non-custodial measures<sup>2</sup> would be more likely to be deployed to ensure the attendance of the requested person.

## 4.6. THE SURRENDER DECISION

### England and Wales

The expert team was advised that in uncontested matters the period between arrest and the first instance surrender decision was 28 days and in contested matters the average was 65 days.

Although the executing JAs were of the view that the standard of EAWs upon which they had to adjudicate was highly variable, there was uniformity of opinion in respect of the need of issuing Member States to provide greater factual detail to explain delay in old cases.

The team noted that, in appropriate cases, a practice was developing whereby an intervening section "2 validity hearing" could be listed to deal with matters of concern to the parties prior to the substantive surrender hearing.

At the substantive extradition hearing (listed to commence no later than 21 days from the arrest of the requested person, but once begun it may be suspended at the discretion of the court) the JAs are required determine the following issues<sup>3</sup>;

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<sup>1</sup> The Scotland Act containing comparable bail provisions to the Bail Act in England and Wales.

<sup>2</sup> The surrender of passport/international travel documents, the lodgement of a sum of money as security etc.

<sup>3</sup> The considerations that executing JAs are required to apply in order to determine the question of surrender are strictly prescribed by statute.

# RESTREINT UE

- Is the offence an extradition offence<sup>1 2</sup>- The Extradition Act sets out in some detail those offences which constitute extradition offences in both prosecution<sup>3</sup> and conviction<sup>4</sup> cases. Should the JA determine that the offence is not an extradition offence the requested person must be immediately discharged<sup>5</sup>;
- On being satisfied that at least one extradition offence is disclosed<sup>6</sup> the JA will then proceed to consider whether any of the statutory bars to surrender (refusal grounds) are fulfilled (see section 4.7).

Such contested hearings are greatly assisted by the parties cross-serving skeleton arguments in respect of any points to be taken in advance of the hearing. The expert team noted that despite these documents being designated as "skeleton arguments" they were generally comprehensive expositions of the law and facts in issue. The expert team was advised by the JAs that the reliance on skeleton arguments was a contributory factor in restricting the duration of contested surrender hearings to somewhere in the region of 1 hour on average.

The expert team was further advised that in respect of straightforward EAW requests the JAs would endeavour to hand down their surrender judgement immediately. In other cases it was considered that a period of 2 weeks could be expected. The court clerks would in all cases fax a copy of the judgement to SOCA and to the High Court to ensure all parties were aligned in terms of the time limits.

Details of the progress of surrender cases are as a general rule conveyed to the issuing Member State by SOCA/Interpol channels; however the Special Crime Division prosecutor may provide ad hoc updates to the appropriate official (directly or via Eurojust) via telephone, e-mail or fax if it is felt that the instant situation merits such contact.

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<sup>1</sup> Extradition Act, section 10(2).

<sup>2</sup> The expert team noted that there is now clear jurisprudence (*Dabas v High Court of Justice, Madrid* (respondent) (Criminal Appeal from Her Majesty's High Court of Justice) [2007] UK HL6) establishing that the signature of the issuing JA on the face of the EAW serves to self certify that the conduct described is that of a FD list offence.

<sup>3</sup> Extradition Act, section 64.

<sup>4</sup> Extradition Act, section 65.

<sup>5</sup> Extradition Act, section 10(3) "if the judge decides the question in subsection (2) in the negative he must order the person's discharge."

<sup>6</sup> If no such offences are disclosed the requested person must be discharged.

# RESTREINT UE

## Northern Ireland

The statutory considerations and time limits apply equally to surrender decisions reached by the JAs of Northern Ireland; however, no interlocutory procedures have evolved to deal with issues pertaining to section 2 validity issues.

## Scotland

At present 4 designated EAW JAs sit at the Edinburgh Sheriff Court<sup>1</sup>.

Each JA carries their own designated caseload but all are competent to transfer cases as necessary to progress matters as expeditiously as possible. The expert team was advised that it was common practice for the Sheriffs to discuss common issues arising on EAW files; it was noted however that no professional liaison existed between the JAs from the different legal jurisdictions of the UK.

Because of the strong domestic tradition of hearing oral argument, the Scottish JAs expressed a reluctance to curtail points made by the advocates before them. One case was cited in which the defence were able to protract the surrender hearing for 3 days in a matter in which the central argument concerned defence issues over the appropriateness of the designation, by an issuing Member State, of a JA (namely that it did not accord to the Common Law model of such<sup>2</sup>).

The expert team was advised that contested surrender hearings will generally be expected to occupy 2 - 3 days at first instance level and that that, taken together with factors such as availability of the parties to the litigation, leads to constant delay.

In Scottish cases the staff at the International Cooperation Unit represent the Lord Advocate who in turn represents the issuing Member State before the courts.

The Crown Office will, as a matter of course, correspond in writing with the author of the EAW or the appropriate CA as the case may be if it is considered that such contact becomes necessary during the course of the surrender proceedings.

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<sup>1</sup> One additional Sheriff was designated during 2006 to assist with the increasing EAW workload.

<sup>2</sup> This argument being entirely contrary to the FD.

# RESTREINT UE

Should a decision to surrender the requested person be made it was likely that a corresponding order will be made for a remand in custody.

## 4.7. REFUSALS TO SURRENDER

In addition to the executing JA being required to consider whether the EAW itself is section 2 compliant and issued in respect of an extradition offence the Extradition Act details 10 specific grounds of refusal; these bars apply equally to the 3 legal jurisdictions:

- The rule against double jeopardy<sup>1</sup>;
- Extraneous considerations<sup>2</sup> (equivalent to FD recital 12);
- Passage of time<sup>3 4</sup>;
- The age of the requested person<sup>5</sup>;
- Hostage taking considerations<sup>6</sup>;
- Specialty<sup>7</sup>;
- Earlier extradition from an "EAW territory"<sup>8</sup>;
- Earlier extradition from a "non EAW territory"<sup>9</sup>;
- In absentia convictions in respect of which the requested person did not deliberately absent themselves and would not be entitled to a retrial (or equivalent review) on return<sup>10</sup>; and
- That the surrender (as opposed to the substantive proceedings) would be incompatible with ECHR rights.<sup>11 12</sup>
- Under Sections 22-25 of the 2003 Act, proceedings may also be adjourned or discharged, e.g. on medical and physical grounds.

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<sup>1</sup> Extradition Act, section 12.

<sup>2</sup> Extradition Act, section 13.

<sup>3</sup> Extradition Act, section 14.

<sup>4</sup> The UK does not operate a statutory time bar on the prosecution of offences.

<sup>5</sup> Extradition Act, section 15.

<sup>6</sup> Extradition Act, section 16.

<sup>7</sup> Extradition Act, section 17.

<sup>8</sup> Extradition Act, section 18.

<sup>9</sup> Extradition Act, section 19.

<sup>10</sup> Extradition Act, section 20.

<sup>11</sup> Extradition Act, section 21.

<sup>12</sup> Principally arguments pursuant to ECHR Articles 6 and 10.

# RESTREINT UE

The expert team noted that the Extradition Act contained refusal grounds not permitted by the FD. In consequence the central and judicial authorities of the UK had developed the practice of conducting an examination of the facts of the surrender case and the conduct of the issuing Member State<sup>1</sup>. These enquiries were contrary to the principle of mutual recognition.

The expert team was provided with the following statistical records pertaining to the basis of EAW refusals:

- 1 Delay between arrest and first production to Court
- 1 No EAW available following a provisional arrest
- 17 EAW withdrawn by IMS
- 6 No extradition offence disclosed
- 2 Time bar in issuing Member State
- 1 Not unlawfully at large
- 1 EAW did not contain a statement that the requested person was unlawfully at large
- 8 Passage of time
- 3 Double jeopardy
- 1 No accusation statement in the EAW
- 1 Insufficient detail as to conduct contained in the EAW.

## 4.8. APPEALS PROCEDURES AND THE IMPACT ON TIME LIMITS

A requested person is provided with recourse to the full range of appeal procedures of the criminal justice system. As a matter of fact therefore the lodgement of an appeal effectively precludes the UK authorities from complying with the FD surrender timetable.

The expert team noted that the Extradition Act cites time limits for the commencement of each tier of appellate hearing, but does not provide a maximum time between arrest and the final decision (although in all cases the physical surrender itself must be undertaken within 10 days of the final decision).

Authorities from all parts of the UK noted a general tendency for the defence to use up the full allocation of the time permitted to lodge appeals. There was acceptance that the adversarial system of litigation meant that this conduct was not to be the subject of criticism.

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<sup>1</sup> To establish the reasons behind any apparent delay.

# RESTREINT UE

## England, Wales and Northern Ireland

- First instance appeals are determined in the Administrative Division of the High Court<sup>1</sup>. The requested person<sup>2</sup> or the issuing authority<sup>3</sup> (represented by the Special Crime Division of the CPS) may serve notice of appeal (law or fact) within 7 days of the surrender decision. All first instance appeal are appeals of right<sup>4</sup>.

To succeed the applicant must demonstrate that: (1) the JA ought to have decided one of the questions before him differently, and that had he done so, he would have been required to make the opposite decision on surrender to the one made; or (2) raise an issue or provide evidence not raised/available at the substantive surrender hearing, which had it been raised/available would have resulted in the JA making the opposite decision on surrender to the one made.

Under Part 52 of the Administrative Court Practice Direction<sup>5</sup>, the appellate hearing must have commenced within 40 days of arrest (although the Court has discretion to extend this time limit if it considers it in the interests of justice to do so<sup>6</sup>). The hearing will be before 2 judges of the High Court<sup>7</sup> and will typically be listed for ½ day. The expert team was advised that judgement in these matters is generally reserved for a period of 3-4 weeks.

- Either party may then appeal to the House of Lords<sup>8</sup>, either with the leave of the High Court<sup>9</sup> (leave applications themselves must be made within 14 days of the Divisional Court ruling on the appeal) or, if such leave is refused, with the leave of the House of Lords itself (leave to the House of Lords must be brought within 28 days of the High Court's decision to refuse leave).

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<sup>1</sup> In Northern Ireland the Queen's Bench Division of the High Court.

<sup>2</sup> Extradition Act, section 26.

<sup>3</sup> Extradition Act, section 28.

<sup>4</sup> That is to say leave to appeal is not required.

<sup>5</sup> Order 61 A of the Rules of the Supreme Court (Northern Ireland) 1980 for Northern Ireland.

<sup>6</sup> The expert team was advised that very few cases actually arrive at the High Court within the prescribed timeframe.

<sup>7</sup> Save for vacation periods where a single judge may hear the appeal.

<sup>8</sup> Extradition Act, section 32.

<sup>9</sup> Leave to appeal to the House of Lords will only be granted by the High Court if it has certified that there is a point of law of general public importance involved in the decision, and it appears to the court making the decision that the point is one that ought to be considered by the House of Lords.

# RESTREINT UE

The substantive appeal to the House of Lords must then be commenced within 28 days of the decision to grant leave; no statutory limit exists in respect of the delivery of the ultimate ruling of their Lordships.

- It is possible that the requested person may additionally apply for a writ of habeas corpus. This is a prerogative writ available to all detained persons as of right. Habeas applications will be determined by a single judge of the Administrative Division of the High Court as soon as is practicable after the application is made. In Northern Ireland, habeas corpus applications are normally heard by a Divisional Court of the Queen's Bench Division of the High Court.

The expert team was advised that, at the time of the evaluation visit, there had been 89 cases in which notifications as to breach of FD time limits had been made to Eurojust<sup>1</sup>.

## Scotland

The Scottish procedures mirror those of the rest of the UK in respect of the appeal from the first instance decision; however, there is no provision for appeal to the House of Lords.

Instead, an appellant in proceedings before the Scottish Courts may have recourse to the Privy Council<sup>2</sup>, but only in relation to devolution issues. The expert team was advised that Proceedings before the Privy Council could last for up to 18 months, as there was no priority or expedited process available to EAW matters. In fact however, there has not been a case where leave to appeal to the Privy Council has been granted.

It is apparent therefore that the surrender of a requested person in accordance with the timetable requirements of the FD in appellate matters is impossible.

The Scottish authorities reported that during 2006 they had received 24 EAWs in respect of 21 requested persons. Of these requests: 11 individuals had been traced with 4 having been returned (in an average of 32 days), 2 EAWs had been refused and (at the time of the evaluation visit) 7 EAWs remained to be determined by the courts.

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<sup>1</sup> These notifications are made quarterly in arrears.

<sup>2</sup> By virtue of the Scotland Act 1998, section 57(2).

# RESTREINT UE

In all cases in which the requested person has consented to their surrender the Scottish authorities have complied with the 10-day surrender deadline.

## 4.9. OWN NATIONAL AND YOUTH ARREST AND SURRENDER ISSUES

There is no provision in UK law requiring that British nationals be returned to the UK to serve a sentence imposed abroad following an EAW surrender.

The UK authorities expressed no problematic experiences in undertaking surrenders of UK nationals and reported that no EAWs had been received in respect of persons below the age of criminal responsibility.

## 4.10. SPECIALTY

The Extradition Act prohibits<sup>1</sup> surrender where there are no specialty arrangements with the issuing Member State, although there is no need for the EAW to recite the arrangements that are in place. The respect for speciality by the issuing State should be inferred from the fact that the issuing Member State was party to the FD. The position regarding speciality throughout the UK is not compatible with the FD.

In respect of defence specific arguments that an issuing Member State "might" breach these rules the evidential hurdle has therefore been set at a very high level, the Administrative Court stating that it:

*"... would need compelling evidence that it is likely to do so in the future."*<sup>2</sup>

Subject to specialty arrangements with an issuing Member State, and the consent of the requested person a prosecution may only be brought for:

- The offence in which surrender was ordered;
- An extradition offence disclosed on the same facts;
- An appropriate offence in respect of which the executing JA has authorised<sup>3</sup>;

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<sup>1</sup> Extradition Act, section 17.

<sup>2</sup> Farad Hilali v Central Court of Criminal Proceedings, No. 5 Madrid [2006] EWHC 1239 (Admin) – paragraph 52.

<sup>3</sup> Extradition Act, section 55.

# RESTREINT UE

- An offence not punishable with imprisonment/detention;
- An offence in respect of which the person will not be detained in connection with his trial, sentence or appeal.

## 4.11. ONWARD SURRENDER/EXTRADITION

At the time of the evaluation visit no onward surrenders had taken place.

## 4.12. AD HOC ISSUES SURROUNDING UNDERTAKINGS

Similarly no issues were expressed to the expert team.

## 4.13. ARTICLE 32 EXPERIENCES

To date the UK has not experienced any difficulties with regard to EAWs received from Member States that have made declarations pursuant to Article 32 of the FD.

The critical date for UK purposes is the date on which the request is received. All requests received from "Category 1 territories" after 31 December 2003 will be dealt with pursuant to Part 1 of the Extradition Act 2003 i.e. the procedures of the Extradition Act (EAW) will apply. As long as the warrant/extradition request complies with the requirements of Part 1 (in particular section 2) it does not matter that the request is not an EAW or described as such.

Until the amendment of the Czech Republic's domestic legislation<sup>1</sup> the UK was unable to act upon extradition requests received from the Czechs for conduct prior to 1 November 2004. The Czech transposition exceeded the provisions of Article 32 (in that they were also operating the temporal reservation as issuing Member State<sup>2</sup>) and, as the Czech Republic was designated under Part 1 of the Act<sup>3</sup> it was not possible to process extradition requests made under the pre-existing regime.

Now that the Czech Republic has amended its domestic implementing legislation this problem can be viewed in a historical context.

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<sup>1</sup> Entry into force 1 July 2006.

<sup>2</sup> Rather than merely as executing Member State.

<sup>3</sup> The Extradition Act requires the UK to designate a territory either under the simplified Part 1 procedures (EAW) or (traditional) Part 2 procedures; such designations are mutually exclusive.

# RESTREINT UE

## 4.14. TEMPORARY/CONDITIONAL SURRENDER

The Extradition Act makes specific provision<sup>1</sup> for the temporary surrender of requested persons serving a sentence of imprisonment (but not otherwise). In such instances the executing JA was required to request an undertaking that the requested person be returned at the conclusion of the foreign proceedings (trial). Amendments to that regime have now been enacted<sup>2</sup> so that arrangements may now be put in place for persons in custody or those released on licence, and for return to the UK to be required following the service of any sentence imposed.

No surrenders under these provisions have been undertaken.

## 4.15. THE MECHANICS OF SURRENDER (INCLUDING TEMPORARY AND CONDITIONAL SURRENDER) OF REQUESTED PERSONS

Pursuant to the timetable set down by the UK's implementing legislation, the requested person is required to be surrendered to the issuing Member State within 10 days of the final surrender order<sup>3</sup>. Failure to comply with this timetable without reasonable cause being demonstrated would lead to the discharge of the requested person<sup>4</sup>.

This 10 day limit however failed to take account of the 7 day window of appeal available to all persons in respect of EAW proceedings<sup>5</sup>. In consequence in a large number of cases the Metropolitan Police Extradition Unit had been left with just 3 days to undertake the full logistics of physical surrender. The recently enacted Police and Justice Act 2006 has rectified this difficulty by prescribing a full 10 day surrender period in addition to the 7 day initial appeal limit set out above.

### Northern Ireland

Responsibility for surrenders rests with the Police Service of Northern Ireland.

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<sup>1</sup> Extradition Act, sections 37 and 52.

<sup>2</sup> Paragraphs 7 and 8 of Schedule 14 of the Police and Justice Act 2006.

<sup>3</sup> Extradition Act, section 35.

<sup>4</sup> Extradition Act, section 35(5).

<sup>5</sup> Extradition Act, section 28(5).

# RESTREINT UE

The majority of experience to date has been with persons requested from the Irish Republic. In those cases the requested persons are transported to the land border between the two jurisdictions and surrendered into the custody of the Irish police authorities by prior arrangement.

## Scotland

The Scottish position is similar to that of the rest of the UK; however, the expert team was advised that flight availability may be rather restricted. In one instance no direct flights to Poland were available for a period of 3 weeks following the final surrender decision.

### 4.16. THE MECHANICS OF THE SURRENDER OF REQUESTED PROPERTY

No practical experiences of such requests were recounted to the expert team; however, the police authorities interviewed confirmed that the preferred course would be that they comply with such requests using established MLA channels.

### 4.17. CONFLICT OF EAWs/EXTRADITION REQUESTS

In cases where 2 or more EAWs have been received in respect of the same person it will be for the JA to reach a decision in respect of the priority applications<sup>1</sup>. The JA is empowered to determine the priority of unexecuted EAWs or to order the deferral of an unexecuted surrender if that is deemed to be the appropriate course.

In reaching his view the JA is obliged to take into consideration the following statutory matters<sup>2</sup>:

- (a) The relative seriousness of the offences concerned;
- (b) The place where the offences were alleged to have been committed;
- (c) The date on which the EAWs were issued; and
- (d) Whether the EAWs relate to conviction cases.

## England and Wales

The English authorities reported that, in an unreported first instance consent case, the executing JA determined that distinct EAWs in respect of the same person but issued by different JAs from the same Member State were not competing EAWs for the purposes of the Act.

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<sup>1</sup> Extradition Act, section 44.

<sup>2</sup> Extradition Act, section 44(7).

# RESTREINT UE

## Northern Ireland

The Authorities of Northern Ireland reported no experience in this area.

## Scotland

The issue of competing EAWs has not arisen in respect of Scottish EAW experiences; however, the Scottish authorities considered that in such a case they would be likely to consult with Eurojust.

## 4.18. EXPENSES

No difficulties have been experienced in this regard.

## 5. TRAINING PROVISION

A comprehensive package of training measures has been put in place by the UK authorities. The most important of those measures are set out below.

### England, Wales and Northern Ireland

- November 2003 - The CPS Policy Directorate ran a 4-day course for specialist practitioners on the Extradition Act. The speakers at this course included CPS extradition practitioners, members of the extradition bar, specialist police officers and policy officers from the Home Office. It was aimed at equipping specialist practitioners and local prosecutors, SOCA, court staff, foreign liaison magistrates, Eurojust and police officers with a working knowledge of the new law.
- At the beginning of 2004 the CPS Policy Directorate ran a series of seminars for prosecutors across the CPS updating delegates on the changes brought about by the Extradition Act 2003 with regard to EAWs for persons wanted in UK criminal proceedings.
- Overseas presentations - Between December 2003 and March 2004 the CPS Policy Directorate organised a series of presentations in Paris, Rome and Madrid to familiarise prosecutors and judges in the UK's main extradition partner states with the changes to UK extradition law brought about by the Extradition Act 2003.

# RESTREINT UE

The seminar in Paris was held at the British Embassy in December 2003. It involved a day of presentations by CPS extradition specialists, prosecutors from other government departments, members of the UK extradition bar, police officers, SOCA officials, Liaison Magistrates and the judiciary. It was attended by judges and prosecutors from across France. A reception in the evening was aimed at establishing/improving contact networks between relevant staff.

The seminar in Rome was held at the Consiglio Superiore della Magistratura's lecture facility in February 2004 and followed a similar format to that in Paris.

A CPS prosecutor attended a Spanish conference on the EAW in Madrid and was able to give a presentation on the Extradition Act 2003.

- Extradition Appeals Course - A 3-day course was held by the CPS Policy Directorate in November 2004. The object of this course was to equip CPS extradition practitioners to present export extradition appeals in the Administrative Court. This case study based course was devised and presented by experienced members of the extradition bar.
- Government Legal Service Extradition Courses - CPS extradition practitioners have devised and regularly (1-2 times per year) present a half-day introductory course on import extradition (including the EAW) to lawyers from the Government Legal Service.
- Bow Street/City of Westminster Magistrates' Court - Internal training was provided to all staff and legal advisers at the City of Westminster Magistrates' Court before the implementation of the 2003 Act. Since that date legal advisers who take extradition courts are provided with training, mentoring and coaching (administrative staff receive similar training and coaching). The 'Out of Hours' team shadow more experienced colleagues before participating in the out of hours rota and are provided with training, including mentoring and shadowing and have access to other experienced legal advisers for advice.
- Court Users Group - An Extradition Liaison Group was created ahead of the implementation of the Extradition Act 2003. The group provides a regular forum (up to four times each year) to share and discuss points of complexity and agree best practice.

# RESTREINT UE

Feedback from these meetings is passed on to the specialist legal advisers at the legal adviser international jurisdiction meetings that take place approximately every 6 – 8 weeks. These meetings provide an opportunity for legal advisers to keep up to date with new developments in the law and developing case law – as well as sharing best practice and contributing to the development of agreed procedures to support extradition work within the courthouse.

- Metropolitan Police Extradition Unit - All officers joining the unit are placed on a team with experienced extradition officers and supervisors. Training is carried out in a real environment and officers are not permitted to perform on call duty or deal with extradition cases without the close supervision of an experienced officer until they are competent in this area of work. Officers also complete Officer Safety Training and Aircraft Restraint/Safety Techniques Training at the British Airways Training Establishment every 6 months<sup>1</sup>. Supervising officers have attended various training conferences on EAWs and related matters. The objectives of this training are:
  - to ensure that officers of the Metropolitan Police Extradition Unit are competent to deal with EAW matters alone if required.
  - to ensure safety of officers and subjects during arrest, escort and surrender procedures.
- SOCA - EAW and some language based training is provided to new post holders in the Fugitives Unit and 24-hour Duty Staff. Mentoring is also in place. SOCA has a team of professionally qualified translators (French and Spanish) who have the opportunity to increase their range of language skills through participation in external courses (currently German and Portuguese). Support for language training is also given to other staff. Staff in the UKCA for the EAW at SOCA are trained in the use of the Police National Computer, the electronic case management system and have also taken part in investigative or operational training. A number of the unit work shifts, providing 24 hour support for the Central Authority functions. They receive specialist training to enable them to deal with a significant range of international enquiries.
- Members of the team have also taken part in cross departmental training, both as students and also as trainers in the role of the Central Authority such as Crown Prosecution Service training. Internationally members of the unit have delivered lectures at bi-lateral training events in France, Spain, Italy and Cyprus.

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<sup>1</sup> Airline captains may refuse boarding rights to officers not having adequate training in this regard.

# RESTREINT UE

- Prosecutors have access to the guide to the Extradition Act and to UK procedures, which is a detailed, lengthy and regularly<sup>1</sup> updated internal guide created by senior lawyers in the CPS Policy Directorate and published on the CPS intranet. This guide (copies of which were reviewed by the evaluation team) provides practical and sequential aid in the actions to be taken in respect of both issuing and executing Member State roles.

## Scotland

- The Judicial Studies Committee<sup>2</sup> created a briefing paper (guide) for Lothian and Borders Sheriffs in Edinburgh entitled "Extradition from Scotland and the EAW" in May 2004.
- Edinburgh Sheriff Court Clerks received 1 full day's training on the Extradition Act in London prior to the introduction of the system.
- The Crown Office provides training to all officials who have a role in the application, transmission or execution of EAWs. Additionally a 1-day conference was given by Crown Office lawyers to all relevant Scottish agencies.
- Other ad hoc opportunities are taken to highlight the work of the International Cooperation Unit, Eurojust and the wider work of the Scottish JAs in international matters. In addition, the Scottish assistant to the UK National Member for Eurojust is in frequent contact with the International Liaison Officers for all the Scottish forces.

## **6. DEFENCE PERSPECTIVES**

### England and Wales<sup>3</sup>

The expert team was provided with the opportunity to meet with specialist members of the extradition bar in London. Each of the leading and junior counsel interviewed had received numerous instructions from both the Special Crime Division of the CPS (on behalf of the issuing Member State) and from the defence in a range of high profile and complex cases.

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<sup>1</sup> On a monthly basis.

<sup>2</sup> Chaired by a Judge of the High Court.

<sup>3</sup> No defence representatives were interviewed in respect of EAW experiences in Northern Ireland or in Scotland.

# RESTREINT UE

The unified positions as expressed may be summarised as follows:

- The clarity of drafting exhibited in the Extradition Act was poor and the "flow chart methodology" relied upon by the legislator served to fetter the discretion that the executing JAs could otherwise have contributed to these proceedings;
- The decision to include Part 2 "extradition" in an Act designed to deal with the EAW regime was unhelpful in distinguishing between the two concepts;
- The use of certain defined terms lacked consistency which in turn generated confusion in seeking to interpret the Act. By way of example Part 1 (incoming) warrants were required to contain both a "statement" and "information" whereas Part 3 (outgoing) warrants were required to contain a "statement" and "a certificate". This confusion as to terminology was said to cross over into common terminology used within Part 2 of the Act (traditional extradition), specifically in terms of the "certificate" required to be issued by the Secretary of State to commence proceedings under Part 2.
- There was as yet no definitive ruling on the weight to be attached to a Part 3 certificate (or what was added by the certification given that the JA was not bound by the document in any event) and in consequence it was as yet uncertain whether the EAW itself (the Part 3 warrant) could self-certify or whether a separate document was essential.
- There was clear disparity between the Act and the practice of the Courts of England and Wales and the provisions of Article 15(2) of the FD. These specific issues are yet to be appropriately challenged.
- There was clear disparity between the Act and the trans-national limitations imposed by the definition of an extradition offence in respect of the reintroduction of the examination of double criminality. These specific issues are yet to be appropriately challenged.
- Passage of time arguments are now "virtually a pro-forma points to take".

# RESTREINT UE

Defence Counsel estimated that in respect of 90% of cases no appeal issues arose, of the 10% that appealed perhaps 2-3% of those seek leave to appeal to the House of Lords. According to information provided by the UK authorities, only two cases have gone before the House of Lords for a full hearing, although there have been a number of applications for leave to appeal.

## Scotland

The expert team regretted that professional obligations prevented defence counsel from attending the proposed meeting in Edinburgh.

## 7. CONCLUSIONS

### 7.1. GENERAL CONCLUSIONS

The expert team wishes to thank the EAW authorities of the UK for providing a comprehensive itinerary of meetings and presentations during the 5-day evaluation visit. This enabled a highly detailed analysis to be undertaken of the entirety of the practical application of the EAW process. The team also appreciated the demonstrable value added to the process by the willingness of all participants to debate and reflect upon what were at times critical comments made in respect of various aspects of the surrender process.

The team felt however that greater steps could have been achieved by the UK if the Extradition Act had focused exclusively on the EAW, rather than combining the law on extradition and the law on surrender in one instrument<sup>1</sup>. In doing so the legislator had failed to reinforce the fact that the surrender mechanism introduced by the FD is of an entirely different character to the former extradition regime. In this regard the team considered it unhelpful that the Extradition Act makes no reference in any of its 227 sections to the "European Arrest Warrant"<sup>2</sup>, to issuing Member States<sup>3</sup>, to issuing Arrest Warrants "for purposes of conducting a prosecution" (the Act uses the term "accused" persons which may lead to confusion because of differences in legal systems) or to the very concept of "surrender". The team noted that some case law showed that Courts to some extent referred to old precedent regarding extradition cases. The experts felt that this may be due to the language of the Act. The team took note of the fact that recent case-law (see Dabas) shows that the principle of mutual recognition is embraced at the highest judiciary level.

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<sup>1</sup> See paragraph 2.2.

<sup>2</sup> Referring instead to "Part 1" or to "Part 3" warrants.

<sup>3</sup> Referring rather to Category 1 territories.

# RESTREINT UE

The team wishes to acknowledge the recent statutory amendments introduced by the Police and Justice Act 2006 which sought to resolve some of the issues which impeded the efforts of the UK's EU partners to obtain the return of requested persons apprehended in the UK for the purpose of executing a custodial sentence.

The expert team recognises that the Common Law practitioners interviewed were entirely at ease with the "bedding-in" period associated with new legislation<sup>1</sup> but they were seriously concerned to learn that, following the introduction of the Police and Justice Act 2006, the opportunity for further legislative amendment to the Extradition Act in the immediate future was limited. The expert team considered that further legislation was essential to bring the relevant parts of the Extradition Act into compliance with the FD. Furthermore the introduction of the SIS II will, due to article 9, paragraph 3 of the Framework Decision, in the opinion of the experts, a comprehensive review of EAW procedures in the UK, in particular it will exclude a certification procedure such as the one now practices by the UK prior to the arrest of a person wanted for surrender.<sup>2</sup>

In short the expert team was of the view that notwithstanding the critical importance genuinely attached to this instrument in the UK, true acceptance of the principle of mutual judicial recognition by the domestic participants has suffered in consequence of the way in which the FD was transposed by the legislator.

## 7.2. CONCLUSIONS IN RESPECT OF THE UK'S ACTIVITIES AS AN ISSUING MEMBER STATE

### 7.2.1. Issues

#### 7.2.1.1. Targeted transmission of EAWs

The established practice of the UK is to directly target EAWs<sup>3</sup>. To do so the UK invests considerable resources into locating requested persons abroad before applying to the court to issue an EAW. Other Member States, in particular SIS countries, issue EAWs with a view to the entry of an Alert into the SIS system or issuing an Interpol diffusion, which by themselves serve as locating systems which tend to frustrate the free movement of requested persons.

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<sup>1</sup> The expert team was advised that jurisprudence could be expected to continue to clarify substantive aspects of new legislation for a period of 3-5 years.

<sup>2</sup> See paragraph 7.3.1.1.

<sup>3</sup> A targeted transmission being one directed specifically to a single recipient Member State.

## RESTREINT UE

It was within the knowledge of the expert team that other Member States did not consider non-targeted Interpol diffusions to be "speculative" or overly burdensome and, further, that they would rather invest resources in seeking to locate an alleged criminal (sometimes suspected of the commission of very serious offences) than to remain ignorant of the allegations they faced and to risk having such a person remain at liberty on their territory.

### 7.2.1.2 Drafting standards

The issuing JAs, were proud of the quality of outgoing EAWs (the effectiveness of which was demonstrated by the fact that the JAs received few requests for further information) and the expert team considered this to be very positive. However the team felt that this high drafting standard generated an unexpected counterpoint, in that the team considered that UK authorities had grown to expect this drafting standard from other Member States in return, and were regularly requesting further information prior to certifying an EAW for arrest.

7.2.1.3. The evidential requirement of certain Member States for additional evidence  
The expert team noted that in order to secure the surrender of requested persons in respect of requests to Ireland the UK authorities had been required to serve affidavit evidence dealing with the following matters: delay, medical facilities and fitness to plead. On one occasion a Special Crime Division lawyer was required to appear before the executing JA in Dublin to provide oral evidence and be cross-examined in the surrender proceedings on the basis of her affidavit. The team recognized that this was likely a consequence of procedural law, but considered it to be a disproportionate requirement in respect of the surrender proceedings envisaged by the FD.

### 7.2.1.4. Language training

Although aware of the language training given to SOCA, the expert team was unaware of any substantive language training being promoted or delivered with a view to facilitating enhanced communication with executing judicial authorities in accordance with the Framework Decision and felt that EAW practitioners would benefit from more training in this area. It is recalled in this context that the Framework Decision in principle foresees that direct contact should be made between judicial authorities.

# RESTREINT UE

## 7.2.2. Good practices

### 7.2.2.1. The creation of Member State Country files

The expert team understood that the creation of "country files" was from a practitioner's point of view a useful development. The collection of data on MS specific practices would be useful for an issuing judicial authority, as long as these practices are compatible with the FD. However where MS develop practices not foreseen by the FD and/or practices that are contrary to the FD or the principle of mutual recognition, these should not be recognised. Those practices should not be included in country files with the view to follow them.

The expert team felt that the EAW system would benefit from an analysis on an EU level of those requirements which were recorded in such country files, but were not in keeping with the FD.

## 7.3. CONCLUSIONS IN RESPECT OF THE UK'S ACTIVITIES AS AN EXECUTING MEMBER STATE

### 7.3.1. Issues

#### 7.3.1.1. Non-statutory certification, sequential requests for further information and the failure to rely upon supplementary information

The expert team was of the view that it was standard practice that an executing Member State undertakes some form of check to ensure that all of the boxes on the EAW form were completed and that it is signed. The certification process in the UK<sup>1</sup> far exceeds this check.

The expert team is particularly concerned about this process for the following reasons:

- In general, it is undertaken by a Central Authority (SOCA) as opposed to a judicial authority;
- It exceeds the domestic statutory provisions which only provide for a check as to the competence of the issuing JA;
- The standards applied in the certification process as to the completeness of the EAW are extrapolated from UK jurisprudence often referring to old practice in extradition cases which is not precisely on point; One of the aims of the Framework Decision was to simplify the surrender procedure by providing a standard document - the European Arrest warrant - that could be supplemented by the provision of additional information;
- SOCA requires issuing JAs to comply with the requirements it sets;

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<sup>1</sup> See sections 4.2 and 4.3.

## RESTREINT UE

- The JAs of England, Wales and Northern Ireland only allow minor additions to be made to the EAW. More substantial changes will necessitate the reissue of the EAW by the Member State of origin whereas, in Scotland attaching additional information to the EAW was common practice in resolving ambiguities; and
- Since certification is a mandatory pre-requisite for any arrest, the process itself delays the apprehension of the requested person whose whereabouts is generally known. Whereas in a number of the Member States a person is first arrested (as there is already an Arrest Warrant issued by a competent judicial authority) before the executing judicial authority eventually asks for clarification of the Warrant, the process in the UK is the other way around. This no doubt leads to delay in the arrest in the UK.

The expert team noted the developing jurisprudence outlined at section 4.2 of this report and the legal reasoning behind the cautious approach of the participants in ensuring that EAWs were substantially perfected before being certified<sup>1</sup> and placed before the executing JA.

The experts notes in addition that the UK authorities seem unable to provide any statistics on the average time to complete the verification process. In terms of monitoring the system, this seems to be a considerable short come.

It was however inescapable that the UK had recourse to a number of layers of enquiry to the JAs of issuing Member States and that these requests were instigated by non-judicial bodies in the UK.

Possible non-judicial requests in this category were perceived to be as follows by the expert team<sup>2</sup>:

- By the SOCA desk officer – as to content and legal interpretation (prior to certification);
- By the Special Crime Division of the CPS on review (in exceptional cases only);
- By the Crown Solicitor's Office in Northern Ireland or the International cooperation Unit in Scotland<sup>3</sup> (following SOCA certification but prior to arrest);
- By the competent arresting police units prior to arrest - both in terms of completeness of the form (via SOCA), and in respect of risk assessment data and better particulars to be put to the requested person on arrest (police to police channels); and

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<sup>1</sup> The expert team observed that this certification is non-binding on JAs in any event.

<sup>2</sup> In practice SOCA would be the transmission conduit irrespective of the origins of the request.

<sup>3</sup> The Crown Office.

## RESTREINT UE

- By the Special Crime Division of the CPS (as part of their continuing duty to represent the issuing JA).

Whereas this stepped approach fitted within the UK's organisation, the team considered that the effect of an issuing JA receiving potentially multi-layered (non-judicial) requests was at odds with both the letter and the spirit of the FD.

Additionally the team were unclear how these multiple processes could survive the onset of SIS II, particularly as at present the consequences of this certification exercise determines whether the EAW would be endorsed for an arrest or merely marked on the PNC or CRO as a locate/trace alert.

The courts of England, Wales and Northern Ireland<sup>1</sup> take the view that substantive defects in an EAW render it incapable of rectification. The experts considered this approach to be expressly contrary to Article 15(2) of the FD<sup>2</sup> and with the interpretative ruling of the European Court of Justice (Grand Chamber) in the case of Pupino<sup>3</sup> and are glad to note that this case has been relied upon by one of the judges in the case of Dabas referred to above.:

"...the national court is required to take into consideration all the rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of the Framework decision".

The team felt that the authorities of the UK were hampered in taking remedial action in this regard because test cases on these precise issues had not yet been taken.

The team noted however that the Scottish JAs were comfortable in adopting an approach more recognisable as being within the spirit of the FD.

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<sup>1</sup> Although the JAs of Scotland adopt an approach in keeping with the FD.

<sup>2</sup> "If the executing JA finds the information ...to be insufficient to allow it to decide on surrender, it shall request that necessary supplementary information,...".

<sup>3</sup> Case C-105/03.

# RESTREINT UE

## 7.3.1.2 Statutory issues and refusal grounds

In addition to the findings of the expert team itself, it was observed that some members of the judiciary were less than content with the drafting quality of aspects of the legislation. The issues noted were as follows:

- The mandatory requirement that a requested person is produced before a judge as soon as practicable. This is acknowledged as an important safeguard for the person. However, the question arises whether the mandatory requirement that an executing JA must discharge any requested person not produced before him "as soon as practicable" after an EAW based arrest<sup>1</sup> is a disproportionate remedy<sup>2</sup> in comparison to the wide discretionary powers generally available to a JA in an ordinary criminal case.<sup>3</sup> The expert team noted that just such a discharge had in fact been ordered on two occasions.<sup>4</sup>
- Conviction cases and in absentia convictions – The expert team reviewed the enabling provisions of the Extradition Act<sup>5</sup> with the UK authorities and compared them with the construction of the corresponding section (d) of the form of the EAW. It seemed to the experts that these two texts were contradictory, the UK Act (and the practices which flow from it) consider that the form must indicate that the requested person was convicted in his presence<sup>6</sup>, and that thereafter the JA must look for evidence that the individual "deliberately absented himself from his trial"<sup>7</sup>, whereas the construction of the EAW form proceeds on the basis that the requested person was present unless it is indicated otherwise. The expert team considered that the EAW form could have benefited from a more precise form of wording in this particular regard.<sup>8</sup>

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<sup>1</sup> Extradition Act, section 4(5).

<sup>2</sup> In that it is not balanced against the seriousness of the offence in question or the harm represented to society by the requested person.

<sup>3</sup> Extradition Act, section 7(6)(7)(8) "...the judge has the same powers (as near as may be) as if...summary trial...".

<sup>4</sup> See section 4.6 of this report.

<sup>5</sup> Extradition Act, section 20.

<sup>6</sup> Extradition Act, section 20(1).

<sup>7</sup> Extradition Act, section 20(3).

<sup>8</sup> See for example the drafting used in the FD mutual recognition of financial penalties part H 3 of the form.

## RESTREINT UE

- The UK act also provides for the express possibility of refusing surrender on the basis of ECHR issues<sup>1</sup> which derive from Article 1.3 of the FD. However ECHR jurisprudence has established that such arguments can only succeed if there is a substantial risk of a flagrant breach of fundamental rights. Since the UK courts have accepted this jurisprudence refusal to surrender on such grounds should only happen in exceptional cases<sup>2</sup>.

o Grounds of refusal incompatible with the FD -

- The passage of time<sup>3</sup> is in the opinion of the UK authorities broadly comparable to the statute of limitations as referred to in Article 4(4) FD. The expert team is of the opinion that this ground of refusal is not in conformity with the FD, because Article 4(4) includes a limitation to cases over which the executing state has jurisdiction. This ground, once raised, obliges the judge to look into the substance of the underlying case and the conduct of the issuing Member State, as some cases have illustrated.

- Where the conduct of the offence occurred outside the issuing Member State, the UK has implemented the ground of refusal of Article 4(7)(b) FD in such a way that it applies the double criminality test as part of the assessment of the applicability of this ground of refusal. The expert team is of the opinion that this amounts to a reintroduction of the double criminality test beyond the scope of Article 2 FD. In the view of the expert team this article is only concerned with jurisdiction.

- The possibility that the UK may refuse surrender in extra-territorial requests where the surrender offence is punishable (in the UK) by less than 12 months imprisonment. The expert team recognise that the UK considers that it would only assume such jurisdiction in limited practical circumstances but notes that such latitude is contrary to the provisions of the FD<sup>4</sup>.

7.3.1.3. Time Limits and appeals – The expert team noted that the Extradition Act was silent as to the FD surrender time limit of 60 days from arrest. The only limit set down by the Act being that surrenders should be carried out within 10 days of the final decision.

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<sup>1</sup> Extradition Act, section 21.

<sup>2</sup> Although the Act is silent as to the burden of proof required to establish such a risk of breach.

<sup>3</sup> Extradition Act, section 14.

<sup>4</sup> Article 4 paragraph 7(b).

## RESTREINT UE

The team noted also that, although the surrender hearing must commence within 21 days of the arrest of the requested person, it was common that thereafter the defence could obtain an adjournment beyond this time and that the JA had full discretion to set the date for a continued hearing. In any event written judgements were generally reserved for up to 2 weeks.

Parties to surrender proceedings have the full range of domestic appeal options open to them (Magistrates' Court to High Court to the House of Lords/Privy Council).

A first instance appeal must be lodged (served) within 7 days of the surrender decision with the hearing to take place within 40 days of the arrest of the requested person. In practice the team were advised that the Court of Appeal regularly used its discretion to extend this time limit. Furthermore, as a matter of practice written decisions are handed down within a period of 3-4 weeks of the appeal hearing, although this is not a statutory requirement.

Thereafter if the parties wish to appeal to the House of Lords or to the Privy Council<sup>1</sup> they need, as a first step, leave to do so. This leave application may be made to the Appeal Court within 14 days or, if that is refused, directly to the House of Lords within 28 days of that refusal.

If leave is granted (no statutory limit is set for this) the House of Lords must commence that appeal within 28 days of the grant of leave but no statutory limit is set for the hearing or for the decision.

The team considered that the processes described above (in addition to the certification procedure described in paragraph 4.2) demonstrates a clear failure to transpose the FD surrender time limits in the domestic legislation.

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<sup>1</sup> In Scottish proceedings.

# RESTREINT UE

## 7.3.1.4. Risk assessments

The expert team noted that each of the police units responsible for the arrest and initial detention of requested persons stated that the majority of surrender requests with which they were involved contained such a lack of information that it was not possible to put in place what they considered to be an adequate risk assessment and so structure conditions for a safe arrest<sup>1</sup>. This lack of information necessitated additional recourse to the issuing Member State<sup>2</sup>.

The team were made aware of one case in which the Extradition Unit had not been informed, that the individual to be surrendered was HIV positive. Had an inexperienced officer been charged with that specific surrender, transportation on the designated commercial flight might not have been possible.

The experts felt that it was important to recognise the difficult and central role played by the officers (of all Member States) who undertook the arrest of suspects and thus the importance of equipping them with the necessary information (risk assessment data) to carry out their tasks as safely as possible. The team recognised that both Interpol and SIS contained a mechanism for recording such information, however in respect of cases of direct transmission of an EAW, such information is not available. The expert team felt that where appropriate it should be made directly available to the relevant executing authorities.

## 7.3.1.5. Intelligence development

The expert team felt that the methodologies deployed by SOCA<sup>3</sup> during their intelligence gathering phase were a value adding process in respect of received EAWs and requests via the Interpol channels where there is a UK link. They felt however that SOCA's operational decision to limit, on the basis of certain criteria, both intelligence development and the circulation of requests for surrender through the Interpol channels without an EAW copy where there is no UK link was not justified in terms of the reasonable expectations of issuing Member States. They considered that these justifications bore no relation to the priorities that the issuing Member States themselves had placed on a specific individual (evidenced by virtue of having issued a diffusion).

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<sup>1</sup> The continuance of specialised units in respect of general ad hoc rather than structured arrests following the UK's accession to SIS II was a matter that the UK would need to consider in due course.

<sup>2</sup> On a police to police basis.

<sup>3</sup> See section 4.4.

# RESTREINT UE

## 7.3.1.6. Legal Aid

At the time of the evaluation visit the team became aware of changes to the general criminal legal aid system introduced in England and Wales on 2 October 2006. In consequence of these changes requested persons were assessed on the same basis as defendants in domestic criminal cases and were required to produce historical financial documentation unlikely to be available to residents.

Following an alert made by the District Judges of the City of Westminster Magistrates' Court, talks were in place to remedy this situation. At the time of the visit, the expert team was advised however that the consequence of this current issue was that requested persons had, for the two month period prior to the evaluation visit, frequently been forced to represent themselves in person.

## 7.3.1.7. Consent cases

The expert team felt that there was merit in reiterating a view expressed by the executing JAs that compared to the practices of certain other Member States, the UK can be said to have a lenient approach to remanding requested persons on bail (as opposed to in custody) and that one possible consequence of this is that consents to surrender are said to be the exception rather than the rule.

## 7.3.2. Good practices

### 7.3.2.1 Skeleton arguments

The expert team felt that the practice of prior submission of skeleton arguments<sup>1</sup> within the oral tradition of the courts of England and Wales was of benefit to both the adversarial parties and the court.

The JAs who adjudicated on such arguments reported that the practice served to reduce the amount of court time required to determine surrender cases. The expert team learned that for some reason such skeleton arguments were not the practice in Scotland.

### 7.3.2.2 Intranet-based practice guide

The CPS electronic guide to prosecutors is a comprehensive and constantly updated treatise on domestic EAW practice. The experts considered that this work provided professionals unfamiliar with the subject matter, or with current developments in this area, with all of the requisite knowledge to progress files in an efficient and appropriate manner.

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<sup>1</sup> Written summaries of fact and law.

# RESTREINT UE

## 7.3.2.3 Legal Aid prioritisation in Scotland

The Scottish Legal Aid Board reported that it processed between 80-90,000 applications each year. In order to provide for the effective resolution of applications made in respect of EAW proceedings they had devised a fast track procedure whereby the documentary strictures normally applied in criminal proceedings were effectively suspended so that 24-hour decisions were the norm. In addition to this the expert team learned that the decision to grant legal aid (based on a simple form) is immediately notified to the applicant's solicitor by telephone in addition to the dispatch of a written certificate.

## 8. RECOMMENDATIONS

### 8.1 RECOMMENDATIONS TO THE UNITED KINGDOM

Recommendation 1 – That the statutory issues particularised in section 7.3.1.2 of this report be addressed in the light of ECJ interpretational jurisprudence (in particular the *Pupino* case) so that the UK position may be brought more closely into line with the FD.

Recommendation 2 - That the authorities of the UK re-examine the avenues of appeal available to requested persons and consider how best domestic processes may be streamlined to give effect to the surrender time limits set out in the FD (see 7.3.1.3).

Recommendation 3 – That the UK prioritises its efforts to identify an appropriate test case in which the necessity of the non-statutory certification process may be examined (see 7.3.1.1).

Recommendation 4 - That the UK prioritises its efforts to identify appropriate test cases in which guidance can be sought concerning the extent to which supplementary information may be relied upon to remedy deficiencies in EAWs received by the UK as an executing Member State (see 7.3.1.1) or, alternatively, if a Warrant does not contain the statement referred to in Section 2 (2) legislative changes are considered to remedy the situation regarding the provision of supplementary information.

Recommendation 5 - That, in light of the outcome of the test case(s) taken pursuant to recommendations 3 and 4, the UK authorities consider whether there is a need to introduce further legislation to close any remaining lacunae (see 7.3.1.1).

# RESTREINT UE

Recommendation 6 - That the UK examine its system of handling incoming requests via the Interpol channels for surrender where there is no EAW copy and no UK link. The criteria for giving a follow up to such a request should not be based on a UK perception of the seriousness of the offence (see 7.3.1.5 and 7.3.1.1).

Recommendation 7 - That consideration be given to the creation of a suitable forum whereby the various JAs of the UK can undertake an exchange of views and best practices (see 7.3.1.1. and 7.3.2.1).

Recommendation 8 – That immediate measures be put in place to facilitate the timely and adequate provision of legal aid to persons subject to EAW surrender requests in England and Wales (see 7.3.1.6).

## 8.2 RECOMMENDATIONS TO CERTAIN OTHER MEMBER STATES

Recommendation 9 - That a review be conducted as to the potential need for appropriate judicial training to be delivered in the area of EAW law. This training should inter alia insist on the fact that in principle no additional evidence than the Arrest Warrant itself, properly filled in, should be required by judicial authorities in most cases (see 7.2.1.3 and 7.2.2.1).

Recommendation 10 – That those bodies charged with the drafting of outgoing EAWs consider the merits of creating "country files", but taking into account only requirements of executing Member States that are in conformity with the FD (see 7.2.2.1).

Recommendation 11 – That consideration be given to the means by which key risk assessment data may be standardised to assist arresting officers Member States as has been done in the SIS and some Interpol alerts (see 7.3.1.4).

## 8.3 RECOMMENDATIONS TO THE EUROPEAN UNION

Recommendation 12 – That consideration be given to facilitating a series of exclusively judicial trans-national seminars on the topic of mutual legal assistance specifically in the context of the EAW (see recommendations 7 and 9).

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ANNEX A

## SCHEDULE OF THE UK'S STATUTORY GROUNDS OF REFUSAL

Statutory Reference	Précis	Corresponding FD Article
S.7(4)	Identity of the requested person	First principles.
S.12	Double jeopardy	Articles 3.2, 4.5.
S.13	Extraneous circumstances (EAW issued for the purpose of prosecuting or punishing a person on the basis of race, religion, nationality, gender, sexual or political orientation).	FD recitals.
S.14	Passage of time	N/A.
S.15	Requested person being under the age of criminal responsibility at the time of commission of the offence.	Article 3.3.
S.16	Hostage taking considerations.	N/A.
S.17	Specialty.	N/A.
S.18	Earlier extradition from Member State.	Article 28.
S.19	Earlier extradition from non Member State.	Article 21.
S.20	In absentia convictions.	Subject to Article 5.1 conditions.
S.21	Human rights.	FD recitals/fundamental rights.
S.25	Humanitarian Grounds.	N/A.
S.39	Surrender proceedings may be postponed pending claims for Asylum.	N/A.
S.208	National Security.	N/A.

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ANNEX B

## PROGRAMME OF VISITS

### Monday 11 December

- 9.15 Welcome address: Brian Minihane, Head of Multilateral Operations, International Crime Division, Serious Organised Crime Agency
- 9.30 Opening presentation: Karen Townsend, Head of Extradition Policy, Home Office
- 10.00-12.45 Fugitives' Unit, Serious Organised Crime Agency
- 13.30-17.30 Prosecution agencies: EAW requests to UK
- 19.15 Dinner hosted by Joan Ryan MP, Permanent Under Secretary of State, Home Office

### Tuesday 12 December

- 9.00-11.00 Prosecuting Agencies: EAW requests from the UK (Spring Gardens, Vauxhall)
- 11.30-13.30 Representatives from the bar with experience of defence cases (3 Raymond Buildings)
- 19.30 Dinner hosted by the Lord Advocate

### Wednesday 13 December

- 09.00 - 09.15 Welcome to Crown Office – Crown Agent
- 09.15 – 11.00 Work of International Cooperation Unit in Extradition
- 11.15 – 12.30 The Court Dimension
- 12.30 – 13.30 Lunch
- 13.30 – 14.15 SLAB
- 14.15 – 14.45 Lothian and Borders Police
- 15.00 – 16.00 International Cooperation Unit for final questions

### Thursday 14 December

- 9.00-10.00 SIS Programme Team (Home Office, 2 Marsham Street)
- 10.00 -12.30 Meeting with specialist extradition Police Officers from Metropolitan Police and Police Service of Northern Ireland (Home Office, 2 Marsham Street)
- 12.30-13.00 Lunch
- 13.00-13.45 Further questions to Crown Prosecution Service
- 14.00- 16.00 Meeting with District Judges and court staff (City of Westminster Magistrates' Court, Horseferry Road)
- 16.00-16.30 Meeting with representatives from Home Office to discuss implementation of Framework Decision (City of Westminster Magistrates' Court, Horseferry Road)
- 16.30-17.00 MO meeting

### Friday 15 December

- 9.30-11.30 Meeting with staff at Administrative Court (Administrative Court, Royal Courts of Justice, The Strand)
- 12.00-12.30 Lunch
- 12.30-13.30 Meeting on Prisoner Transfers under Article 5.3
- 13.30-15.00 Further questions to Serious Organised Crime Agency

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ANNEX C

## LIST OF PERSONS INTERVIEWED

### Serious Organised Crime Agency

Brian Minihane  
Marcus Thompson  
Caroline Denham  
Chris Hardwick  
Ian Churchill

### Crown Prosecution Service

Gareth Julian  
Paul Close  
Brian Gibbins  
Anne-Marie Kundert

### Crown Solicitor's Office

Colin Wright

### Revenue and Customs Prosecutions Office

Louise van der Straeten

### Three Raymond Buildings Chambers

Clive Nicholls QC  
James Lewis QC  
James Hines  
John Hardy  
Gemma Lindfield

### Scottish Crown Office

Lorna Harris  
David Dickson  
Natalie Barclay-Stewart  
Sheila Robertson  
Emma Provan

### Edinburgh Sheriff Court

Sheriff Charles N Stoddart  
John McAllister

### Scottish Legal Aid Board

Douglas Haggarty

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## Lothian and Borders Police

Detective Sergeant Andrew Ferguson

## Metropolitan Police Service

Detective Inspector Paul Fuller  
Detective Sergeant Stephen Lane  
Detective Constable Ron Hay

## Police Service of Northern Ireland

Detective Inspector Peter Galbraith

## Home Office

Fenella Tayler  
Karen Townsend  
Andrew Miller  
Justin Millar  
Graham Wilkinson

## City of Westminster Magistrates' Court

Senior District Judge Timothy Workman  
Deputy Senior District Judge Daphne Wickham  
District Judge Nicholas Evans  
District Judge Anthony Evans  
District Judge Caroline Tubbs  
District Judge Quentin Purdy  
Elizabeth Franey

## Administrative Court

Mr. Justice Collins  
Lynne Knapman  
Simon Slidders

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ANNEX D

## LIST OF ABBREVIATIONS

ACRONYM ABBREVIATION TERM	ENGLISH EXPLANATION
CA	Central Authority
CPS	Crown Prosecution Service
CRO	Criminal Records Office
CSO	Crown Solicitor's Office
ECJ	European Court of Justice
EJN	European Judicial Network
HL	House of Lords
HM	Home Office
HMRC	Her Majesty's Revenue and Customs
ICU	International Cooperation Unit
JA	Judicial Authorities
MLA	Mutual Legal Assistance
MOU	Memorandum of Understanding
OIC	Officer in Charge
PNC	Police National Computer
PPS	Public Prosecution Service
PSNI	Police Service of Northern Ireland
RCPO	HM Revenue and Customs Prosecution Office
SCD	Special Crime Division, CPS Headquarters in London
SFO	Serious Fraud Office
SLAB	Scottish Legal Aid Board
SOCA	Serious Organised Crime Agency

## GIBRALTAR – EUROPEAN ARREST WARRANT<sup>1</sup>

### Implementation of the European Arrest Warrant (EAW)

The Gibraltar Parliament has passed the necessary legislation to transpose the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States and the UK into domestic legislation.

The relevant law is entitled European Arrest Warrant Act and came into effect on 28 January 2004. For a copy of the legislation please click below.

[European Arrest Warrant Act 2004](#)

This Act makes provision for the arrest and surrender of individuals between Gibraltar and Member States of the EU including the UK upon receipt of a duly issued European Arrest Warrant.

### Application

It is a statutory requirement that:

- (i) the issuing judicial authority intends to bring proceedings against the person in respect of whom the warrant is issued for the offence to which the EAW relates; or
- (ii) a sentence of imprisonment or detention has been imposed upon the said person and who fled from the issuing State before he commenced serving that sentence, or completed serving that sentence.

The European Arrest Warrant Act 2004 applies to all offences carrying a sentence of at least 12 months imprisonment in the law of the issuing Member State or, where a sentence has been handed down, a sentence of at least 4 months has been imposed. [Section 24(1) European Arrest Warrant Act 2004].

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<sup>1</sup> The territory of Gibraltar has not been evaluated by the expert group during the evaluation visit to the UK. When the MDG had its first discussion of the draft report the expert group was asked to collect further information on the application of the EAW in Gibraltar. Upon its request the UK, as the Member State responsible for Gibraltar's external relations according to article 299.4 of the Treaty of the European Union, provided further information, which has been added to the report without further study by the expert group.

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The dual criminality requirement (i.e. that an offence is an offence in both the issuing and requested states) applies for all offences other than the 32 listed in the Framework Decision (repeated in the European Arrest Warrant Act 2004 at Schedule 2). [Section 27(1)(b) European Arrest Warrant Act 2004].

Where the person in respect of whom the warrant is issued has been convicted, a term of imprisonment of not less than 4 months must have been imposed in respect of the offence and the person must be required to serve all or part of the term of imprisonment.

## How it operates

### Incoming European Arrest Warrants

#### - Central Authority

The Governor in his capacity as the representative of the Queen of Gibraltar is designated as the central authority with a mandatory section stating that the Governor shall delegate to the Chief Secretary his powers under this part in relation to matters not affecting internal security or defence (Section 5 European Arrest Warrant Act 2004).

#### - Transmission of European arrest warrants to Gibraltar

A European arrest warrant must be transmitted, in the required form, by the issuing judicial authority to the Central Authority in Gibraltar together with the required undertakings. All warrants must be in English or accompanied by a certified English translation.

#### - Form of European arrest warrant

The warrant must in so far as is practicable be in the form set out in Schedule 1 to the Act and specifying the following:-

- a) the name and nationality of the person in respect of whom it is issued;
- b) the name, address of the principal office, fax number and e-mail address of the issuing judicial authority;
- c) the offence to which the warrant relates including the nature and classification under the law of the issuing State of the offence concerned;

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- d) that a conviction, sentence or detention order is immediately enforceable against the person, or that a warrant for his arrest or another order of a judicial authority in the issuing State, having the same effect has been issued in respect of that offence;
- e) the circumstances in which the offence was committed or is alleged to have been committed, including the time and place of its commission, and the degree of involvement or alleged degree of involvement of the person in the commission of the offence; and
- f) (i) the penalties to which that person would, if convicted of the offence specified in the EAW be liable;  
(ii) where that person has been convicted of the offence specified in the EAW but has not been sentenced, the penalties to which he is liable in respect of the offence;
- g) where that person has been convicted of the offence specified in the warrant and a sentence has been imposed in respect thereof, the penalties of which that sentence consists.

### Required Statement of Fact

The EAW must include a statement from the Issuing Judicial Authority that a decision has been made by a person who in the issuing Judicial State performs the same or similar functions to those performed in Gibraltar by the Attorney General for commencing proceedings against the person in respect of whom the EAW is issued and that a decision has been made to try him for the offence concerned.

### Required Undertakings

The Issuing Judicial authority must provide the following undertakings in writing:-

- that the surrender of the person is sought for the purpose only of his being charged with and tried for the offence described in this European Arrest Warrant;
- the person will not be surrendered to another State pursuant to a European Arrest Warrant issued by a judicial authority in that State in respect of an offence committed or alleged to have been committed before his surrender
- the person will not be extradited to a third State without the consent of the executing authority

Where the person in respect of whom a warrant is issued has been convicted in absentia without having been given proper notice of the trial, an undertaking in writing must be provided that the person will, upon being surrendered, be retried for that offence or be given an opportunity of a retrial in respect of that offence; be notified of the time when and place at which any retrial will take place and be permitted to be present when any such retrial takes place.

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Upon receipt of a duly issued European Arrest Warrant the Central Authority takes necessary steps to ensure its execution by delivering the same to the Commissioner of Police of the Royal Gibraltar Police.

The warrant can be executed by any police officer in any part of Gibraltar.

Upon execution of the warrant a copy of the warrant must be given to the person arrested not later than 24 hours after arrest and the person must be informed of his/her right to consent to being surrendered to the Issuing State; of his/her right to obtain or be provided with professional legal advice and where appropriate, the services of an interpreter.

The person arrested under a European arrest warrant shall, as soon as may be practicable after arrest, be brought before the Magistrates' Court where he can consent to being surrendered to the issuing judicial State or ask for the matter to be determined at a hearing.

## Procedure at a Hearing

The judge is required to be satisfied that the person before him or her is the person whose surrender is sought.

The judge must also be satisfied that the warrant complies with the requirements of the Act, that it contains the necessary Statement of Fact and required undertakings and that it is in respect of an offence to which the Act applies.

The judge must refuse to order the person's surrender if any of the Prohibitions to surrender in the law apply.

## Prohibitions on Surrender

The European Arrest Warrant Act 2004 contains safeguards where surrender is incompatible with the provisions of the European Convention on Human Rights and/or the Constitution of Gibraltar. This includes a prohibition on surrender where there are reasonable grounds to believe that the person to be surrendered would be sentenced to death, tortured or subjected to other inhuman or degrading treatment.

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Other grounds for refusal are where a person has been pardoned for the offence in question; where there has been undue delay/passage of time in bringing the European arrest warrant; where the person has already been tried for the offence elsewhere; where the person is being prosecuted in Gibraltar for the same offence; where the person has not reached the age of criminal responsibility.

- European Arrest Warrants issued by Gibraltar authorities

Upon application by the Attorney General, the Magistrates' Court may issue a European arrest warrant where it is satisfied that a warrant was issued for the arrest of that person but was not executed; and the person is not in Gibraltar.

The Magistrates Court must be satisfied that the person would be liable to a term of imprisonment of 12 months if convicted in respect of the offence for which the application for a warrant is made or that a term of imprisonment of not less than 4 months has been imposed and the person is required to serve all or part of that term.

The required form for outgoing warrants is the same as for incoming warrants.

Where a person is surrendered to Gibraltar pursuant to a EAW, any time spent in custody in the executing State in contemplation, or in consequence of the execution of the EAW is reduced by any term of imprisonment required to be served in Gibraltar.

The information contained in this document is not intended to be a substitute for reference to the legislation.

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## Statistical information

European arrest warrants received	European arrest warrants executed
6	<p>2 – Partially executed. Fugitives arrested and Magistrates' Court ordered Surrender to issuing State. Currently pending appeals.</p> <p>2 – Warrants failed to comply with the requirements. Fugitives no longer in Gibraltar.</p> <p>2 – Fugitives never arrived in Gibraltar. (1 arrested in Madrid).</p>

European arrest warrants issued	European arrest warrants executed
1 (Never issued. Fugitive surrendered to police before issue.)	0

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