

## CHAPTER 14 - SPECIALITIES OF JURISDICTION, MUTUAL LEGAL ASSISTANCE AND EXTRADITION

### **JURISDICTION: GENERAL**

For a more detailed discussion of this topic, see Chapter 1 of Renton and Brown's Criminal Procedure.

As a general rule Procurators Fiscal deal only with offences committed at a place which lies within the jurisdiction of their Sheriff and District courts. Offences committed in Scotland but outwith their jurisdiction may be prosecuted by them when the accused has also committed offences within their jurisdiction, but only if both types of offence are dealt with on the same complaint or indictment.

The general rules are contained in Sections 8, 9 and 10 of the Criminal Procedure (Scotland) Act 1995. Examples of extraterritorial exceptions to the general rule are dealt with in this chapter but this should not be considered a comprehensive list of all those statutes which confer extra-territorial jurisdiction and reference should be made in every case to the terms of the particular statute.

### **OFFENCES AT SEA**

#### **14.02 CONTINENTAL SHELF AND UNITED KINGDOM TERRITORIAL WATERS**

The main legislation conferring extra-territorial jurisdiction in these areas consists of The Continental Shelf Act 1964, the Oil and Gas (Enterprise) Act 1982, the Territorial Sea Act 1987 together with various Orders made under these Acts (e.g. Criminal Jurisdiction (Offshore Activities) Continental Shelf (Designation of Areas) Order (S1 1993/599) and the No 2 Order (S1 1993/1782) etc).

Section 1(7) of the 1964 Act provides a power to designate by Order in Council areas within which the United Kingdom may exercise rights with respect to the sea bed and sub-soil and their natural resources.

The Criminal Jurisdiction (Offshore Activities) Order 1987 replaces provisions previously contained in Sections 3(1) and 11(3) of the Continental Shelf Act 1964 and extends them to territorial waters. The Order provides that any act or omission which takes place on, under or above an installation in the territorial waters of the United Kingdom and waters in any area for the time being designated under Section 1(7) of the 1964 Act, or in any waters within 500 meters of any such installation, and which would if taking place in any part of the United Kingdom constitute an offence under the law in force in that part, shall be treated for the purposes of that law as taking place in that part. The Order further provides that a constable shall have on, under or above or within 500 meters of any such installation all the powers, protection and privileges which he has in the area for which he acts as constable.

The similar provisions of the repealed Section 3 of the 1964 Act had been previously interpreted as extending only the common law to such installations and the waters within 500 meters of them. If followed, this would mean that any statutory offence would only be included if the Act creating it specifically stated that it extended to these areas. This view is not, however, conclusive. Any report against a person alleging the commission of a statutory offence in territorial waters or a designated area must, if the statute is silent on the extension of jurisdiction, be referred to Crown Counsel for instruction.

Examples of other statutes which have extended jurisdiction include the Health and Safety at Work etc Act 1974 which has been extended to territorial waters and designated areas (S1 1989/840) and the Mineral Workings (Offshore Installations) Act 1971, The Offshore Petroleum Development (Scotland) Act 1975 and the Petroleum and Submarine Pipeline Act 1975 all of which extend to designated areas.

#### **14.03 MERCHANT SHIPPING ACT 1995**

Section 281 of the Merchant Shipping Act 1995 extends the criminal jurisdiction of Scottish Courts in respect of offences under the Act to United Kingdom ships on the high seas; and, where the accused is a British citizen, to United Kingdom ships in foreign ports. It also extends the criminal jurisdiction where a British citizen has committed an offence on board a foreign ship to which he does not belong.

Section 279 of the 1995 Act also provides for the purpose of conferring jurisdiction under the Act that the offence is deemed to have been committed in any place in the United Kingdom where the offender may for the time being be.

#### **14.04 PREVENTION OF OIL POLLUTION ACT 1971**

Section 19(5) provides that proceedings under the Act (except for an offence under Section 3) may be taken against a person at any place at which he is for the time being. This provision is useful for the prosecution of the masters of foreign vessels but it is in general preferable to prosecute in the court having geographical jurisdiction over the waters in which the pollution occurred. Section 19(7) provides that in relation to offences under Section 3 of the Act proceedings may be taken, and the offence may for all incidental purposes be treated as having been committed in

any place in the United Kingdom.

#### **14.05 PROTECTION OF WRECKS ACT 1973**

Section 1 of the Act provides that the Secretary of State may designate an area around the site of a wrecked vessel as a restricted area. The Act applies to wrecks within United Kingdom waters which are defined in Section 3(1) of the Act as being any part of the sea within the Seaward Limits of United Kingdom territorial waters and includes any part of a river within the ebb and flow of ordinary spring tides. Section 3(4) of the Act provides that proceedings for an offence may be taken and the offence may for all incidental purposes be treated as having been committed at any place in the United Kingdom where the person accused is for the time being.

#### **14.06 FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRY (SCOTLAND) ACT 1976**

Section 9 provides that for the purposes of the Act a death or any accident from which death has resulted which has occurred -

- (a) in connection with the exploration of the sea bed or subsoil or the exploitation of their natural resources; and
- (b) in that area or any part of that area in respect of which it is provided by Order in Council under Section 23(1) of the Oil and Gas (Enterprise) Act 1982 (or under the now repealed Section 3 of the Continental Shelf Act 1964) that questions arising out of acts or omissions taking place therein shall be determined in accordance with the law enforced in Scotland shall be taken to have occurred in Scotland.

The effect of various Orders in Council made under the 1964 and 1982 Acts (see S1 1980/184 onwards) is to provide jurisdiction under the Act in an area approximately bounded on the south latitude 55° 50' N (known as "The Scottish Area"). If there is any doubt as to whether jurisdiction is Scottish or English the matter must be referred immediately to Crown Office.

The Procurator Fiscal responsible for investigation of a death covered by Section 9 of the Act will be the Procurator Fiscal in whose district is situated the port of operation most closely connected with the death thus following as closely as possible the general rule as to jurisdiction provided for in Section 1 of the Act.

#### **14.07 FISHERY LIMITS ACT 1976**

Section 1(1) of the Act extends British fishery limits to 200 miles from the base line from which the breadth of the territorial sea adjacent to the United Kingdom, the Channel Islands and the Isle of Man is measured. (Section 30 of the Fisheries Act 1981 provides for the enforcement of Community Rules within British fishery limits). Jurisdiction is conferred by Section 14 of the Sea Fisheries Act 1968 which provides that proceedings may be taken and the offence may for all incidental purposes be treated as having been committed in any place in the United Kingdom. The appropriate jurisdiction will be that of the sheriff within whose sheriffdom is situated the harbour to which an arrested fishing boat is brought.

#### **14.08 DEEP SEA MINING (TEMPORARY PROVISIONS) ACT 1981**

This Act prohibits unlicensed deep sea mining by a citizen of the United Kingdom and Colonies, a Scottish firm or a body incorporated under the law of any part of the United Kingdom and who is resident in

any part of the United Kingdom. The deep sea bed is defined as being that part of the bed of the high seas in respect of which sovereign rights in relation to the natural resources of the sea bed are neither exercisable by the United Kingdom nor recognised as being exercisable by another country. Section 14 provides that proceedings for an offence under the Act may be taken, and the offence may for incidental purposes be treated as having been committed, in any place in the United Kingdom.

#### **14.09 FOOD AND ENVIRONMENT PROTECTION ACT 1985**

Inter alia this Act deals with offences involving unlicensed dumping at sea. Section 21(8) of the Act provides that proceedings for any offence under the Act (which includes offences committed both within and outwith United Kingdom waters) may be taken and the offence may for all incidental purposes be treated as having been committed in any place in the United Kingdom.

#### **14.10 CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ACT 1990**

Part II of this Act deals with international drug trafficking offences. Section 18 provides that anything which would constitute a drug trafficking offence if done on land in any part of the United Kingdom shall constitute that offence if done on a British ship.

Section 19 applies to a British ship, a ship registered in a state which is a party to the Vienna Convention and to a ship not registered in any country. A person is guilty of an offence if on any such ship, wherever he may be, he has a controlled drug in his possession or is knowingly concerned in the carrying or concealing of a controlled drug on the ship, knowing or

having reasonable grounds to suspect that the drug is intended to be imported or has been exported contrary to the law of any state.

Section 20 and Schedule 3 deal with powers of enforcement in relation to ships. Where the ship is registered in a Convention state, these powers can only be exercised with the authority of the Secretary of State who, in turn, must have the authority of, or be acting in response to a request of, a Convention state. Any conditions attached to the authorisation/request must be strictly adhered to. Section 21 makes provision as to jurisdiction.

All cases arising under these provisions must be reported immediately to the Fraud and Specialist Services Unit at the Crown Office.

[Useful up to date information on offences at sea can be found in Dainlith and Willoughby, "United Kingdom Oil and Gas Law"].

### **OFFENCES ON AIRCRAFT**

#### **14.11 CIVIL AVIATION ACT 1982**

Section 92 of this Act provides that any act or omission taking place on board a British controlled aircraft while in flight elsewhere than in or over the United Kingdom which would have been an offence if the aircraft had been in or over the United Kingdom shall constitute that offence. For the purpose of jurisdiction any such offence is deemed to have been committed in the place where the offender is found. Section 92(5) of the Act defines a British controlled aircraft.

#### **14.12 AVIATION SECURITY ACT 1982**

Section 1 of the Act defines the offence of hijacking. Section 2 deals with the

destroying, damaging or endangering the safety of aircraft. Section 3 deals with other acts endangering or likely to endanger the safety of aircraft. Section 6 deals with other ancillary offences. The provisions relating to jurisdiction are to be found in those sections and in Sections 5 and 8.

In relation to air piracy, any court having jurisdiction in respect of piracy committed on the high seas has jurisdiction in respect of piracy committed by or against an aircraft, wherever that piracy is committed (see 14.18 below). Section 8(2) confers jurisdiction on the sheriff to entertain proceedings for an offence under Sections 2, 3 or 6 of the Act which offence is to be deemed to have been committed in any place in Scotland where the offender may be for the time being.

[Useful up to date information is contained in Shawcross and Beaumont, "Air Law"].

### **CRIMES AGAINST THE PERSON**

#### **14.13 GENEVA CONVENTIONS ACT 1957**

Section 1 of the Act provides that any person of whatever nationality who commits any grave breach whether in or outside the United Kingdom of any of the Conventions which are laid out in the Schedules to the Act shall be guilty of a felony. These include: (Convention For Amelioration of The Condition of Wounded Sick and Shipwrecked Members of Armed Forces at Sea; Convention relative to Treatment of Prisoners of War; Convention relative to the Protection of Civilian Persons in Time of War).

Section 1(2) provides that a person charged with committing such an offence outside the United Kingdom may be proceeded against, indicted, tried and punished therefor in any place in the United

Kingdom as if the offence had been committed in that place. Only the High Court has jurisdiction to try such an offence but any Sheriff Court has jurisdiction to deal with the preliminary matters.

#### **14.14 TORTURE**

By virtue of Section 134 of the Criminal Justice Act 1988 a public official or person acting in an official capacity or another acting at the instigation, or with the consent or acquiescence of such an official or person, whatever his nationality, commits the offence of torture if, in the United Kingdom, or elsewhere, he intentionally inflicts severe pain or suffering on another in the performance or purported performance of official duties.

For the purposes of the Act any act or omission amounting to torture or attempted torture shall be deemed to be an offence committed within United Kingdom territory wherever it takes place and an offence against the law of the United Kingdom.

Allegations of torture should be reported to Crown Office for Crown Counsel's instructions.

#### **14.15 WAR CRIMES ACT 1991**

This Act authorises proceedings for murder, manslaughter or culpable homicide to be brought against any person who was a British citizen or resident in the United Kingdom, Isle of Man or Channel Islands on or after 8 March 1990 irrespective of his nationality at the time of the alleged offence if it occurred during the period between 1 September 1939 and 5 June 1945 in a place which at the time was part of Germany or under German occupation and constituted a violation of the laws and customs of war.

It is perhaps unlikely that reports in terms of this Act will come to Procurators Fiscal rather than Crown Office but if that occurs Procurators Fiscal should immediately report the case for Crown Counsel's instructions.

### **TERRORISM**

#### **14.16 SUPPRESSION OF TERRORISM ACT 1978 AND THE INTERNATIONALLY PROTECTED PERSONS ACT 1978**

Section 4(1) of the Suppression of Terrorism Act 1978 provides that if a person, whether a citizen of the United Kingdom or not, does in a Convention Country any act which if he had done it in a part of the United Kingdom would have made him guilty in that part of the United Kingdom of -

- murder;
- culpable homicide;
- kidnapping, abduction or plagium;
- false imprisonment;
- an offence under the Explosive Substances Act 1883, Section 2 or 3;
- an offence under the Firearms Act 1968, Section 16 or 17(1); or
- an offence of attempting to commit any of these offences

he shall, in that part of the United Kingdom be guilty of the offence aforesaid of which the Act would have made him guilty if he had done it there.

Section 4(3) makes similar provision in relation to nationals of Convention Countries who outwith the United Kingdom and that Convention Country commit acts which would make them guilty in the United Kingdom of the offence of murder, culpable homicide or an offence under Sections 2 or 3 of the Explosive Substances Act.

Section 4 provides that without prejudice to any jurisdiction exercisable apart from the subsection, every Sheriff Court in Scotland shall have jurisdiction to entertain proceedings for an offence which would not be an offence in Scotland apart from Section 4.

Subsections 2 and 6 of Section 4 of the Suppression of Terrorism Act 1978 are repealed by the Internationally Protected Persons Act 1978, Section 6. The latter Act makes provision for the prosecution in Scotland of persons who commit offences outwith the United Kingdom against internationally protected persons defined in Section 1(5) or their premises or vehicles. Jurisdiction is conferred on Scottish courts by Section 2(2) of the Act in the same terms as Section 4(5) of the Suppression of Terrorism Act.

A prosecution under either Act in Scotland will take place only where the offender is found in Scotland and is not to be extradited. It would be unusual not to extradite.

A Convention Country is one which is party to the European Convention on the Suppression of Terrorism and at present these are set out in the Explanatory Note to SI 1994/2978 as the following: Austria (SI 1978/1245), Belgium (SI 1986/261), Cyprus (SI 1979/697), the Czech Republic (SI 1994/2978), Denmark (SI 1978/1245), Finland (SI 1990/1272), France (SI 1987/2137), Germany, Greece (SI 1990/1272), Iceland, Italy (SI 1986/1137), Liechtenstein (SI 1986/1137), Luxembourg, the Netherlands (SI 1986/271), Norway (SI 1981/1507), Portugal, the Republic of Ireland (SI 1989/2210), Slovakia (SI 1994/2978), Spain, Sweden (SI 1978/1245), Switzerland (SI 1986/271) and Turkey and by virtue of SI 1986/2146 the 1978 Act also applies to the USA.

#### **14.17 TAKING OF HOSTAGES ACT**

#### **1982**

Section 1 of the Act defines the offence of hostage taking. Any such offence shall be deemed to have been committed in any place in Scotland where the offender may be for the time being.

#### **COMMON LAW OFFENCES**

#### **14.18 MURDER AND CULPABLE HOMICIDE**

Section 11(1) of the Criminal Procedure (Scotland) Act 1995 provides that any British citizen or subject who in a country outside the United Kingdom commits any act or makes any omission which if done or made in Scotland would constitute murder or culpable homicide shall be guilty of the same crime and subject to the same punishment as if the act or omission had been done in Scotland.

#### **THEFT OUTSIDE SCOTLAND**

Any person who has in his possession in Scotland property which he has stolen in any other part of the United Kingdom or in Scotland receives property stolen in any other part of the United Kingdom, may be dealt with, indicted, tried and punished in Scotland in like manner as if he had stolen it in Scotland by virtue of Section 11(4) of the 1995 Act.

Schedule 3, paragraph 8 of the 1995 Act (which provides that robbery etc will include reset and theft will include breach of trust etc) provides that the power conferred by the section to convict a person of an offence other than that with which he is charged shall be exercisable by the Sheriff Court before which such person is tried, notwithstanding that other offence was committed outside the jurisdiction of that Sheriff Court. In this connection, however, see the case of Roy v HMA 1963 SLT in which it was held that there is no

jurisdiction to convict in Scotland of reset which occurred in England even where the theft took place in Scotland.

### TREASON

Jurisdiction in treason cases is based on allegiance and there is jurisdiction to try persons charged with treason no matter where the treasonable acts are committed.

### PIRACY

Scottish courts have jurisdiction to try the offence of piracy no matter where the offence takes place and irrespective of the nationality of the ship or the offenders (see HMA v Cameron and Others 1971 JC 50).

### FURTHER STATUTORY EXCEPTIONS

#### 14.19 CROWN SERVANTS

Section 11(2) of the Criminal Procedure (Scotland) Act 1995 provides that any British citizen or subject employed in the service of the Crown who in a foreign country, when acting or purporting to act in the course of his employment, does any act or makes any omission which in Scotland would constitute an offence punishable on indictment shall be guilty of that offence and subject to the same punishment as if the act or omission had been done or made in Scotland.

Such a person may be proceeded against in any Sheriff Court District in Scotland in which he is apprehended or is in custody and for all incidental purposes the offence is deemed to be committed in that district. Such cases must be reported for Crown Counsel's instructions.

#### 14.20 CUSTOMS AND EXCISE ACTS

Section 148(1) of the Customs and Excise Management Act 1979 provides that proceedings for an offence under the Acts

may be commenced -

- (a) in any court having jurisdiction in the place where the person charged with the offence resides or is found; or
- (b) if anything was detained or seized in connection with the offence, in any court having jurisdiction in the place where that thing was so detained or seized or was found or condemned as forfeited; or
- (c) in any court having jurisdiction anywhere in that part of the United Kingdom in which the place where the offence was committed is situated.

This provision is also applied in respect of offences under Part 1 of the Finance Act 1972 by Section 38(3) of the Finance Act 1972 as amended by the Customs and Excise Management Act 1979, Schedule 4, paragraph 12 and Part I of the table referred to in paragraph 12.

#### 14.21 TRANSPORT ACT 1968

Section 103(7) (added by the Road Traffic (Drivers' Ages and Hours of Work) Act 1976, Section 2) provides that an offence under Part VI of the Act (Drivers Hours and Keeping of Records) may be treated for the purpose of conferring jurisdiction on a court (but without prejudice to any jurisdiction it may have apart from the subsection) as having been committed in any of the following places -

- (a) The place where the person charged with the offence was driving when evidence of the offence first came to the attention of a constable or vehicle examiner.
- (b) The place where that person resides, or is, or is believed to

reside or be at the time the proceedings are commenced.

- (c) The place where at that time that person or, in the case of an employee-driver, that person's employer or, in the case of an owner-driver, the person for whom he was driving, has his place or principal place of business or his operating centre for the vehicle in question.

#### **14.22 INTERNATIONAL CARRIAGE OF PERISHABLE FOODSTUFFS ACT 1976**

Section 1 of the Act provides that the Secretary of State may make regulations as to the standards for transport of equipment used or intended to be used for the international carriage of perishable foodstuffs. Section 7 of the Act creates offences of using transport equipment in contravention of the regulations. Section 14 of the Act provides that offences may for the purpose of conferring jurisdiction on a court (without prejudice to any jurisdiction the court may have apart from the section) be treated as having been committed in any of the following places:-

- (a) The place where the transport equipment was being used when evidence of the offence first came to the attention of a police constable or an examiner.
- (b) The place where the person charged resides, or is, or is believed to reside or be, at the time when the proceedings are commenced.
- (c) The place where at that time that person has his place or principal place of business or his operating centre for transport equipment in question.

#### **14.23 TRADE DESCRIPTIONS ACT 1968**

Section 21 of the 1968 Act provides that any person who, in the United Kingdom, assists in or induces the commission in any other country of certain contraventions of Section 1 of the Act (indicating that goods were manufactured, produced, processed or reconditioned in the United Kingdom; or using an expression to which a meaning is assigned by an order made under Section 7(b) of this Act) or a contravention of Section 12 (false representations as to Royal Approval or award) shall be guilty of an offence.

#### **14.24 REPRESENTATION OF THE PEOPLE ACT 1983**

Section 178 of the 1983 Act provides that proceedings in respect of an offence under the Act alleged to have been committed outside the United Kingdom by a Commonwealth citizen or citizen of the Republic of Ireland may be taken before the appropriate court in the United Kingdom having jurisdiction in the place where the person charged is for the time being.

#### **14.25 FOREIGN ENLISTMENT ACT 1870**

Section 16 provides that any offence against the Act shall, for all purposes incidental to the trial and punishment of any person guilty of any such offence, be deemed to have been committed either in the place in which the offence was wholly or partly committed or in any place within Her Majesty's dominions in which the person who committed such an offence may be.

#### **14.26 WIRELESS TELEGRAPHY ACT 1949**

Section 6(1) of the Act applies Sections 1-5 to all stations and apparatus in or over, or for the time being in or over, the United

Kingdom or the territorial waters adjacent thereto and, subject to any limitations made by regulations, to British ships and aircraft anywhere in the world. Sections 1-5 also apply to apparatus outwith the United Kingdom or its territorial waters which was released from the United Kingdom or any British ship or aircraft.

Regulations may also be made under Section 6(2) regulating the use of Wireless Telegraphy Apparatus on any foreign ship or aircraft within the limits of the United Kingdom or its territorial waters.

Section 6 is amended, explained and extended by the Wireless Telegraphy Act 1967, Sections 9(1) - (4) and 10(3).

The Wireless Telegraphy (Colonial Ships and Aircraft) Orders 1954 have been made in exercise of powers contained in Section 6 (S1 1954/488, S1 1954/539 and S1 1954/540). The Continental Shelf (Jurisdiction) Order 1980 (1980/184) Regulation 4 extends the Wireless Telegraphy Act 1949 beyond territorial waters and provides that any installation in the "Scottish Area" and any waters within 500 meters of an installation shall be deemed to be situated in Scotland.

#### **14.27 RADIOACTIVE SUBSTANCES ACT 1960**

The Continental Shelf (Jurisdiction) Order 1980 (1980/184) extends this Act in the same way and to the same extent as it does the Wireless Telegraphy Act 1949.

#### **SCOTTISH INVESTIGATIONS NECESSITATING ENQUIRIES ELSEWHERE IN THE UNITED KINGDOM**

#### **14.28 ARREST AND DETENTION**

By virtue of the Criminal Justice and Public Order Act 1994 Part X (Section 136-141) police officers within the United Kingdom may exercise their powers and offer

assistance outside their home jurisdictions.

Part XII (Section 60) makes provision for the police to exercise their powers in United Kingdom waters.

Section 136 deals with warrants for arrest issued in one part of the United Kingdom which require to be executed in another part while Sections 137 and 138 deal with powers of detention or arrest without warrant.

Where a person is detained outside Scotland under Section 137 by a constable of a Scottish force he must be taken as soon as reasonably practicable to the nearest convenient designated police station in that jurisdiction or to the nearest convenient police station in Scotland or to a police station within a sheriffdom in which the offence is being investigated. If he is arrested under Section 137 similar conditions apply with the proviso that he must be brought to the nearest convenient Scottish police station or one within the relevant sheriffdom.

Any period of detention is limited by Section 138(6)(a) to a period of 4 hours calculated from the time of arrival at the police station to which the suspect is taken and not the normal 6 hour period from the time of detention.

#### **14.29 SEARCH WARRANTS**

A search warrant can be obtained from a Sheriff or Magistrate in the Scottish jurisdiction in which the offence occurred authorising search at a place in England but it must be then endorsed by the relevant judge in England as prescribed in the Schedule to the Summary Jurisdiction (Process) Act 1881. The police officer who obtains the warrant in Scotland should be the same one who takes it to England for endorsement and enforcement as the person presenting the warrant for endorsement in England has to be able to

identify the signature of the Sheriff or Magistrate to the relevant Judge in England.

A warrant granted by a court of summary jurisdiction in England and Wales (but not Northern Ireland) may also be endorsed by a court of summary jurisdiction in Scotland. It should be noted that under the Police and Criminal Evidence Act 1984 a warrant to seize special procedures material (Schedule 1 to the 1984 Act) can be issued only by a Circuit Judge, who is not a court of summary jurisdiction, and cannot therefore be endorsed under the 1881 Act. Requests by English police or prosecuting authorities for assistance in enforcing such warrants should be referred to the Head of the Fraud and Specialist Services Unit at the Crown Office.

#### **14.30 CITING OF WITNESSES OUTSIDE SCOTLAND**

The citation of a witness in England, Wales or Northern Ireland is regulated by the Writ of Subpoena Act 1805. A reasonable sum of money must be tendered to the witness to defray his expenses. If the witness fails to appear there is a fairly cumbersome procedure by which the facts are reported to the High Court in England or the High Court of Justice in Northern Ireland and proceedings can then be taken in that court against defaulting witnesses as if they had failed to appear in response to a citation to attend that court.

The citing of witnesses outwith the United Kingdom cannot be enforced but the witness may be cited or have his evidence taken by Letter of Request under the Criminal Justice (International Co-operation) Act 1990, or his evidence can be taken on Commission or, in solemn proceedings only, by live television link under Sections 272 and 273 of the Criminal Procedure (Scotland) Act 1995.

As the Isle of Man and the Channel Islands are not part of the United Kingdom, the obtaining of evidence from these jurisdictions and the citing of witnesses there, is governed by the 1990 Act.

#### **14.31 CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ACT 1990 PART I**

##### **MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

The Fraud and Specialist Services Unit of the Crown Office is responsible for both incoming and outgoing requests for mutual legal assistance, and enquiries should be directed to the Head of the Unit.

Part I enables the United Kingdom to provide a wide range of practical assistance to judicial authorities in other jurisdictions in the investigation and prosecution of crime.

The provisions of Part I introduce measures for the service of process and court decisions (sections 1 and 2), the obtaining of formal evidence for use in both investigations and prosecutions (sections 3 and 4), the transfer of prisoners and other detained persons as witnesses or for other evidential purposes (sections 5 and 6), and the obtaining of evidence by search and seizure (sections 7 and 8). Section 9 makes provision for the enforcement of overseas forfeiture orders.

#### **14.32 UNITED KINGDOM CENTRAL AUTHORITY FOR MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

Part I of the Act enables the United Kingdom to comply with the requirements of the Scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth, the European Convention on Mutual Assistance in Criminal Matters (1959), and the United Nations Convention

against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988). Each of these instruments assumes the existence of a Central Authority (Ministry of Justice) for the receipt and despatch of mutual assistance requests. This role is being performed in the United Kingdom within the Home Office by the United Kingdom Central Authority for Mutual Legal Assistance in Criminal Matters.

In general, requests for assistance in either direction will be channelled through the Central Authority. However, where a request emanates from or is intended for execution in Scotland, the Home Office will in practice act only as a postbox and requests will be subject to scrutiny at and processing by Crown Office. It should be borne in mind that the Act does not affect less formal investigation relationships between police and other agencies, such as through Interpol and various customs agreements.

### **14.33 SERVICE OF PROCESS (SECTIONS 1 AND 2)**

Prior to the 1990 Act, all process issued by other jurisdictions was normally served by the relevant country's Embassy or High Commission in the United Kingdom. Under the 1990 Act, the Central Authority in the Home Office will receive all incoming summonses or other process seeking the attendance of witnesses or accused persons at criminal proceedings in other jurisdictions, together with documents recording court decisions in criminal matters. Authorities in other jurisdictions have been advised that they must send all such documents to the Central Authority and any which are received direct by Procurators Fiscal or the police should be forwarded to the Crown Office.

On receipt of such process or documents, the Crown Office will serve them by post (in accordance with international practice).

Where another jurisdiction requests a witness summons to be served personally and for additional information to be conveyed to him or her, the Crown Office may request a designated police officer to arrange for personal service. Section 1(5) of the 1990 Act requires the officer to confirm details of service or non-service and, if possible, to provide a receipt signed by the person on whom the process or document was served. Where a personal service is not possible, it may in some cases be sufficient to leave a summons at the last known address of the person involved, but only where the requesting authority has expressly declared that it has no objection.

Sections 1(3) and 1(4) of the 1990 Act make clear that, again in accordance with international practice, process served on another jurisdiction's behalf is not enforceable in the United Kingdom. The recipient of the process will be advised as to this position. The Crown Office is required by the Act to advise the recipient that different rights and privileges may apply in the state where evidence is to be given than apply in the United Kingdom.

**CITING WITNESSES AND ACCUSED PERSONS OUTWITH THE UNITED KINGDOM**

Procurator Fiscal are unlikely to be troubled with service of overseas criminal process in Scotland. It is, however, entirely possible that Procurators Fiscal will wish to avail themselves of the mechanism in Section 2 for service of United Kingdom process overseas. It will be noted that in terms of Section 2(2) in relation to Scotland the facility exists for service of any document which may competently be served on an accused or witness. This will include not only the kind of documents mentioned above but also, for example, certificates under Section 280 of the Criminal Procedure (Scotland) Act 1995 and even notices under Section 67 of the 1995 Act although in relation to the latter there should be a domicile of citation within the United Kingdom.

Procurators Fiscal are reminded that they must obtain Crown Counsel's instructions before making arrangements for the attendance of witnesses from overseas.

Documents for service overseas should be submitted to the Sheriff Clerk or clerk to the District Court or, after lodging of a High Court indictment, the Clerk of Justiciary for transmission to the Crown Agent. The route of submission through the Clerk of Court has been chosen for various reasons including the desirability of a request to foreign authorities being seen as judicial requests and the related reason that the provision is available to the prosecution, the court and the defence. It should be remembered, however, that the documents will have to be transmitted overseas where arrangements for service may well be entrusted to agencies with less of a sense of urgency than is expected of Scottish Police Officers. Time should be allowed for any delays and as much information as

possible provided about the intended recipient in order to gain the best chance of success.

Rule 363 of the Act of Adjournal (Criminal Procedural Rules) 1996 makes provision for proof of service of documents overseas. The Home Office will provide a certificate as to service which will be sent to the relevant Clerk of Court. The certificate is sufficient evidence of the facts stated in it.

Even where service can be proved, the terms of Section 2(3) means that warrants to arrest must not be sought on the basis of this procedure and this will also limit the usefulness of the provision. Given the absence of compulsion and the likely delays involved in the service of persons under the Act direct informal approaches to witnesses may often prove more effective. Wherever possible, reference to obligation to attend and exposure to arrest etc., should be deleted from any documents for service. Where this is impractical a notice explaining the import of Section 2(3) will be attached to any process.

**14.34 OBTAINING FORMAL EVIDENCE FROM OTHER JURISDICTIONS (SECTION 3)**

Section 3 deals with the obtaining of evidence overseas for use in the United Kingdom. Procurators Fiscal will note that there are two different mechanisms in the Section. The primary method is by presentation of an application to the Court for a Letter of Request, but there is also provision for designated prosecuting authorities themselves to issue Letters of Request. Procurators Fiscal and the Lord Advocate are designated for this purpose under the Criminal Justice (International Co-operation) Act 1990 (Designation of Prosecution Authorities) Order 1991.

By Section 3(1) and (3), before a Letter of Request is issued the Court or designated

prosecuting authority must be satisfied that an offence has been committed or that there are reasonable grounds for suspecting that it has been committed; and that proceedings have been instituted or that the offence is being investigated.

Where the matter proceeds by application to the Court, the application may be made by either the prosecutor or the accused. The style of application and draft Letter of Request are to be found in the Act of Adjournment (Rule 36.4 and Forms 36.4 -A and 36.4-B).

In general, the procedures set out in the Act are to be preferred to the previous procedure of submission of Commissions Rogatoires, since, for all practical purposes, Section 3 encompasses everything which can be achieved by Commission Rogatoire.

In all cases where it is desired to operate Section 3 Procurators Fiscal must first communicate with Crown Office.

Procurators Fiscal may expect to receive intimation of all defence applications, from the Clerk of Court if not from the defence. Immediate communication of any defence application must be made to Crown Office, which will advise in particular on proposed amendments to secure, as far as possible, that the product will be acceptable to foreign authorities.

The hearing of any application will be in private and dealt with on the basis of ex parte statements.

Once a Letter of Request has been issued by the court the clerk will send it to the Crown Agent for transmission unless the court has been persuaded to order direct transmission overseas in terms of sub-section (5); in such cases the clerk will send a copy to the Crown Agent.

The Commissioners of Customs and Excise and the Secretary of State for Trade and Industry are also designated prosecuting authorities for the purposes of Section 3. Both departments have given undertakings not to send Letters of Request in cases with a Scottish element without consulting Crown Office.

#### **14.35 ADMISSIBILITY OF EVIDENCE OBTAINED BY LETTER OF REQUEST**

It will be noted that in terms of sub-section (9) evidence thus obtained is admissible without being spoken to by witnesses in so far as that is not unfair. Before seeking to introduce evidence obtained under Section 3 without it being spoken to Procurators Fiscal should obtain the instructions of Crown Counsel. In any question on the fairness of admitting such evidence the procedure under Section 272 of the Criminal Procedure (Scotland) Act 1995 may be distinguished as being in different terms and the case of Muirhead v HMA 1983 SCCR 133 sought to be distinguished accordingly, in particular on the basis that under Section 272 (then Section 32 of the Criminal Justice (Scotland) Act 1980) the Court is required to consider the fairness of the procedure before the evidence is taken, whereas under Section 3 it is enabled to see the product of the Letter of Request. Although Section 272 remains on the statute book it is expected that the new provision will more often be used in practice.

#### **14.36 POLICE-TO-POLICE CO-OPERATION**

The above procedure does not affect direct police-to-police co-operation under arrangements operated by Interpol National Central Bureau at New Scotland Yard. Letters of Request for Scottish police officers to make enquiries abroad will continue to be drawn up by the Procurator Fiscal before being submitted to the Crown

Office.

Law enforcement officials representing foreign governments, when conducting investigations in the United Kingdom relating to the possible contravention of their laws or regulations, should make their enquiries in the United Kingdom only with the prior knowledge and permission of the United Kingdom authorities concerned.

Details of the nature of the investigation to be undertaken and reasonable notice must be given to the appropriate authorities. Such permission may be granted, given conditionally or withheld.

Officials representing foreign governments must advise the United Kingdom Government or agency representing the Government of the United Kingdom of the developments in the enquiry conducted within the United Kingdom, in the form requested by the Government or agency.

Interviews relating to such enquiries may only be conducted with the consent of the person to be interviewed. In some circumstances United Kingdom officials may be able to use their statutory powers in support of such enquiries. The United Kingdom authorities concerned reserve the right to have an official present at any interview and for any interview to be conducted in compliance with UK law.

The United Kingdom National Central Bureau of Interpol acts as the focal point for international police communications to and from the United Kingdom. The Bureau is incorporated in the Headquarters of the National Criminal Intelligence Service (NCIS). In cases dealt with by the United Kingdom National Central Bureau or the United Kingdom Central Authority for Mutual Legal Assistance in Criminal matters, permission for foreign law enforcement officers to travel to the United Kingdom to be present when enquiries are

conducted is given by the Head of the Bureau.

The use of coercive powers requires a formal letter of request from the competent judicial or prosecuting authority of the requesting country. The letter of request will be sent to the United Kingdom Central Authority for Mutual Legal Assistance in Criminal Matters which will pass requests relating to Scotland to the Crown Office (see para 14.39).

#### **14.37 COMMISSION ROGATOIRES**

The formal means of seeking police-to-police co-operation is a Commission Rogatoire which is a written request to a competent judicial authority in another country for the assistance of police officers within its jurisdiction for the purpose of furthering criminal investigations in the jurisdiction of the requesting party. The necessity to proceed in this way is a result of the fact that, particularly in European countries, police officers may act in the investigation of crimes only on a commission granted to them by an examining magistrate or equivalent judicial authority of the district in question.

The request is made by a competent judicial authority in the requesting country to its counterpart in the foreign jurisdiction. In Scotland, the competent judicial authority is the Lord Advocate, or the Procurator Fiscal of the district in which the enquiries originate.

#### **14.38 DRAFTING LETTERS OF REQUEST FROM THE PROSECUTOR**

The form provided by the Act of Adjournal (Form 36.4-B) is drafted on the basis that the request is being made by a court. Nevertheless, much of the style is relevant to the drafting of a request by a prosecutor.

Because of the difficulties which can arise

in relation to the form, content and translation of Letters of Request and since the Lord Advocate may decide in certain cases that the request should run in his name, the draft Letter of Request and related papers should be submitted to Crown Office for approval. Unless the decision is taken that the Letter should be signed by the Lord Advocate, the approved draft will be returned for engrossment and signature by the Procurator Fiscal of the requesting jurisdiction. Thereafter, the final document with supporting productions should be returned to Crown Office for translation and despatch through diplomatic channels.

The signed Letter of Request with any accompanying documents, must be translated into the language of the jurisdiction in question. In the case of countries such as Switzerland and Belgium, where more than one language is spoken, care has to be taken to ensure that the documents are translated into the language appropriate to the canton or region. As already mentioned translation will be arranged by Crown Office, but the Procurator Fiscal should ascertain the appropriate language.

On completion, the documents are submitted to the Central Authority of the Home Office in London for onward transmission to the jurisdiction in question.

#### **14.39 LETTERS OF REQUEST ADDRESSED TO THE UNITED KINGDOM (SECTION 4)**

Section 4 deals with the obtaining of evidence in the United Kingdom for use overseas. Where a request is received which satisfies the conditions set out in the Act the Lord Advocate may nominate a Court to receive the evidence. Rule 36.8 of the Act of Adjournal provides that prosecutors and any party to or persons

with an interest in the criminal proceedings will be permitted to be present at the execution of the request. The Procurator Fiscal or Depute will require to arrange for citation of witnesses and to be present at the hearing. In the event that an official representative of the requesting authority is not present and putting questions it will be the duty of the Procurator Fiscal to put such questions as seem to be appropriate having regard to the information contained in the request and he should in any event be in a position to seek to clarify ambiguities and otherwise assist the court.

The proceedings will be in private. They will be recorded by a shorthand writer unless that is pointless (as would be the case where the whole proceedings consisted of, for example, the giving of consent to and provision of a blood sample). The record of proceedings will not be open to inspection by anyone who was not at the hearing other than a party to the proceedings and the requesting authority.

Once evidence has been obtained it will be sent by the Sheriff Clerk to the Crown Agent for onward transmission through the Home Office to the requesting country.

#### **14.40 TRANSFER OF UNITED KINGDOM PRISONERS TO ASSIST IN OVERSEAS INVESTIGATIONS (SECTION 5)**

Section 5 allows for the transfer of UK prisoners abroad at the request of the foreign jurisdiction to assist in proceedings in that country. Only if the prisoner gives his or her consent to being transferred can the Secretary of State give authority for such a transfer.

The relevant authorities, having satisfied themselves that the criteria for such a transfer have been fulfilled, will make the appropriate arrangements for the transfer

of the prisoner. The Scottish Office Home Department will be responsible for taking the prisoner from prison to the point of embarkation. The prisoner will then be handed over to representatives of the requesting authority. On the prisoner's return to this country Prison Officers will collect the prisoner from point of arrival and return him or her to prison. Where the prisoner involved is a remand prisoner, it will be for the Police Service to provide escorting arrangements as described above.

#### **14.41 TRANSFER OF OVERSEAS PRISONERS FOR USE IN UNITED KINGDOM PROCEEDINGS (SECTION 6)**

The procedure under this section mirrors that in section 5. In that respect, it will be for the authorities in this country to travel to the foreign jurisdiction to collect the prisoner from the point of departure. In order that officers have recognised control of the prisoner it is advised that travel should take place on British controlled craft.

#### **14.42 REQUESTS FOR THE EXERCISE OF POWERS OF SEARCH AND SEIZURE (SECTION 8)**

Section 8 provides for the giving of assistance by search and seizure. Procurators Fiscal will note that the procedure is for a direction by the Lord Advocate to the appropriate Procurator Fiscal who then applies to the Sheriff for a search warrant which, if granted, operates as if it were a Scottish common law search warrant. It will be necessary to meet a double criminality test in terms of subsection (1). Search warrants may be executed by police officers and Customs officers and those acting under direction of Customs officers (by virtue of the Criminal Justice (International Co-operation) Act 1990 (Exercise of Powers) Order 1991).

Where evidence is obtained by search it is to be forwarded to the Lord Advocate for transmission to the requesting country.

#### **14.43 ENFORCEMENT OF OVERSEAS FORFEITURE ORDERS (SECTION 9)**

Section 9 enables courts in the United Kingdom to enforce forfeiture orders made by courts in countries and territories designated by Order in Council under the Act (ie. orders for the forfeiture of anything in respect of which an offence was committed, or which was used in connection with the commission of an offence). This procedure will be dealt with by the Fraud and Specialist Services Unit of the Crown Office.

#### **14.44 SEIZURE OF CASH BY CUSTOMS AND EXCISE**

Part II of the Drug Trafficking Act 1994 provides a mechanism whereby a Customs Officer or Constable may seize and detain any cash which is being imported into or exported from the United Kingdom if its amount is not less than a prescribed sum and there are reasonable grounds for suspecting that it represents the proceeds of or is intended for use in drug trafficking. The prescribed sum is £10,000 in terms of the Criminal Justice (International Co-operation) Act 1990 (Detention and Forfeiture of Drug Trafficking Cash) Order 1991 (S.I. 1816/91) and "cash" is defined so as to include coins and notes in any currency.

Cash so seized cannot be detained for more than 48 hours except with the authority of a Sheriff and before ordering such continued detention the Sheriff must be satisfied that there are reasonable grounds for the suspicion mentioned above and that the continued detention of the cash is justified while its origin or detention

is investigated or consideration is given to the institution of criminal proceedings (which need not necessarily be in Scotland).

Application for authority for the continued detention of cash is at the instance of the Procurator Fiscal and orders for continued detention may be for such period as the Court specifies, not exceeding 3 months. Such orders are renewable up to a total period of detention not exceeding 2 years. The procedure is regulated by the Act of Sederunt (Summary Applications, Statutory Applications and Appeal etc Rules) 1999/929 Pt 3 (VI). A style of Summary Application is in Appendix 1 to this chapter.

An application for continued detention of cash is to be made by Summary Application to the Sheriff who will be exercising his civil jurisdiction. A further application for detention of cash is to be by Minute in that Process.

The procedure on a Summary Application is very much at the discretion of the Sheriff and Procurators Fiscal should consult an up to date text on Sheriff Court Practice in any cases in which they become involved.

The Act of Sederunt requires a Sheriff to proceed at once to determine a first application. There is no scope for continuation of the application to a hearing or for intimation of the application to any person before the order is made. If it were otherwise the purpose of the Act would be defeated because there would be no locus to retain the cash during that continuation (by definition such an application will only be made when the cash is not required as a production in any criminal proceedings). Although the 1994 Act allows a first application to be for a period of up to 3 months it is fairer to make the first application for a much shorter period. The appropriate period will depend on the circumstances of the particular case and

will have to be long enough to cover the making and determination of an application for further detention, a procedure which does involve service upon affected persons

Applications for the release of cash and applications for forfeiture of cash are also to be by Summary Application.

Procurators Fiscal are reminded that initial applications may require to be made outside court hours and in particular at weekends. It is therefore important that Procurators Fiscal on duty outside office hours are aware of the appropriate procedures.

All cases under this procedure should be reported to the Fraud and Specialist Services Unit at the Crown Office.

### ***MUTUAL LEGAL ASSISTANCE IN CIVIL MATTERS***

#### **14.45 EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS) ACT 1975**

Under Article 24 of the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters the Crown Agent has been designated as an "other authority" to whom a Contracting State may send requests to obtain evidence for the purpose of civil proceedings, commenced or contemplated in the Contracting State. Letters of Request under the Hague Convention are processed by the Fraud and Specialist Services Unit of the Crown Office.

Section 1 of the Evidence (Proceedings in Other Jurisdictions) Act 1975 makes provision for application being made to the Court of Session for an order for evidence to be obtained in Scotland. The court has to be satisfied that the application is made in pursuance of a request issued by or on behalf of a court or tribunal exercising jurisdiction outside the United Kingdom and

that the evidence to which the application relates is to be obtained for the purposes of civil proceedings which have either been instituted before the requesting court or whose institution before that court is contemplated.

By virtue of Section 2, the Court of Session has the power to make such provision for obtaining evidence as may appear to the court to be appropriate for the purpose of giving effect to the request in pursuance of which the application is made. Without prejudice to that generality, the court may make provision for the examination of witnesses, the production of documents and the taking of samples of blood.

The Crown Office will make application to the Court of Session on behalf of the Lord Advocate. Chapter 66 of the Rules of the Court of Session 1994 applies. The Petition normally seeks an order for the examination of a witness before the Sheriff Principal or a Sheriff of the Sheriffdom. The Crown Office will then send the request, together with the interlocutor of the Court of Session, to the Sheriff Principal. Copies of the papers will be sent to the Procurator Fiscal with a request that he attend at the examination of the witness and give all possible assistance in the execution of the request.

#### **14.46 ROLE OF PROCURATOR FISCAL**

The Procurator Fiscal will require to cite the witness to attend the diet fixed for the examination of the witness. A shorthand writer will also have to be arranged for the hearing. Unless an agent for the party seeking the examination of the witness is present and putting questions it will be the duty of the Procurator Fiscal to assist the Sheriff Principal or Sheriff by putting such questions as seem to be appropriate having regard to the information contained in the request. Section 3 of the 1975 Act makes provision for the privilege of

witnesses. Rule 66.6 regulates the procedure to be adopted where a witness claims he is not compellable.

Where the request is to take a sample of blood, the Procurator Fiscal should make arrangements for a police casualty surgeon to take the blood.

All costs incurred in meeting the request (ie, service of the citation, cost of shorthand writer and witness expenses) are borne by the Crown Office.

The evidence obtained pursuant to the request should be forwarded to the Crown Office by the Sheriff Clerk.

### ***EXTRADITION***

#### **14.47 EXTRADITION: GENERAL**

Extradition requests made by foreign states are generally received and dealt with by the Fraud & Specialist Services Unit at Crown Office. Similarly, extradition requests made to foreign states are sent through the Unit which also has overall responsibility for the preparation of such requests. Procurators Fiscal should be aware of the circumstances in which requests may be made and the general procedures for dealing with such requests.

#### **14.48 INCOMING REQUESTS**

The general law on extradition is contained in the Extradition Act 1989. In addition to harmonising the general law on extradition it enabled new arrangements to be entered into either on a general basis, with one or more states, or in respect of individual cases where no general extradition arrangements exist. The former category is defined in the Act as "general extradition arrangements", the latter as "special extradition arrangements". The Act also preserved the position in relation to pre-existing treaties.

The procedures for general extradition arrangements are set out in Part III of the Act which also applies to designated Commonwealth countries and all colonies. Those for special extradition will follow the particular arrangements which are made in such cases whilst the procedures for pre-existing treaties are set out in Schedule 1 to the Act.

The Act also makes special provision in relation to certain offences pursuant to international conventions. This effectively allows general extradition arrangements (i.e. procedure under Part III) to be in place where no treaties otherwise exist in respect of the relevant offences but the foreign state is a signatory to the convention.

The procedure to be followed will therefore be determined by whether the arrangements are pursuant to:-

- (i) Pre-existing treaties (Schedule 1), or
- (ii) General extradition arrangements with
  - (a) Foreign states,
  - (b) Commonwealth countries or colonies,
  - (c) Signatories to international conventions, or
- (iii) Special extradition arrangements

A list of countries with which the United Kingdom has extradition arrangements, and the category into which the arrangements fall, is in Appendix 2 to this chapter.

#### 14.49 SCHEDULE 1 PROCEDURE

What constitutes an "extradition crime" for

the purpose of such procedure will be determined by reference to the pre-consolidation legislation and the relevant treaty. The list of countries with such bilateral extradition treaties with the United Kingdom includes the United States. For most practical purposes, Scottish jurisdiction in these matters is confined to crimes committed on the high seas on vessels coming into port in Scotland, or on board aircraft in flight which land in Scotland. Otherwise the principal jurisdiction for such extradition procedures, continues to be that of the Metropolitan Magistrate at Bow Street, London.

#### 14.50 PART III PROCEDURE

This procedure covers foreign states subject to the new general arrangements, and Commonwealth countries and colonies. Such cases are dealt with at the Sheriff Court of Lothian & Borders which is designated as the Court of Committal in such matters. The procedure is activated by a request for the surrender of a person, such request being made by a diplomatic or consular representative of a foreign state or by and on behalf of the government of a designated Commonwealth country or the governor of a colony. The request must contain:-

- (i) Particulars of the person whose return is requested.
- (ii) Particulars of the offence of which he is accused or was convicted including evidence sufficient to justify the issue of a warrant for his arrest under the Act.
- (iii) In the case of a person accused of an offence, a warrant for his arrest issued in a foreign state etc and
- (iv) In the case of a person unlawfully at large after conviction of an offence, a certificate of the conviction and

sentence.

The request can only proceed if the Secretary of State issues an authority to proceed.

#### **14.51 WARRANT TO ARREST**

In cases of urgency, provisional arrest may be sought in advance of receipt of the full request and the issue of an authority to proceed. Such a request is normally made through the International Criminal Police Organisation to the Duty Officer at Lothian & Borders Police who will in turn contact the Fraud & Specialist Services Unit at Crown Office. The warrant for provisional arrest is issued by a Sheriff upon information that the person is or believed to be in or on his way to the United Kingdom. Details of the warrant are then sent to the Secretary of State.

The person arrested in pursuance of a warrant (which may be executed anywhere in the United Kingdom) shall be brought as soon as practicable before the Sheriff of Lothian & Borders who has the power to adjourn the case, to remand the person in custody or release on bail. Where there is such a remand pending receipt of an authority to proceed the Court may fix a period after which the person will be discharged. In European convention cases this period is 18 days but can be extended to no more than 40 days.

Where provisional arrest has not been sought, the matter commences by the Secretary of State considering whether or not to issue an authority to proceed. It must specify the offence constituted by equivalent conduct in the United Kingdom. If such an authority is issued, then on receipt of the same, the Sheriff of Lothian & Borders may issue a warrant and the person shall then be brought before the court as soon as practicable. It should be noted that all applications for such warrants

should be made to the Sheriff of Lothian and Borders at Edinburgh.

As in the case of a request for a provisional warrant, the Sheriff may proceed to issue the same if he is supplied with such evidence as would in his opinion justify the issue of a warrant for the arrest of a person accused or, as the case may be, convicted within his jurisdiction and it appears to him that the conduct alleged would constitute an extradition crime.

#### **14.52 EXTRADITION CRIME**

An "extradition crime" for the purposes of Part III cases is any conduct subject to the jurisdiction of the foreign state etc seeking extradition which is punishable with at least 12 months' imprisonment there and in the United Kingdom.

#### **14.53 COMMITTAL**

A copy of the particulars of the request must be served on the person before he is brought before the Court of Committal, except in the case of provisional arrest where the papers should be served on him immediately after the Secretary of State's authority to proceed has been issued.

If the authority to proceed has been issued and the parties are ready to proceed then the Sheriff, after hearing the parties, requires to be satisfied that:-

- (i) the offence to which the authority to proceed relates is an extradition crime and,
- (ii) that the evidence would be sufficient to warrant the person's trial if the extradition crime had taken place within the jurisdiction of the Court or, where the person is alleged to be unlawfully at large after conviction, that he has been so convicted and appears to be so

at large.

If the Court is not so satisfied the person shall be discharged.

If the Sheriff is so satisfied he shall commit the person to custody or on bail to await the Secretary of State's decision as to his return and, if the Secretary of State decides that he shall be returned, to await such return.

On such committal the Court issues a certificate of the offence against the law of the United Kingdom which would be constituted by the alleged conduct.

#### 14.54 EVIDENCE

Perhaps the most significant aspect of the Part III procedure is the provision which enables the United Kingdom to provide extradition to selected foreign states, specified by Order in Council, without the foregoing requirements that the Court of Committal be satisfied that the evidence would be sufficient to warrant trial locally, i.e. the requirement to produce prima facie evidence can be removed. This is the position which obtains in respect of the arrangements which now exist pursuant to the European Convention on Extradition, as implemented by the European Convention on Extradition Order 1990 (S.I. No 1507). Whilst countries are obliged to send information about the offence in question, as the element of dual criminality has to be considered and satisfied, there is no longer a need for the foreign state to send depositions where such new extradition arrangements have been entered into. In cases where the prevailing extradition arrangements do not allow for such an exclusion, as is the case with Commonwealth countries, the Sheriff, when asked to consider whether to commit the accused to await his return by the Secretary of State, must be satisfied that the evidence would be sufficient to make a case requiring an answer by the accused

person were the matter proceeding under the local jurisdiction.

#### 14.55 PROHIBITIONS ON RETURN

Finally, as regards the exercise of any discretion by the Sheriff, and as regards the exercise of any discretion by the Secretary of State in due course, no order to return shall be made if:-

- (i) the offence is political,
- (ii) the offence is against military law only,
- (iii) the request for his return is in fact made for the purpose of prosecuting or punishing him on account of his race, tribe, religion, nationality or political opinions,
- (iv) on his return he might be prejudiced at his trial, or punished, or restricted in his liberty on account of any of the factors set out in iii above,
- (v) where he is alleged to be unlawfully at large after conviction, the conviction was obtained in his absence and it would not be in the interests of justice to return him on the ground of that conviction,
- (vi) he would be entitled to plead that he had been previously dealt with in respect of the offence in question in the United Kingdom,
- (vii) there is absence of any provision whereby he cannot be dealt with in the place to which he has returned for any offence committed prior to his return other than the offence for which he is extradited without being given a chance to leave that place, unless the other offence is extraditable and the Secretary of State consents to his being dealt

with for it (the so-called rule of speciality).

regard to all the circumstances, be unjust or oppressive to return him.

#### **14.56 WAIVER**

There is provision for the person whose return is sought to give notice that he waives his rights and consents to return by invoking what is known as the simplified procedure whereby the Sheriff may order his committal for return at any time after his arrest.

#### **14.57 APPEALS PROCEDURE**

There is also an appeals procedure whereby if the Sheriff refuses to make an order, the foreign state may appeal to the High Court on a point of law. The High Court may dispose of the appeal by remitting the case to the Sheriff to decide in accord with their opinion or may dismiss it. In addition, the person committed to await his return has the right to apply to the High Court for a review of the committal and, unless he waives that right, he cannot be returned for 15 days or, if he applies for review, until the disposal of his application.

#### **14.58 SECRETARY OF STATE'S ORDER**

Where a person has been committed to await the Secretary of State's decision, the Secretary of State may, by warrant, order him to be so returned unless such return is prohibited, in terms of the matters set out above or if it appears to him that:-

- (i) by reason of the trivial nature of the offence or,
- (ii) by reason of the passage of time since the alleged commission of the offence or of the person becoming unlawfully at large or,
- (iii) because the accusation against him is not made in good faith in the interests of justice, it would, having

The subject must be given notice that the Secretary of State is considering making such an order and has 15 days to make representations. The subject shall not be sent back until the expiration of seven days from the date of the warrant ordering his return and during this period he may apply for judicial review.

The Secretary of State may also decide to make no order for return where the person may be sentenced to death in the country by which the request is made.

#### **14.59 ROLE OF PROCURATOR FISCAL: EXTRADITION (INCOMING REQUESTS)**

Whilst these procedures should not directly affect Procurators Fiscal, if they become aware of possible requests these should be drawn to the attention of the Fraud & Specialist Services Unit. Police enquiries should be routed through Lothian and Borders Police.

Procurators Fiscal should also note that the Act provides for any return to be delayed pending determination of proceedings or the serving of a sentence in this country and should report any cases where it appears that domestic and extradition proceedings may overlap.

#### **14.60 IRELAND**

It should be noted that particular arrangements exist with Ireland. The arrangements are in fact governed by legislative framework rather than treaty, and most significantly, as regards requests made to Ireland, in terms of the practice adopted and accepted in such cases by the Irish authorities.

As regards incoming requests, the procedure is governed by the Backing of

Warrants (Republic of Ireland) Act 1965. A warrant issued by a judicial authority in the Republic of Ireland shall be endorsed by a Sheriff, Justice of the Peace or Magistrate for execution in Scotland subject to the provision of the following supporting evidence:-

- (i) a certificate that the warrant is issued by a judicial authority,
- (ii) a certificate that the offence of which the person is accused or has been convicted is, under the laws of Ireland, either an indictable offence or an offence punishable on summary conviction with imprisonment for six months, as the case may be,
- (iii) a statement on oath by the constable who produces the warrant that he has reason to believe the person named and described therein is within the area for which the Sheriff, Justice or Magistrate acts or is on his way to the United Kingdom.

In addition, where the warrant relates to a summary offence there must be an affidavit (or other written statement on oath) by a clerk or other officer of court that the person named in the warrant has failed to appear before the court in answer to a summons, or in pursuance of a recognizance or at adjourned proceedings.

Where the failure to appear is in respect of a summons, the affidavit must be supported by a certified copy of the same and an affidavit, or other written statement on oath, duly verified, that the summons was served personally in the Republic on the person named in the warrant not less than 14 days before the due date of his appearance. Alternatively, if the accused was served personally in Scotland, this aspect can be dealt with by evidence on oath from the serving officer or on

production of his written execution.

Where the warrant relates to a conviction a similar affidavit is required, stating that the purpose of the arrest will be to enable the convicted person either to be brought before a court in the Republic for sentence in respect of the conviction or to be imprisoned (otherwise than in default of payment of a fine or other sum) under such a sentence.

If the Sheriff Justice or Magistrate is satisfied that the supporting evidence is available he shall endorse the warrant.

There is scope for the granting of a provisional warrant in cases of urgency but such warrant is only valid for seven days after its issue, during which time the original warrant of arrest should have been received. If the warrant, duly endorsed, is not produced upon the person's appearance before the Sheriff under a provisional warrant, the court may remand the person for not more than seven days, either on bail or in custody. Upon receipt of the full warrant, the accused should be brought before the court as soon as appropriate and if on bail as soon as practicable. Otherwise, the person is discharged. If the warrant subsequently arrives it can proceed to be endorsed in the normal way.

There are various restrictions on orders of surrender. The principal ground is that the offence specified in the warrant must correspond with an offence under the law of Scotland which is an indictable offence or is punishable on summary conviction with imprisonment for six months.

If an order is made it must not be executed before the expiration of a period of 15 days unless the person consents to his earlier removal and signs a form to this effect (it should be noted that all relevant forms are governed by Chapter 30 of the Act of

Adjournal (Criminal Procedure Rules) 1996.

The procedure thereafter is broadly similar to that which applies in extradition cases, i.e. the accused has to have notice, in such cases from the court, of his right to apply for a review within the 15 day period and if he does so apply he shall not be surrendered until the proceedings on his application have been disposed of. Where an order has been made, the accused may be remanded on bail or in custody until its execution.

In due course the endorsed Irish warrant is handed over to a member of the Garda Siochana. In most cases this will be done by the Sheriff Clerk arranging for the warrant to be passed to the Police, in bail cases, or to the prison Governor, if remanded in custody. Thereafter, it is essentially a matter for a responsible officer of the Police force on whose application the warrant was endorsed to liaise with the Garda Siochana as to arrangements for delivery of the accused. This will involve taking him to a point of departure from the United Kingdom where he can be handed over to the officers of the Garda Siochana and until such time he should be detained.

#### **14.61 ROLE OF THE PROCURATOR FISCAL: BACKING OF IRISH WARRANTS**

Procurators Fiscal should report the circumstances to the Fraud and Specialist Services Unit at the Crown Office as soon as they learn of a request for the backing of an Irish warrant.

The Unit will advise Procurators Fiscal on the steps which need to be taken in accordance with the above procedure.

#### **14.62 OUTGOING REQUESTS FOR EXTRADITION OR FOR BACKING OF WARRANT IN IRELAND**

The particular procedure to be followed in such matters will be determined not only by the arrangements which exist with the requested country but more importantly with that country's own particular requirements to satisfy its domestic law. However, in general terms it should be noted that the following will normally require to be submitted:-

- (i) the warrant or an authenticated copy thereof,
- (ii) statements setting out the facts which give rise to the offences,
- (iii) statement of the law setting out the requirements of each offence and applicable penalty,
- (iv) evidence to identify the accused.

The precise format of such documentation varies according to the particular arrangements which exist and the requirements of individual countries so that in certain cases sworn witness statements may be required whereas in others a deposition as to the facts by the reporting officer may suffice. The procedure for authentication of documents will also vary as will the precise matters of law which require to be covered in any statement of law or deposition to that effect.

Any potential request for extradition of an accused from a foreign state should be referred immediately to the Fraud and Specialist Services Unit.



## EXTRADITION ARRANGEMENTS

## COUNTRIES WHICH ARE PARTY TO THE COUNCIL OF EUROPE CONVENTION ON EXTRADITION OF 1957

1. Austria
2. Belgium
3. Bulgaria
4. Croatia
5. Cyprus
6. Czech Republic
7. Denmark
8. Estonia : NB Order in Council required
9. Finland
10. France
11. Germany
12. Greece
13. Hungary
14. Iceland
15. Ireland : NB arrangements with UK are under the Backing of Warrants (Republic of Ireland) Act 1965
16. Israel
17. Italy
18. Latvia : NB Order in Council required
19. Liechtenstein
20. Lithuania
21. Luxembourg
22. Malta
23. The Netherlands
24. Norway
25. Poland
26. Portugal
27. Romania : NB operational date in December 1997, Order in Council will be required. This will supersede the existing bilateral treaty
28. Slovakia
29. Slovenia
30. Spain
31. Sweden
32. Switzerland
33. Turkey

ECE countries which have signed but not yet ratified:

Belgium  
Moldova

**COUNTRIES WHICH HAVE ENACTED NATIONAL LEGISLATION REFLECTING AN AGREED 'COMMONWEALTH EXTRADITION SCHEME FOR THE RENDITION OF FUGITIVE OFFENDERS', AND WHICH HAVE BEEN DESIGNATED BY AN ORDER IN COUNCIL FOR THE PURPOSES OF THE UK'S EXTRADITION ACT 1989:**

- |                          |                             |
|--------------------------|-----------------------------|
| 1. Antigua & Barbuda     | 31. Montserrat              |
| 2. Australia             | 32. Nauru                   |
| 3. Bahamas               | 33. New Hebrides            |
| 4. Bangladesh            | 34. New Zealand             |
| 5. Barbados              | 35. Nigeria                 |
| 6. Bermuda               | 36. Papua New Guinea        |
| 7. Belize                | 37. Pitcairn Islands        |
| 8. Botswana              | 38. St Helena               |
| 9. Canada                | 39. St Kitts Nevis Anguilla |
| 10. Cayman Islands       | 40. St Lucia                |
| 11. Cook Islands         | 41. St Vincent/Grenadines   |
| 12. Dominica             | 42. South Africa            |
| 13. Falkland Islands     | 43. Seychelles              |
| 14. Fiji                 | 44. Sierra Leone            |
| 15. Gambia               | 45. Singapore               |
| 16. Ghana                | 46. Solomon Islands         |
| 17. Gibraltar            | 47. Sri Lanka               |
| 18. Grenada              | 48. Swaziland               |
| 19. Guyana               | 49. Tonga                   |
| 20. Hong Kong            | 50. Tanzania                |
| 21. India                | 51. Trinidad & Tobago       |
| 22. Jamaica              | 52. Turks & Caicos Islands  |
| 23. Kenya                | 53. Tuvalu                  |
| 24. Kiribati             | 54. Uganda                  |
| 25. Lesotho              | 55. Vanuatu                 |
| 26. Malawi               | 56. Virgin Islands          |
| 27. Malaysia             | 57. Zimbabwe                |
| 28. Maldives             | 58. Western Samoa           |
| 29. Malta (until 1.9.97) | 59. Zambia                  |
| 30. Mauritius            |                             |

Commonwealth Countries with whom we have no extradition arrangements:

Cameroon  
Pakistan  
Mozambique  
Namibia

**LIST OF COUNTRIES WITH BILATERAL EXTRADITION TREATIES WITH THE UNITED KINGDOM**

1. Albania : 1926
2. Argentina : 1889, 1979
3. Bolivia : 1872
4. Brazil : 1997
5. Chile : 1898
6. Colombia : 1888
7. Cuba : 1904
8. Ecuador : 1880
9. Guatemala : 1885
10. Haiti : 1874
11. Iraq : 1932
12. Liberia : 1892
13. Mexico : 1886
14. Monaco : 1891
15. Nicaragua : 1905
16. Panama : 1906
17. Paraguay : 1908
18. Peru : 1904
19. Romania : 1893 (superseded by their ratification of European Convention on Extradition)
20. Salvador : 1881
21. San Marino : 1899
22. Thailand : 1911
23. Uruguay : 1884
24. USA : 1972, 1986
25. Yugoslavia : 1900