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from : United Kingdom delegation
to : Working Party on Cooperation in criminal matters (Experts on the European arrest warrant)
Subject : The UK's operation of the European Arrest Warrant

1. Introduction

1.1 This guide has been produced by the United Kingdom Government. It is designed to assist the other Member States of the European Union by explaining how the UK has given effect to the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedure between Member States.¹

1.2 This guide is also meant to help other Member States understand how they go about seeking the surrender of a person from the UK using EAW procedures. It is only concerned with the operation of the EAW. It is not relevant to a non-EU country seeking extradition from the UK.

1.3 This guide is necessarily brief and can only be a summary of complicated legislative provisions. It is not designed to be a substitute for the legislation to which reference should always be made in case of doubt.

¹ (2002/584/JHA)

1.4 If further information is required contact should be made with the people named at the end of this guide.

2. Date of Commencement

2.1 The Parliament of the United Kingdom has passed the necessary legislation to transpose the Framework Decision into national law.

2.2 The relevant law is entitled the Extradition Act 2003. The text can be found at:

www.legislation.hmso.gov.uk/acts/acts2003/20030041.htm

2.3 It now remains for Parliament to make the necessary regulations but it is the expectation of the UK Government that the UK will begin operating the EAW on 1 January 2004.

2.4 The situation that will arise if either the United Kingdom or another Member State is unable to operate the EAW from 1 January 2004 is dealt with below.

3. Failure to Implement by 1 January 2004

3.1 If the UK is not in a position to begin operating the EAW on 1 January, all outgoing requests will take the form of pre-EAW extradition requests, as there will be no legal basis for producing an EAW.

3.2 All requests made to the United Kingdom should take the form of pre-EAW extradition requests. However if another Member State is unable any longer to issue such requests, it should send the United Kingdom a copy of the signed EAW and the United Kingdom may still be able to act on it. Certain authentication requirements will attach to the supporting material that is required. Further information about this can be obtained from the people named at the end of this guide.

3.3 If another Member State has not implemented the EAW after the UK has, it should continue to submit pre-EAW extradition requests. The UK will be able to process such requests, though they will not benefit from the simplified EAW procedures.

3.4 The United Kingdom will still retain the ability to issue pre-EAW extradition requests. It is therefore very important that any country which is not in a position to execute EAWs notifies the United Kingdom of this fact.

3.5 It is also very important that any such country notifies the United Kingdom as soon as it has a firm date for beginning to operate the EAW so the UK can designate in secondary legislation by that date.

4. Date of Offence

4.1 The United Kingdom will accept and act on EAWs received after 1 January 2004 even if the alleged offence took place before that date.

4.2 Similarly, all requests made by the UK after 1 January 2004 will be in the form of EAWs irrespective of the date of the alleged offence.

4.3 The only exception will be where the UK makes a request to one of the three countries (France, Austria and Italy) which has made a declaration under Article 32 of the Framework Decision.

4.4 Where it is known that the alleged offence occurred before the date in the relevant declaration, the UK will submit a pre-EAW extradition request.

4.5 In all other cases the UK will submit an EAW. If it transpires, on further investigation, that the alleged offence took place before the date in the relevant declaration, the UK should be informed and a replacement pre-EAW extradition request will be submitted.

5. EAWs in respect of more than one offence

5.1 It is the view of the United Kingdom that EAWs are capable of being issued for more than one offence and UK law has been drafted accordingly.

5.2 Where another Member State wishes to secure the surrender of a person who is wanted for more than one alleged offence, all the offences should be listed on the same EAW.

5.3 If more than one EAW is issued in respect of the same individual, it is likely that they will be treated as competing requests. Priority will be given to one particular request and, if appropriate, the person will be surrendered in respect of that alleged offence only. If the requesting authority then wishes to prosecute the person in respect of the other offence(s) a formal request for waiver of speciality will be required.

5.4 The UK will submit EAWs containing more than one offence. If this is unacceptable to any other Member State, early notification should be given to the UK.

6. Procedure for making request

6.1 In order to be valid a request made to the United Kingdom must, in an accusation case, take the form of an arrest warrant which:

- (a) is issued by a recognised judicial authority in the requesting country;
- (b) contains a statement that the person is accused in the country concerned of an offence or offences specified in the warrant and that the warrant has been issued for the person's arrest and extradition for the purpose of being prosecuted for the offence(s);
- (c) contains the following details
 - (i) particulars of the person's identity;
 - (ii) particulars of any other warrant issued in the category 1 territory for the person's arrest in respect of the offence(s);
 - (iii) particulars of the conduct alleged to constitute the offence(s), including the time and place of the offence(s) and the law which the conduct is alleged to have contravened;
 - (iv) particulars of the sentence which may be imposed.

6.2 In order to be valid a request made to the United Kingdom must, in a conviction case, take the form of an arrest warrant which:

- (a) is issued by a recognised judicial authority in the requesting country;
- (b) contains a statement that the person is alleged to be unlawfully at large following conviction by a court in the country concerned and that the warrant has been issued for the person's arrest and extradition for the purpose of being sentenced or serving a sentence of imprisonment or other form of detention;
- (c) contains the following details
 - (i) particulars of the person's identity;
 - (ii) particulars of the conviction;
 - (iii) particulars of any other warrant issued in the category 1 territory for the person's arrest in respect of the offence(s);
 - (iv) particulars of the sentence which may be imposed if the person has not been sentenced for the offence(s);
 - (v) particulars of the sentence which have been imposed if the person has been sentenced for the offence(s).

6.3 In a case under Article 2.2 of the Framework Decision there must, in addition, be a certificate from a judicial authority in the requesting country certifying that the offence in questions falls within one of the categories in the list in Article 2.2 and attracts the appropriate penalty.

6.4 The attention of other EU Member States is particularly drawn to the requirements in 6.1(b) and 6.2(b) above.

6.5 The model warrant annexed to the Framework Decision, if fully completed, contains all the information necessary to satisfy the requirement of UK law.

6.6 The UK has two designated authorities - the National Criminal Intelligence Service and the Crown Office (details below). All EAW requests should be sent to the National Criminal Intelligence Service, except in cases where it is known that the person sought is located in Scotland when the request should be sent to the Crown Office.

6.7 The relevant UK designated authority is required to certify that the request has come from a recognised source. If it has doubts on this point or has a query about the content of the request, it will seek further information from the requesting authority.

6.8 All requests must be in English or be accompanied by an English translation.

6.9 A request may be sent by post, by facsimile transmission or by other electronic means (such as the Schengen Information System). It should wherever possible be accompanied by a copy of the signed original warrant, with an English translation if necessary.

6.10 The UK is not currently operating the Schengen Information System. When the UK does begin to operate the SIS, in late 2004, the UK law allows the UK to treat Schengen Article 95 alerts issued prior to 1 January 2004 as if they were EAWs.

6.11 It is also possible for an arrest to be made in urgent cases where the necessary information has not yet been transmitted to the UK but the police officer concerned has reasonable grounds to believe that a warrant has been or will be issued. In such circumstances all the information referred to above must be supplied within 48 hours of arrest, otherwise the person will be discharged.

7. Arrest

Once an incoming warrant has been certified by the appropriate UK authority, it will be passed to the relevant police force. They will make the necessary enquiries to establish the person's location and will carry out the arrest.

8. The Initial Hearing

8.1 The initial hearing takes place before a Judge as soon as possible after the person's arrest (or in provisional arrest cases, described above, within 48 hours).

8.2 The requesting authority will be represented by the Crown Prosecution Service, the Lord Advocate, the Northern Ireland Director of Public Prosecutions or the Crown Solicitor depending on in which part of the United Kingdom the hearing is taking place (unless it wishes to make its own arrangements for legal representation in which case it must do so at its own expense). The same arrangements apply to all subsequent legal proceedings. If further information is required the UK authority which is representing the requesting authority will make arrangements to obtain it.

8.3 At the initial hearing the Judge is required to decide whether the person before him or her is the person whose surrender has been sought. If the judge concludes that the person is not the right person, the person must be discharged.

8.4 The Judge must also decide whether or not to give the person bail and must advise the person about the possibility of consent to surrender.

9. The Main Hearing

9.1 The main hearing must take place within 21 days of the person's arrest. The Judge can extend this period if the interests of justice require him or her to do so.

9.2 The Judge must refuse to order the person's surrender if any of the legal bars to surrender in the law apply. These are set out in annex A.

10. Action Following Hearing

10.1 If none of the bars to surrender to apply the Judge must order the person's surrender. The person may appeal against this decision.

10.2 Similarly, if the judge does not order the person's surrender, the requesting authority may appeal. Notice of appeal must be given within seven days of the judge's decision. A decision on whether to make an appeal will be taken by the UK authority which is representing the requesting authority and the requesting authority should contact the body concerned if it has strong views on the matter.

10.3 If the Judge orders surrender and there is no appeal, the person must be surrendered within 10 days of the Judge's order. This can be extended for a further 10 days with the agreement of the requesting authority.

11. Appeals

11.1 Appeals are heard by the High Court in the first instance. Appeals must begin within 40 days of the person's arrest. The Court can extend this period if the interests of justice require it to do so.

11.2 The High Court can either uphold or overturn the decision of the Judge at the main hearing.

11.3 If the outcome of the process is that the person's surrender is ordered, the person has the right, with leave, to appeal to the House of Lords (except in cases in Scotland) but only if a point of law of general public interest has been raised.

11.4 Similarly, if the outcome is that the person is not to be surrendered, the requesting authority may, with leave, appeal to the House of Lords (except in cases in Scotland) but only if a point of law of general public interest has been raised. Notice of appeal must be given within fourteen days of the High Court's decision.

11.5 If the decision of the High Court is that the person should be surrendered and there is no appeal, or if leave to appeal is not granted, the person must be surrendered within 10 days of the High Court's judgement becoming final. This can be extended for a further 10 days with the agreement of the requesting authority.

11.6 Similarly, if there is an appeal to the House of Lords and the outcome is that the person should be surrendered the person must be surrendered within 10 days of the judgement of the House of Lords. This can be extended for a further 10 days with the agreement of the requesting authority.

12. Consent

12.1 A person may consent to his or her surrender if certain conditions are met. Such consent must be given to the Judge and, once given, can not be revoked. Once the person has consented all legal proceedings cease. The judge must then, within 10 days, make an order for the person's surrender. The person must then be surrendered within a further 10 days of the judge's order. This can be extended for a further 10 days with the agreement of the requesting authority.

13. Competing Requests

13.1 The UK law provides that in the event of competing EAWs the decision as to which should take priority is made by the appropriate judicial authority.

13.2 Where an EAW competes with an extradition request from a country which is not a party to the EAW Framework Decision, the decision as to which should take priority is made by the Secretary of State or, in Scotland, by Scottish Ministers.

13.3 In either case, the person making the decision has to consider, in particular:

- (a) the relative seriousness of the offences concerned;
- (b) the place where each offence was committed (or was alleged to have been committed);
- (c) the date on which each warrant was issued or request received;
- (d) whether it is an accusation or conviction case.

14. Serving Prisoners/UK Charges

14.1 If in an accusation case a request is received for a serving UK prisoner the judge can decide whether to act on it with a view to surrendering the person temporarily to stand trial or whether to wait until the person has completed his or her UK sentence.

14.2 If at any point in the process, the person is charged with a criminal offence in the United Kingdom, the process on the EAW will cease until the UK proceedings are complete.

15. Prosecution for other offences/Subsequent surrender or extradition

15.1 The UK does not intend to make notifications under Articles 27.1 and 28.1.

16. Outgoing Requests

16.1 EAWs may be issued by Judges or Magistrates in the United Kingdom¹ on application from a police officer or other appropriate person such as a representative of HM Customs and Excise, the Crown Prosecution Service, the Inland Revenue or the Serious Fraud Office or, in Scotland, a Procurator Fiscal. A domestic arrest warrant must already exist before an EAW can be issued. EAWs will be circulated by the National Criminal Intelligence Service.

16.2 Where the location of the person whose surrender is sought is known the EAW will, if necessary, be translated into the appropriate language. Otherwise EAWs circulated by the United Kingdom will be in English.

17. Contacts

17.1 Questions relating to the practicalities of the new system and to individual cases should be addressed to:

Matthew Foley
National Criminal Intelligence Service
PO Box 8000
London SE11 5EN
T (0044) (0) 20 7238 8295
F (0044) (0) 20 7238 8383
foleym@ncis.x.gsi.gov.uk

¹ In Scotland they are termed Sheriffs

17.2 The Fugitives Desk at the National Criminal Intelligence Service maintains a 24 hour service.
The details are as follows:

T (0044) (0) 20 7238 8115

F (0044) (0) 20 7238 8112

17.3 Questions relating the law more generally should be addressed to:

Karen Townsend

Judicial Cooperation Unit

Home Office

Room 462

50 Queen Anne's Gate

London SW1H 9AT

T (0044) (0) 20 7273 4550

F (0044) (0) 20 7273 2496

karen.townsend@homeoffice.gsi.gov.uk

17.4 For cases where the person is known to be in Scotland, the contact point is:

Elizabeth Munro

Head of Unit,

International and Financial Crime Unit,

Crown Office,

25 Chambers Street,

Edinburgh, EH1 1LA.

T (0044) (0) 131 247 2757

F (0044) (0) 131 226 6861

Elizabeth.Munro@copfs.gsi.gov.uk

17.5 Questions to the Crown Prosecution Service on issues of policy or practicalities should be directed to:

Brian Gibbins
Policy Advisor
European and International Division
Crown Prosecution Service
50 Ludgate Hill
London EC4M 7EX
T (0044) (0) 20 7710 6181
F (0044) (0) 20 7796 8520
brian.gibbins@cps.gsi.gov.uk

Bars to Surrender

Surrender from the UK under an EAW is barred in the following circumstances:

- (a) If the alleged offence does not constitute an offence for which surrender is possible - for definition see below;
- (b) If the rule of double jeopardy applies;
- (c) If the request has been made for the purpose of prosecuting or persecuting the person on the grounds of his or her race, religion, nationality, political opinions, gender or sexual orientation or if the person will be prejudiced at his or her trial for any of these reasons;
- (d) If the length of time that has elapsed since the offence was committed or the person became unlawfully at large would make surrender unjust or oppressive;
- (e) If the person would have been below the age of criminal responsibility (normally 10) if the person had committed the alleged offence in the United Kingdom;
- (f) If the person would be prejudiced at his or her trial because of the lack of consular assistance under the terms of the International Convention against the Taking of Hostages opened for signature at New York on 18 December 1979;
- (g) If there are no speciality arrangements in place with the requesting country - though this should never arise in respect of another EU Member State;
- (h) If the person had come to the United Kingdom via extradition or surrender from a country whose consent is required for further surrender and that consent is not forthcoming;
- (i) In the case of a person who has been convicted in his or her absence and who did not deliberately absent him or herself, if there is no guarantee of a retrial or a review amount to a retrial;

(j) If surrender would not be compatible with the person's rights under the European Convention on Human Rights;

(k) if the person's medical or physical condition would make it unjust or oppressive to extradite him or her.

Definition of an Extradition Offence

The UK considers the following to be offences for which surrender is possible:

In an accusation case:

a) An offence, which occurs in the requesting country and no part of which occurs in the United Kingdom, which falls within the Framework list in Article 2.2 of the Framework Decision, which attracts a maximum penalty of three year's imprisonment or greater in the requesting country.

b) An offence which occurs in the requesting country, which would constitute an offence in the United Kingdom if it had taken place in the United Kingdom and which attracts a maximum penalty of one year's imprisonment or greater in the requesting country.

c) An offence which occurs outside the requesting country, which attracts a maximum penalty of one year's imprisonment or greater in that country and in corresponding circumstances would constitute an extra-territorial offence in the United Kingdom punishable with a maximum penalty of one year's imprisonment or greater.

d) An offence which occurs outside the requesting country and no part of it occurs in the United Kingdom, which attracts a maximum penalty of one year's imprisonment or greater in that country and in corresponding circumstances would constitute an offence in the United Kingdom punishable with a maximum penalty of one year's imprisonment or greater.

e) Certain international offences, such as war crimes and genocide, which occur outside both the requesting country and the United Kingdom which attract a maximum penalty of one year's imprisonment or greater in both countries.

In a conviction case:

a) An offence, which occurs in the requesting country and no part of which occurs in the United Kingdom, which falls within the Framework list in Article 2.2 of the Framework Decision, where a penalty of one year's imprisonment or greater has been imposed in the requesting country.

b) An offence which occurs in the requesting country, which would constitute an offence in the United Kingdom if it had taken place in the United Kingdom, where a penalty of four month's imprisonment or greater has been imposed in the requesting country.

c) An offence which occurs outside the requesting country, which in corresponding circumstances would constitute an extra territorial offence in the United Kingdom punishable with a maximum penalty of one year's imprisonment or greater, where a penalty of four months imprisonment or greater has been imposed in the requesting country.

d) An offence which occurs outside the requesting country and no part of it occurs in the United Kingdom, which in corresponding circumstances would constitute an offence in the United Kingdom punishable with a maximum penalty of one year's imprisonment or greater and where a penalty of four month's imprisonment or greater has been imposed in the requesting country.

e) Certain international offences such as war crimes and genocide which occur outside both the requesting country and the United Kingdom which attract a maximum penalty of one year's imprisonment in the United Kingdom and where a penalty of four month's imprisonment or greater has been imposed in the requesting country.