

**MUTUAL LEGAL ASSISTANCE IN CRIMINAL
MATTERS**

A GUIDE TO IRISH LAW AND PROCEDURES

Department of Justice, Equality and Law Reform

July 2008

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1. INTRODUCTION

This guide is issued by the Department of Justice, Equality and Law Reform in its role as Ireland's Central Authority for Mutual Legal Assistance in Criminal Matters. It constitutes a general outline of Irish law in relation to international judicial cooperation in criminal matters; it does not purport to be an interpretation of that law.

The primary purpose of the guide is to assist authorities abroad (such as judicial authorities, prosecuting authorities and central authorities) in making requests to Ireland for legal assistance for the purposes of criminal investigations or criminal proceedings.

Copies of the guide in French, German, and Spanish are available from the Central Authority. The guide is also available on the Department's website: <http://www.justice.ie>

Separate guidance is available from the Department in relation to European Arrest Warrant and extradition requests.

2. CENTRAL AUTHORITY FOR MUTUAL ASSISTANCE IN CRIMINAL MATTERS

Under the relevant Irish legislation, the Minister for Justice, Equality and Law Reform is the Irish Central Authority for Mutual Legal Assistance in Criminal Matters. The Central Authority has the function of receiving, transmitting and otherwise dealing with requests, except those made in relation to the interception of telecommunications messages. It is also responsible for co-operating, in accordance with the relevant international instruments, with corresponding persons or bodies in designated states in relation to requests received from them.

The Central Authority for Mutual Assistance, within the Department of Justice, Equality and Law Reform, carries out the functions of the Minister for Justice, Equality and Law Reform, under the relevant Irish legislation, on his or her behalf.

All requests for mutual assistance to Ireland, unless the relevant international instrument provides otherwise or they are appropriate to police or customs channels, should be addressed to and sent to:

The Central Authority for Mutual Assistance
Department of Justice, Equality and Law Reform
51 St Stephen's Green
Dublin 2
Ireland

Telephone Numbers: + 353 1 408 6109
Fax Number: + 353 1 408 6117
E-Mail: mutual@justice.ie

Messages, queries etc. relayed after normal office hours to the Central Authority will be responded to on the following working day. In cases of exceptional urgency outside office hours, contact may be made through Mobile Phone Number: +353 87 263 2713

Diplomatic channels:

Where a request is being made from a non designated state, it should be sent by the requesting authority through diplomatic channels.

Police to police requests:

Where requests for assistance in investigations are exclusively of a police to police nature they should be addressed either through Interpol channels to Interpol, Dublin (police services will be aware of the contact details) or directly to the Garda Síochána as follows: Assistant Commissioner, Crime

Branch (Mutual Assistance Section), Garda Headquarters, Phoenix Park, Dublin 8, Ireland.

Where requests cover both mutual legal assistance and co-operation of a police to police nature, they should be sent to the Central Authority, which will co-ordinate the execution of the requests.

Other agencies:

The Central Authority operates in close association with other agencies with functions in relation to requests for mutual assistance, namely, the Office of the Attorney General, the Office of the Director of Public Prosecutions, the Office of the Chief State Solicitor, the Garda Síochána, the Department of Foreign Affairs and the Courts.

Requesting authorities should note that neither the Courts nor the Director of Public Prosecutions –

- (i) have any investigative functions or
- (ii) directly receive requests.

Requests should, therefore, be sent to the Central Authority (or through police channels) as indicated above.

3. REQUESTS UNDER INTERNATIONAL CONVENTIONS

Ireland is a party to the following Conventions/Agreements/Framework Decision or can give assistance in accordance with the relevant provisions of these Conventions/Agreements/Framework Decision:

- (i) The Council of Europe Convention on Mutual Assistance in Criminal Matters (1959), its Additional Protocol (1978) and Second Additional Protocol (2001).
- (ii) The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).
- (iii) The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990).
- (iv) The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000) and its Protocol (2001).
- (v) The Agreement between the EU and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the 2000 EU Convention on Mutual Assistance in Criminal Matters and its 2001 Protocol (2003).
- (vi) Articles 49 (excluding paragraph (a) which has been repealed) and 51 of the Convention, signed in Schengen on 19 June 1990, implementing the Schengen Agreement of 14 June 1985.
- (vii) The Council Framework Decision (2003/577/JHA) of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.
- (viii) Title III of the Co-operation Agreement between the European Community and its member states and the Swiss Confederation to combat fraud and any other illegal activity to the detriment of their financial interests (2004).
- (ix) Chapter IV of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005).
- (x) Articles 13, 14, 18, 19 and 20 of the United Nations Convention against Transnational Organised Crime (2000).
- (xi) Articles 46, 49, 50 and 54 to 57 of the United Nations Convention against Corruption (2003).

- (xii) the 2003 Agreement on Mutual Legal Assistance between the EU and the US and the related Treaty on Mutual Legal Assistance in Criminal Matters between Ireland and the US.

Under the provisions of the relevant legislation Ireland is in a position to provide assistance to designated states. Designated states are

Member States of the European Union (other than Ireland) for the purposes of mutual assistance under the provisions of the EU Conventions/Protocol/Framework Decision listed above

Iceland and Norway or any other designated state, for the purposes of mutual assistance under the provisions of the EU Conventions/Protocol/Framework Decision listed above

Any other state designated by the Minister for Foreign Affairs for the purposes of mutual assistance between Ireland and that state under Irish law in accordance with the relevant international instrument (Conventions/Agreements listed above and bilateral Agreements between Ireland and the state concerned).

A designated state includes a territory whether in the state or outside it:

- For whose external relations the state or its government is wholly or partly responsible, and
- To which the relevant international instrument applies or whose law provides for mutual assistance in criminal matters.

Ireland's capacity to give mutual assistance is not necessarily limited to designated states. Certain forms of assistance may still be provided to non designated states. Requests from non designated states will be considered on an individual basis.

4. AUTHORITIES FROM WHICH REQUESTS MAY BE RECEIVED

Requests should be made by a court, tribunal or any other authority abroad which has the function of making mutual assistance requests, such as Ministries or Departments of Justice, Attorneys General and Public Prosecutors. The requesting authority should ensure that it has authority under the law of its own country or by arrangement to make requests to this jurisdiction.

5. FORM OF REQUESTS, GROUNDS FOR REFUSAL AND CONFIDENTIALITY - GENERAL

- (1) Requests to be addressed to the Central Authority: Requests from designated states must be addressed to the Central Authority, unless the relevant international instrument provides otherwise.
- (2) Format of requests: Requests to the Central Authority for mutual legal assistance should be in writing or in any form capable of producing a written record under conditions allowing their authenticity to be established.
- (3) Language of requests: All requests and any supporting documents should be in either Irish or English. In cases where requests are not in Irish or English, they must be accompanied by a translation into either of those languages and by a translation of any other such documents or the material parts of them.
- (4) Requests to include the fullest information: In general, and subject to the requirements of Irish law set out in this guide and any requirements of the relevant international instrument, requests should contain the fullest information, in particular:
- (a) details of the authority making the request, including the name, telephone number and email address (where available) of a contact person
 - (b) details of the purpose of the request
 - (c) details of the person or persons named in the request including, where available, address, date of birth and nationality
 - (d) a description of the offences charged or under investigation
 - (e) a summary of the facts giving rise to the request
 - (f) relevant dates e.g. date of court hearing (reason for special urgency or attention should be included in the covering letter of request)
 - (g) a description of evidence sought, including, in the case of bank accounts, details of the relevant institution, account numbers and account names
 - (h) specific information on any property to be searched and/or seized
 - (i) details and supporting documents in relation to the freezing, confiscation or forfeiture of criminal assets
 - (j) in the case of service of a summons (or judgement) whether the

document is to be served by post or personally; a contact point so that enquiries can be made regarding allowances and expenses by the person who has been asked to appear

- (k) where evidence is to be taken from witnesses or suspects, whether it should be evidence on oath taken before a judge
- (l) a list of any specific questions to be put to a witness, if feasible
- (m) where the evidence is to be taken before a court, a certificate that an offence under the law of the requesting country in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed, and either that proceedings in respect of the offence have been instituted or that an investigation is being carried out
- (n) whether the requesting country wishes to have persons present during the taking of evidence in the proceedings
- (o) in the case of a prisoner required abroad to give evidence or assist in an investigation, information to enable the prisoner's informed consent to be sought and to satisfy the Irish prison authorities that arrangements will be made to ensure his or her secure custody. This information will need to include details of proposed arrangements for collecting the prisoner from Ireland; details of the type of secure accommodation in which he or she will be held in the requesting state; the type of escort available to and from his/her accommodation; the period during which attendance in the requesting state is required; the date on which the court or other proceedings for which the prisoner is required will commence, and are likely to be concluded and whether he or she will be accorded immunity in respect of previous offences. Further information regarding the requirements for transfer of particular prisoners may be sought by the Irish Central Authority
- (p) the name of the relevant Convention etc. under which the request is being made.

Failure to provide the fullest information possible may result in delays or in a request not being executed in whole or in part.

(5) Notification where assistance is no longer required: Should the requested assistance no longer be required, the Central Authority should be informed immediately.

Grounds for refusal

The Central Authority for Mutual Assistance provides all possible assistance to a requesting party so that effect may be given to a request. Cases of refusal are rare.

Assistance will be refused:

- (a) if the Minister for Justice, Equality and Law Reform considers that providing assistance would be likely to prejudice the sovereignty, security or other essential interests of Ireland or would be contrary to public policy (*order public*);
- (b) if there are reasonable grounds for believing-
 - (i) that the request was made for the purpose of prosecuting or punishing a person on account of his or her sex, race, religion, ethnic origin, nationality, language, political opinion or sexual orientation,
 - (ii) that providing assistance-

may prejudice a person's position for any of those reasons, or may result in the person being subjected to torture or to any other contravention of the European Convention on Human Rights
- (c) if the request is not in accordance with the relevant international instrument, or
- (d) if, and for as long as, the provision of assistance would prejudice a criminal investigation, or criminal proceedings, in Ireland, and

may be refused on any other ground of refusal of assistance specified in the relevant international instrument.

Refusal may be unavoidable in certain cases. For example, in some instances evidence may not be taken or passed on where a witness has made a substantiated claim to privilege, or a request for search and seizure of evidence may be refused if the circumstances of the case do not satisfy the requirements for the exercise of the power contained in Irish law. In addition it may not be possible to provide assistance in relation to overseas proceedings where those proceedings may result in double jeopardy for the accused (e.g. retrial for an offence for which he or she has already been tried in Ireland or elsewhere). In the case of requests for the transfer of prisoners, assistance may be refused or delayed if the prisoner is unwilling to co-operate or is very near the date of his/her release in Ireland or is required for proceedings in Ireland.

More generally, the rule is that assistance cannot be granted where execution of the request would be contrary to the Irish Constitution, other Irish law or established practice.

In appropriate cases, requesting authorities will be invited to modify the request so that assistance may be provided.

Confidentiality of requests

The contents of a letter of request or the fact that it has been made will not normally be disclosed outside Government Departments, the Garda Síocána, the Courts, other official bodies in Ireland concerned with the execution of the request or Ireland's Eurojust national member. Wider disclosure may be necessary, however, when evidence is being obtained or used in proceedings.

If confidentiality requirements make it difficult or impossible to execute a request, the requesting authority will be consulted by the Central Authority.

6. **SCOPE OF IRISH LAW ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

The law enabling Ireland to provide mutual legal assistance to, and seek mutual legal assistance from, other countries is contained in the Criminal Justice (Mutual Assistance) Act 2008. In brief, the Act primarily includes provisions:

- relating to the sharing of information and monitoring of financial transactions for criminal investigation purposes;
- permitting the Minister for Justice, Equality and Law Reform to make a request for the interception of telecommunications to other Member States of the EU and permitting other Member States of the EU to make requests for the interception of telecommunications to Ireland;
- enabling Ireland to transmit an order for the freezing and confiscation of property that could be evidence or the proceeds of crime for enforcement outside the State and enabling the enforcement in Ireland of orders for the freezing and confiscation of property that could be evidence or the proceeds of crime;
- permitting the issuing of letters of request for the taking of evidence outside the State for the purpose of criminal proceedings or a criminal investigation in Ireland;
- permitting the Minister for Justice, Equality and Law Reform to request an Irish court to take evidence for use in criminal proceedings or a criminal investigation in another country;
- enabling the transfer of a prisoner to give evidence or assist a criminal investigation in Ireland and enabling the transfer of a prisoner to give evidence or assist an investigation outside Ireland;
- enabling the issuing of letters of request for television link facilities to be provided in other countries in order that evidence for use in Ireland may be provided via a television link;
- enabling the Minister for Justice, Equality and Law Reform to request an Irish court to summon a witness to give evidence for use outside Ireland by a television link or telephone link;
- permitting the issuing of letters of request for the provision of identification evidence outside the State for use in criminal proceedings or criminal investigations in Ireland;
- permitting the taking of identification evidence in Ireland for use in criminal proceedings or criminal investigations outside Ireland;

- empowering the Minister for Justice, Equality and Law Reform to cause a document requiring a person to appear as a defendant or witness in criminal proceedings in another country or any other document issued by a court or authority in another country in relation to criminal proceedings to be served on the person in Ireland;
- enabling an Irish court to issue a document to be served on a person in another country in the context of criminal proceedings in Ireland;
- providing for a request for the examination of an object or site for the purposes of a criminal investigation or criminal proceedings in Ireland to be transmitted to another country and for a request from other countries for the examination of an object or site in Ireland for such purposes to be complied with;
- enabling requests for the restitution of stolen property to be made to other countries and such requests to be made to Ireland;
- providing for requests for controlled deliveries to be made to other countries and for such requests to be made to Ireland;
- enabling officers from countries outside the EU to participate in Joint Investigation Teams involving Ireland; and
- enabling representatives of other countries to be present at the execution of a request in Ireland and enabling members of the Garda Síochána (Irish police) to be present at the execution of a request in other countries.

7. **INFORMATION ABOUT FINANCIAL TRANSACTIONS FOR CRIMINAL INVESTIGATION PURPOSES**

Account information order and account monitoring order for use in designated state

Requests may be made for information in relation to any account(s) that may be held in Ireland by a person who is the subject of a criminal investigation in a designated state. The Minister for Justice, Equality and Law Reform may, on receiving a request from a designated state, authorise a member of An Garda Síochána to apply to a judge of the High Court for an account information and/or account monitoring order. The request must include:

- A statement that a specified offence has been committed in the designated state concerned and that the person mentioned in the request is the subject of an investigation into the offence;
- A statement that (i) any information that may be supplied in response to the request will not, without the Minister's prior consent, be used for any purpose other than that specified in the request and (ii) the record of any such information will be returned when no longer required for the purpose so specified (or any other purpose for which such consent has been obtained), unless the Minister indicates that its return is not required;
- Why the requesting authority considers that the requested information is likely to be of substantial value for the purposes of the investigation;
- Why the requesting authority considers that a financial institution or financial institutions in Ireland may hold the account of accounts concerned
- If available, the name or names of that institution or those institutions; and
- The maximum period of imprisonment under the law of the designated state by which the offence is punishable; and
- Any other information that may facilitate compliance with the request.

A High Court judge may make the account information or account monitoring order or both orders. The judge must be satisfied that there are reasonable grounds for believing that an offence under the law of the designated state concerned has been committed, that the person concerned is the subject of an investigation into the offence, that the request is in accordance with the relevant international instrument and that there are reasonable grounds for believing that the specified financial institution(s) may have information required for the purposes of the investigation.

Information disclosed in compliance with an account information or account monitoring order will be transmitted to the requesting authority concerned by the Central Authority for Mutual Assistance acting on behalf of the Minister for Justice, Equality and Law Reform.

A judge of the High Court may amend or terminate an account information or account monitoring order on foot of an application to the court by either a member of An Garda Síochána or by the financial institution affected.

8. **INTERCEPTION OF TELECOMMUNICATIONS MESSAGES**

This section relates to the Irish legislation which applies to requests for mutual assistance between member states of the European Union for the interception of telecommunications.

Request to Ireland for interception

A request may be made to Ireland for interception where a criminal investigation is underway in a member state; a lawful interception order or warrant has been issued in the member state; a request is made to the Minister for Justice, Equality and Law Reform for the interception and immediate transmission of telecommunications messages to or from the telecommunications address concerned or for the interception and recording of the messages and the transmission of the recording to the relevant authority and the specified person is present in any member state and Ireland's assistance to intercept is required or the person is present in Ireland and interception can take place within Ireland.

The request must:

- indicate the name of the competent authority;
- confirm that a lawful interception order or warrant has been issued in connection with a criminal investigation;
- give sufficient information to identify the person whose telecommunication messages are to be intercepted;
- give an identification of the criminal conduct under investigation;
- state the desired duration of the interception;
- provide sufficient technical detail, including the network connection number of the telecommunications address concerned, to ensure that the request can be met; and
- if the person is present in a member state other than that in which the lawful interception order or warrant has been issued and from which no technical assistance is required to carry out the interception, confirm that the member state has been informed of the order or warrant pursuant to Article 20(2)(a) of the 2000 EU Convention on Mutual Assistance in Criminal Matters.

Where Ireland receives a request for the interception and immediate transmission of specified telecommunications messages, the Minister may authorise the interception if the terms as set out above have been complied with. The Minister may authorise interception if the terms as set out above are

complied with and the request is for the interception and recording of specific telecommunications messages and immediate transmission of the interception is not possible.

If the person whose communications are to be intercepted is present in the State, the Minister may only authorise interception where the conduct under investigation would, if occurring in the State, constitute a serious offence and would justify the making of an interception authorisation. The Minister may make the authorisation for the interception where the person is present in the State, subject to conditions that would be applied under the Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993.

Where an authorisation is given, the Commissioner of the Garda Síochána will arrange for the transmission of the telecommunications messages concerned or will arrange for the recording and subsequent transmission of the messages.

Where the Minister for Justice, Equality and Law Reform has authorised an interception and the telecommunications address of the person concerned is being used in a member state and technical assistance of that state is not required to intercept, the member state will be notified by the Minister, as soon as Ireland becomes aware of the fact that the person concerned is in that territory. The Minister will comply with any condition, requirement or request in relation to an interception made under Article 20.4 of the 2000 Convention. While the authority of the member state is considering whether to consent to the interception, any interception already made may be continued. However, any material already intercepted may not be used unless agreed with the other member state or for the purpose of taking urgent measures to prevent an immediate and serious threat to public security. A summary of the case and any further relevant information must be provided to the member state by the Minister, if requested, to enable a decision to be made concerning the interception. Where the information is of a particularly sensitive nature, the information may be transmitted through a specific person or body. Where a member state has declared that it does not require information on interceptions, in line with the provisions in Article 20 of the 2000 Convention, this will not apply.

Notification by member state of interception

When an interception has been authorised in a member state, the telecommunications address of the person concerned is being used in Ireland, technical assistance from Ireland is not required in order to intercept and the competent authority of the member state notifies the Minister to this effect in accordance with Article 20 of the 2000 Convention, the Minister will authorise the interception to be carried out or continued. The Minister will require that an interception will not be carried out or that it will be terminated if such a request would not be granted in a domestic context; a general restriction on providing assistance applies or the offence in question is a political or revenue offence. Where a request is refused or terminated, any material already intercepted may not be used, or if it is to be used this may only be done, under specified conditions. The justification for any such conditions will be

communicated by the Minister in writing. The Minister may ask the requesting state to provide a summary of the facts of the case and any further information he considers necessary to decide whether an interception would be granted in a similar domestic context.

Indirect interception of telecommunications messages

Where a person is present in the State, authorisation for the interception has been given but the messages cannot be directly intercepted in the State and the authorised undertaking is obliged to facilitate interception and can in this instance facilitate interception by accessing equipment in a member state, the authorised undertaking shall facilitate the interception. Where the person concerned is present in a Member State, a lawful warrant or order for interception has been made for the purposes of a criminal investigation but the messages cannot be directly intercepted in the member state and an authorised undertaking in this State is obliged to facilitate interception and can in this instance directly intercept and has equipment that can enable a telecommunications provider in the member state to intercept, then the authorised undertaking shall facilitate the interception of the messages.

9. **FREEZING, CONFISCATION AND FORFEITURE OF PROPERTY**

Freezing of Property

Transmission of external freezing orders to Ireland for enforcement

A freezing order from a member state of the EU and a completed certificate¹, certified as accurate, together with a request and any instruction regarding the treatment of the evidence or property concerned, must be transmitted to the Irish Central Authority in connection with a request for enforcement

A request from a designated state (other than a member state) for the enforcement of an external freezing order must be accompanied by a duly certified copy of the order, a statement of the grounds for making the order and for believing that the evidence or property concerned will be subject to an order for confiscation and such other information as may be required by the relevant international instrument.

All documents, relating to requests for the enforcement of external orders, must be transmitted in a format capable of producing a written record and allowing for their authentication, including by facsimile.

Recognition and enforcement of external freezing orders

On receipt of an external freezing order and related documents, the Irish Central Authority will cause an application to be made to the High Court for a freezing co-operation order. Such an order would recognise the external freezing order and prohibit any person dealing with the property specified in the order. The application for a freezing co-operation order may be made *ex parte* and in private.

An application from a member state for the enforcement of an external freezing order will be dealt with as soon as possible and, where practicable, within 24 hours of receipt of the freezing order and certificate.

The Irish High Court may refuse to make a freezing co-operation order on general restrictions for refusing assistance grounds or if

(a) the offence to which the external freezing order relates is not an offence to which the relevant international instrument relates,

(b) where the external freezing order was made in a member state, the certificate is not produced, is incomplete or manifestly does not correspond to the external freezing order,

(c) there is an immunity or privilege under the law of the State which makes it impossible to make a freezing co-operation order,

¹ Certificate as provided for in Article 9 of Council Framework Decision (2003/577/JHA) of 22 July 2003 on the execution in the European Union of orders freezing property or evidence

(d) it is immediately clear from the information provided in a certificate that compliance with a request for the transfer of evidence or confiscation of property in relation to the offence in respect of which the external freezing order has been made would infringe the *ne bis in idem* principle, or

(e) in the case of an external freezing order from a designated state (other than a member state), there is not a reasonable basis for believing—

(i) that there are sufficient grounds for making the order, or

(ii) that the property will be subject to an external confiscation order.

A freezing order from a member state may not be refused solely on the basis that the offences encompassed by Article 3.2 of Council Framework Decision 2003/577/JHA are not offences under Irish law.

The High Court may appoint a receiver to take possession of the property the subject of the freezing co-operation order, and manage it in accordance with the court's directions. The Garda Síochána or an officer of customs and excise may seize property subject to a freezing co-operation order to prevent its removal from the State.

Irish legislation provides that, after expenses and remuneration have been paid, any monies remaining will be used to satisfy the freezing co-operation order and will, subject to any provision in the relevant international instrument, be paid to the Irish Government unless the High Court provides otherwise on request by the designated state concerned.

Duration of freezing co-operation order

A freezing co-operation order will remain in force until the relevant evidence is transferred to the state which has issued the external freezing order or until a request for such a transfer is refused. Where the external freezing is related to confiscation, it will remain in force until a confiscation co-operation order has been made or refused and the refusal upheld on appeal. The freezing co-operation order also remains in force unless it has been varied or discharged by the Irish High Court on the application by any person affected by it.

Confiscation of Property

Transmission to Ireland of external confiscation order

An external confiscation order may be transmitted to the Irish Central Authority in the State by or on behalf of the court that made it with a request for its enforcement. The external confiscation order must be accompanied by:

a duly certified copy of the order;

a statement made by or on behalf of the court to the effect that the order is in force and not subject to appeal;

if the person did not appear in the proceedings an indication he or she received notice of them in sufficient time to enable him or her to defend the proceedings;

a brief description of the conduct which constituted the offence resulting in the order;

any necessary translations; and

any further information required by the relevant international instrument.

Confiscation co-operation order

The Irish Central Authority may cause an application to be made to the High Court, on receipt of an external confiscation order, for a confiscation co-operation order in order to effect the confiscation of the property in Ireland . The court may make a confiscation co-operation order on receipt of an application. The confiscation co-operation order may not be made unless the court is satisfied

- (i) that the application is made with the consent of the Minister for Justice, Equality and Law Reform,
- (ii) with the statements provided by the issuing state,
- (iii) that the conduct leading to the order constitutes criminal conduct,
- (iv) that the making of the order is in accordance with the relevant international instrument and
- (v) that any person claiming to own or have an interest in the property concerned has been given an opportunity to make representations as to why the order should not be made.

The High Court may vary or discharge a confiscation co-operation order if such an application is received either from the person claiming to have an interest in the property or from anyone affected by the order. The Court from whom the external confiscation order was received may be consulted in relation to such an application. An order will be varied in line with any similar variation made to the external confiscation order.

Enforcement, etc., of confiscation co-operation orders

Where the Irish High Court makes a confiscation co-operation order, the order may be enforced by the Director of Public Prosecutions for the purpose of

payment to the State of the sum specified in the order or of any lesser sum due under the order.

Forfeiture of Property

Transmission of external forfeiture order to Ireland for enforcement

An external forfeiture order made by another state may be transmitted to the Irish Central Authority for enforcement. The order must be accompanied by

- i. a duly certified copy of the order;
- ii. a statement by or on behalf of the court that made the order to the effect that it is in force and not subject to appeal and that if the person concerned did not appear in the proceedings, he or she received notice of the proceedings in sufficient time to defend them;
- iii. a brief description of the conduct which made up the offence resulting in the making of the order;
- iv. any required translations; and
- v. Any further information required by the relevant international instrument should also be included.

Making of a forfeiture co-operation order in Ireland

On receipt of an external forfeiture order and supporting documents, the Central Authority may cause an application to be made to the High Court for a forfeiture co-operation order to be made in order to enable the forfeiture of the relevant property to take place. The order may not be made unless the High Court is satisfied:

- (i) that the application is made with the consent of the Minister for Justice, Equality and Law Reform,
- (ii) with the statement provided by the issuing court or on its behalf,
- (iii) that the conduct resulting in the external forfeiture order constitutes criminal conduct,
- (iv) that the making of the external forfeiture order is in accordance with the relevant international instrument and
- (v) that any person claiming to own or have interest in the property which is subject to the order has been given an opportunity to make representations as to why the order should not be made.

Any property forfeited, as a result of the making of a forfeiture co-operation order, is disposed of for the benefit of the Irish Exchequer unless on request by

or on behalf of the requesting state, and in accordance with the relevant international instrument, the High Court provides otherwise.

10. PROVISION OF EVIDENCE

Evidence from Ireland for use in designated state

On receipt of a request for assistance from a designated state for the taking of evidence in Ireland for the purpose of a criminal investigation or criminal proceedings the Minister for Justice, Equality and Law Reform may request the President of the District Court to nominate a judge of that Court to receive the evidence. An assurance must be received from the requesting authority that any evidence supplied will only be used for the purpose permitted by the relevant international instrument or specified in the request unless the nominated judge of the District Court or the witness agrees otherwise. The nominated judge has the powers of the District Court in criminal proceedings and he or she may direct that the evidence not be heard in public in order to protect either a person or information. The judge is obliged to inform the witness of his or her rights in relation to privilege. There is a financial penalty, a penalty of a term of imprisonment or both for the non-compliance by a person summoned to give evidence, if a reasonable excuse cannot be made.

Privilege of witnesses

A person cannot be compelled to give any evidence in proceedings, for the taking of evidence for use in a designated state, which he or she could not be compelled to give in criminal proceedings in Ireland or in the state seeking the evidence. The privilege of not being compelled to give evidence in criminal proceedings in another country does not apply unless the requesting authority accepts the claim of the person to be exempt in that country. Should the claim for privilege not be conceded, the person may be required to give the evidence, but if a court in the state concerned upholds the claim, the evidence cannot be sent to the requesting authority. A person cannot be compelled to give evidence in his or her capacity as an Irish civil or public servant or if to do so might prejudice national security.

Evidence of prisoners

Transfer of prisoner to give evidence or assist investigation outside Ireland

On receipt of a request from a designated state, the Minister for Justice, Equality and Law Reform may issue a warrant for a prisoner to be transferred to a designated state to give evidence, assist in or be identified in a criminal investigation or criminal proceedings in that state, provided that the prisoner gives written consent to being transferred. This warrant will constitute the necessary authority for the handing over, detention and return of the prisoner in due course to continue serving his or her sentence in Ireland. The warrant will not be issued unless the requesting state is in a position to give an assurance that if the prisoner is transferred he or she will not be prosecuted, sentenced, detained or otherwise restricted in his or her personal freedom for any offence against the law of that state committed before the prisoner's departure from Ireland.

Evidence through television link

Request for evidence through television link for use outside Ireland

When a request is received for a person present in Ireland to give evidence through a television link in criminal proceedings in a designated state, and, if the Minister for Justice, Equality and Law Reform is of the view that it is not desirable or possible for the witness to give evidence in person, the Minister may request the President of the District Court to nominate a District Court judge who will summon the witness to attend to give evidence via television link.

The request should be sent to the Irish Central Authority and must include the following information:

- (a) the name, address and, if known, the nationality of the witness;
- (b) the court or authority making the request;
- (c) the name of the person or persons who will conduct the hearing;
- (d) a statement as to why it is not desirable or possible for the witness to give evidence in person;
- (e) the likely date of the hearing.

The nominated District Court judge will summon the witness to give evidence through a television link within the district to which the judge is assigned. The evidence must be given in accordance with the laws and procedures of the requesting state insofar as they are compatible with the fundamental principles of the law of Ireland. The witness may not be compelled to give evidence which he or she could not be compelled to give in criminal proceedings in Ireland or in the state seeking the evidence. The evidence may be taken in private if this is deemed necessary for the protection of witnesses and the state requesting the evidence agrees. The proceedings will be conducted by or under the direction of the judge of the requesting state in line with the laws of that state. However, the nominated Irish District Court judge is obliged, where necessary, to take action to ensure that the evidence is taken in accordance with the fundamental principles of the law of Ireland. Interpretation will be provided during the proceedings, where required. A record of the evidence taken will be sent to the Minister for Justice, Equality and Law Reform for transmission to the requesting state. In the event that a witness fails to testify when under an obligation to do so or where a witness knowingly makes a false statement material to the proceedings, a financial penalty, a penalty of a term of imprisonment or both will apply.

Evidence by telephone link for use outside Ireland

A request for a witness present in Ireland to give evidence by telephone link in criminal proceedings in a designated state may be made to the Irish Central Authority. The request must include the following information:

- (a) the name, address and, if known, the nationality of the witness;
- (b) the court or tribunal which is to hear the evidence;
- (c) the person or persons who will conduct the proceedings;
- (d) a statement that the witness is willing to give evidence by telephone link in the proceedings;
- (e) the likely date of the hearing.

The Minister for Justice, Equality and Law Reform, if of the view that the witness is willing to give evidence by telephone link, may request that a judge of the District Court be nominated by the President of that Court to summon the witness to attend to give such evidence. The provisions set out above, in relation to the taking of evidence through television link for use outside Ireland, apply in relation to the taking of evidence by telephone link for use outside Ireland.

Search for evidence

Search for evidence for use outside Ireland (general)

A request for a search for evidence from a designated state, for assistance in obtaining evidence for the purposes of a criminal investigation or criminal proceedings in that state where a search power exists in Ireland in relation to the conduct given rise to the offence, may be transmitted to the Irish Central Authority. The request may only be dealt with:

- (a) in cases where the offence is punishable under Irish law and that of the member state of the EU concerned by imprisonment for at least six months, or
- (b) where the offence is punishable under Irish law by at least six months' imprisonment and where it is being prosecuted in the member state concerned by administrative authorities, whose decision may give rise to criminal proceedings, and
- (c) in cases from a designated state (other than a member state) when dual criminality applies.

The Minister for Justice, Equality and Law Reform may send the request and any related documents to the Commissioner of An Garda Síochána to arrange for the request to be complied with. The request will not be sent for execution unless the requesting authority gives an assurance that any evidence supplied will not be used, without the Minister's consent, for a purpose other than that permitted by the relevant international instrument or specified in the request

and that the evidence will be returned when no longer required unless the Minister indicates otherwise.

Search for particular evidence for use outside Ireland

A request may be made by a designated state for help in obtaining specified evidence for the purpose of a criminal investigation or proceedings, where a search power exists in Ireland in relation to the conduct giving rise to the offence. The request may only be dealt with:

- (a) in cases where the offence is punishable under both Irish law and that of the member state concerned by imprisonment for at least six months, or
- (b) in cases where the offence is punishable under Irish law by at least six months' imprisonment and where it is being prosecuted in the member state concerned by administrative authorities, whose decision may give rise to criminal proceedings.
- (c) in cases from a designated state (other than a member state) where dual criminality applies.

The request from a member state may relate to the freezing of evidence, where a penalty of not less than three years applies in the member state concerned.

The Minister for Justice, Equality and Law Reform may send the request along with any related documents to the Commissioner of An Garda Síochána for compliance, provided that an assurance has been given by the requesting authority that any material furnished will not, without prior consent, be used for any purpose other than that permitted by the relevant international instrument or specified in the request and that the material will be returned when no longer required unless the Minister indicates otherwise.

Identification evidence

Identification evidence for use outside Ireland

A request to Ireland from a designated state to obtain identification evidence must include a statement that the evidence is required in connection with criminal proceedings or a criminal investigation and a brief description of the conduct concerned. The request should be sent to the Irish Central Authority.

The Minister for Justice, Equality and Law Reform may send the request to the Commissioner of An Garda Síochána for action. The Minister must be satisfied that any evidence furnished in response to the request will not be used for a purpose other than that specified in the request without the Minister's consent and that the evidence will be returned or destroyed once no longer required. If the evidence is not in the possession of An Garda Síochána, a member of An Garda Síochána will inform the person from whom the evidence is required of the nature of the evidence, that it has been requested in connection with criminal proceedings or a criminal investigation

in another state, of his or her right to refuse to provide the evidence and that if consent is not given, this fact may be used in proceedings in the designated state. Identification evidence may be given by a person in prison. Such evidence may only be taken if it relates to an offence other than that for which the person is in prison.

The identification evidence will be transmitted by the Irish Central Authority to the requesting authority in the designated state. The Central Authority will be required to obtain an assurance, if the evidence is not to be returned by the requesting authority, that the evidence, as well as the record of any analysis of the evidence or any recording relating to it, will be destroyed:

(a) if the person the subject of the investigation is not prosecuted, on the expiration of 12 months from the taking of the evidence, unless the failure to prosecute is not due to the fact that the person has absconded or cannot be found,

(b) if the person is prosecuted and is acquitted or discharged or the proceedings are discontinued, on the expiration of 21 days thereafter, or

(c) if the person is prosecuted and made subject to an order corresponding to or in the nature of an Irish probation, on the expiration of a period of 3 years from the making of the order, unless the person is convicted during that period of an offence under the law of the country concerned corresponding to an offence punishable in Ireland by imprisonment for a term of 5 years or more.

Production Orders

Irish law also provides that a member of the Garda Síochána, pursuant to a direction given by the Minister for Justice, Equality and Law Reform, may apply on behalf of a requesting authority for an order for the production of any relevant material (e.g. documentary evidence) or access to it. The application must be for the purpose of an investigation into drug trafficking or money laundering or an investigation into whether a person has benefited from drug trafficking or some other serious offence.

The documents must be likely to be of substantial value to the investigation, they must not be subject to legal privilege and it must be in the public interest that they be produced, having regard to the likely benefit to the investigation and the circumstances under which the person in possession of the documents holds them.

The requirements mentioned above in relation to the use of and return of the evidence obtained by way of search warrant also apply in relation to evidence obtained by way of production order.

11. OTHER FORMS OF ASSISTANCE

Service of documents

Service of documents in Ireland

A request may be made to the Irish Central Authority for service of a document requiring a person to appear as a defendant or witness in criminal proceedings in a designated state and of any other document issued by a court or authority in that state in relation to criminal proceedings. The document will be served by post on the person concerned, unless the request specifies that personal service is required.

Where the request is for personal service of the document, it must be accompanied, where necessary,:

- a) by a translation of the document or of the material parts of it, into either Irish or English, and
- b) if it is known that the person understands only another language or languages and the document is not in that language or one of those languages, by such a translation into that other language or one of those other languages.

The Minister for Justice, Equality and Law Reform will direct the Commissioner of the Garda Síochána to cause the document to be served personally on the person concerned. When the document has been served, the Garda Síochána will send proof of service to the Minister for transmission to the requesting authority concerned. If service is not possible the Minister will be so informed.

A request for personal service from a member state of the EU will only be complied with where:

- (a) the address of the person concerned is unknown or uncertain,
- (b) under the law of the member state proof of service on the person is required, other than proof that can be obtained by post,
- (c) it has not been possible to serve the document by post, or
- (d) the applicant for the issue of the document or the issuing authority has good reason for believing that service by post would not be effective or is inappropriate.

A person served with a document at the request of a designated state is under no obligation under Irish law to comply with it. A document requiring a person to appear as a defendant or witness in criminal proceedings in a designated state may not be served until an assurance is given that the person will not be acted against, should he or she appear, in respect of any conduct taking place prior to his or her departure from Ireland (other than, in the case

of a defendant, that already specified in the document). This immunity will cease when:

(a) a period of at least 15 days has elapsed from the date when the person's presence in the designated state is no longer required by the judicial authorities concerned and the person, having had an opportunity to leave the designated state during that period, has not done so, or

(b) the person, having left the state during that period, returns to it.

A notice from the Irish Central Authority will accompany a document being served at the request of a designated state. This notice will:

- state that there is no obligation, under Irish law, on the person to comply with any requirement set out in the document;
- set out the immunity provisions and the circumstances under which they will cease;
- state that the person served may wish to seek legal advice as to the possible consequences of failing to comply with the document served; and
- state that under the law of the designated state the person may not have the same rights and privileges as apply in Ireland in relation to criminal proceedings.

The notice will be translated into a language other than Irish or English, if required.

Examining objects and sites

Examining objects and sites in Ireland

A request from a designated state to the Central Authority for the examination of a site or object may be sent by the Minister for Justice, Equality and Law Reform to the Garda Síochána for execution. Requests must include a description of the site or object to ensure it can be identified. Requests may only be complied with if there is a search power under Irish law in respect of the offence constituted by the conduct giving rise to the request.

Restitution

Request to Ireland for restitution of stolen property

A request may be made for property in Ireland obtained by criminal means to be placed at the disposal of the requesting authority in the country concerned, in order for it to be returned to its owner. The request must be sent to the Irish Central Authority in writing and must include or be accompanied by the following information:

- a) a statement that—
- (i) a specified person has obtained the property by committing an offence under the law of the requesting state, and
 - (ii) the return of the property to its owner does not prejudice the rights of any *bona fide* third parties in relation to it,
- and
- (b) a description of the property;
- its location;
- the name and address of its owner; and
- any other information likely to facilitate compliance with the request.

On receipt of a request which meets the requisite conditions, the Minister for Justice, Equality and Law Reform may cause an application to be made to the District Court for a restitution order for the property concerned. Notice of the application must be given to any person affected or appearing to be affected by such an order unless that person's whereabouts cannot reasonably be ascertained.

The Irish District Court, if satisfied that the requisite conditions have been complied with and that the property is in the possession of the person specified, may order that the property be delivered to the Garda Síochána. The Irish Central Authority will arrange for the delivery of the property to the requesting authority in the country concerned.

An order for the restitution of property will not be made where the property is required as evidence in criminal or civil proceedings or if the person claiming to own the property has not been given an opportunity to make representations as to why the order should not be made. It is an offence under Irish law not to comply with a restitution order and a financial penalty, a term of imprisonment or both may apply on conviction.

Controlled Deliveries

Controlled delivery in Ireland

A request may be made by a designated state for a controlled delivery to take place in Ireland. Certain persons from that designated state may be permitted to participate in the operation connected with the controlled delivery. The details of the offence to which the controlled delivery relates must be included in the request.

Requests for controlled deliveries should be made to:

(a) the Commissioner of the Garda Síochána, or

(b) if the controlled delivery is concerned with a revenue offence, the Revenue Commissioners.

Where the competent authority of a designated state requires requests to be received by a judicial authority, the requests should be addressed to the Minister for Justice, Equality and Law Reform.

Requests for controlled deliveries may be granted if the relevant Irish authority is satisfied that

- the controlled delivery is being made for the purposes of an investigation into an offence; or
- there are reasonable grounds for believing that a controlled delivery is in the public interest.

JOINT INVESTIGATION TEAMS

Requests to Ireland to participate in Joint Investigation Teams should be made to the Commissioner of An Garda Síochána. One or more officers nominated by an authority of a designated state may participate in such teams. Where the competent authority of a designated state requires requests to be received by a judicial authority, the requests shall be addressed to the Minister for Justice, Equality and Law Reform.

PRESENCE OF REPRESENTATIVES AT EXECUTION OF REQUEST

Presence of representatives of requesting state at execution of request in Ireland

The Minister for Justice, Equality and Law Reform may, at the request of a designated state, authorise a representative of that state to be present at the execution of its request in Ireland. Such requests should be made to the Irish Central Authority and may be subject to such conditions as the Minister decides.

A representative of a designated state present during the execution of a request will be subject to the direction of the Garda Síochána and will have access to the same places and objects and may be authorised to put or propose questions and suggest measures of investigation. A representative may not disclose confidential information resulting from his or her presence at the execution of a request, except to any other such representative or representatives and to his or her authorities.

PROVISIONAL MEASURES

Where criminal proceedings or a criminal investigation are underway in a designated state and a competent authority of that state requests the Minister

for Justice, Equality and Law Reform for the taking of provisional measures within the meaning of the relevant international instrument, an application may be made to the Irish High Court for the requested measures to be granted. Such provisional measures could relate to the preservation of evidence, maintaining an existing situation or protecting endangered legal interests.

12. POLICE TO POLICE ENQUIRIES

Some requests for assistance in investigations can be executed exclusively on the basis of police to police co-operation. The forms of co-operation which can be obtained through police channels include

- interviewing witnesses or suspects in criminal investigations where the person to be interviewed is willing to co-operate and provide an unsworn statement,
- sharing information concerning investigations into offences which have been committed in Ireland, where circumstances permit,
- providing details of motor vehicles registered in Ireland,
- providing details of driving licences issued in Ireland and
- obtaining medical or dental statements or records where the patient has given written consent.

13. IRISH AUTHORITIES EMPOWERED TO MAKE REQUESTS

(i) Designated Authorities

The following courts and authorities have been designated as competent to make mutual assistance requests: the District Court, the Circuit Court, the High Court, a Special Criminal Court, the Court of Criminal Appeal, the Supreme Court, the Attorney General of Ireland, the Director of Public Prosecutions and the Chief State Solicitor.

(ii) Onward Transmission of Requests

Requests from these courts and authorities will in the normal course be passed to the Central Authority for onward transmission to courts and authorities abroad, or where a State is unwilling to accept requests directly from the Central Authority, for transmission through diplomatic channels.

(iii) Urgent Irish Requests Addressed to Courts or Tribunals

Under the applicable national legislation, the Director of Public Prosecutions may make requests for the obtaining of evidence directly to the appropriate authority abroad.

(iv) Limitation regarding the use of Evidence by the Irish Authorities

Under the applicable national legislation, any evidence obtained by virtue of a letter of request, may not, without the consent of the requested authority, be used for any purpose other than that permitted by the relevant international instrument or specified in the request.