

EXPLANATORY MEMORANDUM ON THE TREATY BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE PEOPLE'S REPUBLIC OF CHINA ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

TITLE OF TREATY

Treaty between the United Kingdom of Great Britain and Northern Ireland and the People's Republic of China on Mutual Legal Assistance in Criminal Matters.

Command Paper Number: 8911

SUBJECT MATTER

The Treaty between the United Kingdom of Great Britain and Northern Ireland and the People's Republic of China provides an international framework for mutual legal assistance (MLA) in criminal matters. The Treaty applies to all crimes that are being investigated or prosecuted in the territory of the requesting state where the evidence required is located in the territory of the requested state. The Convention also provides for assistance to be given in restraint and confiscation matters.

KEY ELEMENTS OF THE TREATY ARE AS FOLLOWS:

Assistance will be provided without the need to establish dual criminality except in cases of search and seizure of material and in relation to the restraint and confiscation of the proceeds of crime, where such assistance can be given subject to the domestic law of the Requested State.

The Contracting States expressly retain a right to refuse requests where:

- the assistance relates to conduct which would not constitute an offence under the laws of the Requested State;
- the assistance concerns an offence which the Requested State considers a political offence;
- the offence only constitutes a military offence;
- the assistance has been made for the purpose of investigating, prosecuting or punishing a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions;
- the Requested State is in the process of terminating, or has already terminated criminal proceedings, or the person requested has received a final judgment for the same offence as referred to in the request;

- the Requested State considers that the request lacks a substantial connection to the case;
- the Requested State considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.

With the exception of costs associated with the expenses of witnesses, the fees of experts and any extraordinary expenses, the costs of execution will be borne by the Requested State. This is in line with accepted international practice.

Requests are to be treated as confidential in so far as this is possible under the law of the Requested State. The evidence provided in response to a request is to be used for that request only unless consent for further use is obtained, subject to any rules on disclosure that may apply.

In line with previous bilateral MLA Treaties the Convention can be extended (with necessary amendments) to the Crown Dependencies and the Overseas Territories with the agreement of the Contracting States by exchange of notes.

This Convention does not rule out the provision of assistance through procedures set out in other international agreements or arrangements.

MINISTERIAL RESPONSIBILITY

The Secretary of State for the Home Department has overall responsibility for policy on judicial co-operation. The Lord Advocate and the Scottish Government Ministers also have an interest. The Secretary of State for Foreign and Commonwealth Affairs has overall responsibility for UK policy relating to the UK's relations with the People's Republic of China.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

Both the Scottish Government and the Northern Ireland Office have seen the Treaty and are content.

POLICY CONSIDERATIONS

This Treaty will provide a sound framework for co-operation between the UK and the People's Republic of China, especially where requests from UK prosecution agencies are sent to China. There is now a clear basis under which such requests can be executed. It should be noted that the UK does not need a Treaty basis to provide mutual legal assistance. This can be provided pursuant to the Crime (International Co-operation) Act 2003 and the Proceeds of Crime Act 2002.

The People's Republic of China is an important partner for the UK, and the Treaty will enable us to co-operate in the fight against cross-border crime.

FINANCIAL

Administering the Treaty will not result in significant costs.

RESERVATIONS AND DECLARATIONS

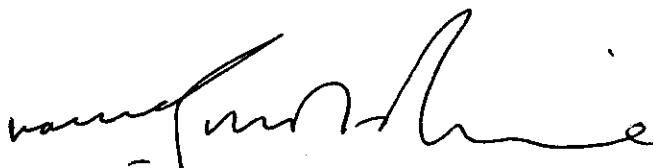
None.

CONSULTATIONS

The Treaty was negotiated on behalf of the United Kingdom by the Home Office and on behalf of the People's Republic of China by officials from the Ministry of Foreign Affairs.

IMPLEMENTATION

No additional legislation is required in order to implement the Convention. The Treaty will enter into force upon the 30th day from the date on which the later of the two notifications by which the Parties shall notify each other of the completion of respective internal procedures.

A handwritten signature in black ink, appearing to read 'James Brokenshire', is positioned above the printed name.

James Brokenshire MP
Immigration and Security Minister
HOME OFFICE