

**EXPLANATORY MEMORANDUM ON THE TREATY ON MUTUAL LEGAL ASSISTANCE IN
CRIMINAL MATTERS BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE STATE OF KUWAIT**

TITLE OF TREATY

Treaty on Mutual Legal Assistance in Criminal Matters Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the State of Kuwait.

Command Paper Number: 9658

SUBJECT MATTER

Mutual Legal Assistance (MLA) is a method of cooperation between States for obtaining assistance in the investigation or prosecution of criminal offences.

The Treaty between the United Kingdom of Great Britain and Northern Ireland and the Government of the State of Kuwait provides an international framework for 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 Treaty also provides for assistance to be given in restraint and confiscation matters and the sharing of assets.

KEY ELEMENTS OF THE TREATY ARE AS FOLLOWS:

Assistance will be provided 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 Requested State considers that the execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests, or is otherwise inconsistent with its domestic law; or
- the offence is regarded by the Requested State as being of a political nature or an offence only under military law; or
- there are substantial grounds for believing that the request for assistance has been made for the purpose of investigating, prosecuting or punishing a person on account of that person's race, sex, sexual orientation, religion, nationality, ethnic origin or political opinions or that person's position may be prejudiced for any of those reasons; or
- the request relates to an offence the prosecution of which would be incompatible with the Requested State's domestic law on double jeopardy (ne bis in idem); or

- the provision of assistance would, or would be likely to prejudice an investigation or criminal proceeding in the Requested State or endanger the safety of any person.

In addition, dual criminality is required in cases of search and seizure of evidence, production orders, and in relation to the restraint and confiscation of the proceeds of crime.

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 not to be used or disclosed except for the purposes stated in that request unless consent for further or collateral use is obtained, subject to any rules or legal obligations on disclosure that may apply (in which case notification rather than consent is required).

In line with previous bilateral MLA Treaties, this agreement 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 Treaty 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 (as the central authority for receipt of MLA requests in Scotland) and the Scottish 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 State of Kuwait.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

Both the Scottish Government and the Northern Ireland Department of Justice have seen the Treaty and are content.

POLICY CONSIDERATIONS

This Treaty will provide a sound framework for co-operation between the UK and the State of Kuwait, especially where requests from UK prosecution agencies are sent to the State of Kuwait. There is now a clear basis under which such requests can be made and, where possible under the domestic law of the requested State, 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. This Treaty is a clear commitment by both parties to mutual co-operation in the cross-border fight against crime and will strengthen bilateral relations more generally.

FINANCIAL

Administering the Treaty will not result in significant costs.

RESERVATIONS AND DECLARATIONS

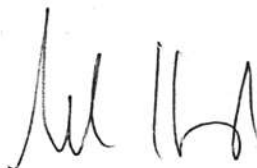
None.

CONSULTATIONS

No formal consultation was carried out given the limited application of the Treaty.

IMPLEMENTATION

No additional legislation is required in order to implement the Treaty.



Rt Hon Nick Hurd MP
Minister for Policing and the Fire Service
HOME OFFICE