



AUTHOR(S):

TITLE:

YEAR:

Publisher citation:

OpenAIR citation:

Publisher copyright statement:

This is the _____ version of an article originally published by _____
in _____
(ISSN _____; eISSN _____).

OpenAIR takedown statement:

Section 6 of the "Repository policy for OpenAIR @ RGU" (available from <http://www.rgu.ac.uk/staff-and-current-students/library/library-policies/repository-policies>) provides guidance on the criteria under which RGU will consider withdrawing material from OpenAIR. If you believe that this item is subject to any of these criteria, or for any other reason should not be held on OpenAIR, then please contact openair-help@rgu.ac.uk with the details of the item and the nature of your complaint.

This publication is distributed under a CC _____ license.

The International Co-operation Unit of the COPFS

Dr Paul Arnell* gives an overview of the report by the Inspectorate of Prosecution in Scotland

In March 2014 the Inspectorate of Prosecution in Scotland (IPS) published its Thematic Report on the International Co-operation Unit (ICU) of the Crown Office and Procurator Fiscal Service (COPFS) (found at www.scotland.gov.uk/Resource/0044/00446087.pdf). The Report is notable for describing the nature and workload of the ICU and highlighting the volume of internationally-related Scottish criminal justice.

The Report sheds considerable light on the ICU. This is welcome. Its work is important, yet there is a dearth of publicly available information relating to it. The COPFS website contains only passing reference – for example in a press release noting the entry into force of the Extradition Act 2003 and in an advert for traineeships. The ICU not mentioned in the COPFS Strategic Plan: Our Priorities for 2012-15.

The ICU

The ICU was created in 2009-10. It is a unit within the COPFS operating as the central authority in Scotland in the area of international criminal co-operation. The creation of the ICU was part of a broader policy within the COPFS to specialise. Also created, for example, have been the National Sexual Crimes Unit and the Health and Safety Division. The leadership and management structures of the ICU have changed recently – in the course of the review by the IPS. The Report notes that the ICU now sits within the Serious and Organised Crime Division (SOCD). It is comprised of a Head (one of the two Deputy Heads of the SOCD), two Principal Deputies (one in charge of extradition and one mutual legal assistance), four prosecutors, a trainee and three administrators.

More generally, the ICU sits within one of the four federations that together make up the COPFS. This is the National Federation, which contains the Serious Casework Group and Corporate Services units. The other three Federations are based upon geography. The West, North and East Federations were created on 2 April 2012, as indeed was the National Federation.

The ICU's Work

The work of the ICU relates to the operation of criminal justice in a transnational sense. To ascertain the precise nature of the work undertaken by the ICU one must look to what it actually does – as opposed to a formal remit or constitution. This is simply because there isn't one – as paragraph 19 of the Report notes, "There is no overarching document setting out the core aims of the ICU". The Report states that this is a shortcoming, and one that should be addressed.

The work of the ICU centres upon extradition, mutual legal assistance (MLA) and international and national liaison. Extradition is the formal mechanism by which accused and convicted persons can be transferred between countries. MLA – in a strict sense – is the formal process of seeking or providing assistance in criminal investigations across borders. International and national liaison, for the ICU, entails engaging with a number of UK-wide, European and international institutions working in the area of transnational criminal justice.

Governing Law

There is considerable and detailed domestic and international law governing extradition and MLA. This law provides the context within which the ICU works when making and processing extradition and MLA requests.

Domestically, the most important statutes governing the work of the ICU are the Extradition Act 2003 and the Crime (International Co-operation) Act 2003 in regard to extradition and MLA respectively. Internationally, bilateral treaties generally govern the UK's extradition and MLA relations with third states. Examples are the United Kingdom – United States Extradition Treaty 2003 and the Treaty on Mutual Legal Assistance in Criminal Matters between the United Kingdom of Great Britain and Northern Ireland and the Hashemite Kingdom of Jordan 2013.

Within the European context distinct arrangements based upon treaty and EU law exist between the UK and parties to the Council of Europe and EU member states. The arrangements differ in that they are multilateral and because they generally provide for an enhanced degree of co-operation. In regard to extradition, the European Arrest Warrant (EAW) applies between member states of the EU. Reflecting the terms of the EAW is the fact that EU member states are provided for separately under the Extradition Act 2003, as Category 1 territories. In regard to MLA two treaties are generally relevant in the European context, one emanating from the Council of Europe and one the EU. These are the European Convention on Mutual Assistance in Criminal Matters 1959 and the Convention on Mutual Assistance in Criminal Matters between Member States of the European Union 2000 respectively.

International and national liaison as a function of the ICU is both founded on specific legislative provision and exists as a necessary consequence of international, European and intra-UK agreements and institutions. In regard to legislative provision, for example, article 2 of the Extradition Act 2003 (Part 1 Designated Authorities) Order 2003/3109 provides that the 'Crown Agent of the Crown Office' certify extradition warrants from Category 1 territories. More generally, interaction and liaison are necessitated on account of the international nature of the ICU's work and the fact that extradition and international relations are reserved matters under the Scotland Act 1998.

Scale of Work and Performance

The Report's greatest external value lies in the insight it gives to the precise nature and scale of the day-to-day work carried out by the ICU. The Report states that at the time of the Review there were 364 live cases in the ICU, comprising outgoing and incoming extradition and MLA requests. Numerically, there are considerably more incoming requests than outgoing – particularly in regard to extradition. Largely explaining this fact is the EAW, intra-EU migration and the prosecution policies of certain states, particularly Poland.

In illustration of the scale and direction of extradition requests in 2012, the Report notes, less than 35 requests were made by the Lord Advocate and 150 were received.

Procedurally, the Report highlights a lack of understanding and degree of confusion in parts of the COPFS as regards the requirements needed to be met to obtain an international or European arrest warrant and in regard to the 'ownership' of a domestic warrant. These were found in, and existed between, the ICU and the three Federations. Generally, however, the IPS stated it was confident that ICU is dealing with extradition efficiently.

Over the last three years, the Report notes, between 200 and 300 incoming MLA requests were received by the ICU. Most of these were requests for precognitions on oath. Outgoing MLAs, seeking evidence from foreign authorities to assist in the prosecution of cases in Scotland, have been increasing in recent years, with 158 being made in 2102. The success of outgoing requests and the time taken to get a response depends upon the country being asked. The Report provides that requests to EU states are generally easier to make and quicker to conclusion.

As the Report states, the ICU liaises with various bodies and institutions working in the area of criminal justice in third countries, the EU and UK-wide. The scale and nature of this work is necessarily difficult to quantify. The Report does note, however, that the ICU had ongoing contact with 62 countries at the time it was inspected by the IPS. It also refers to various organisations with which the ICU works including Eurojust, the European Judicial Network and the International Association of Prosecutors. Within the UK, the ICU engages with the Scottish Government, the Home Office, the NCA and the United Kingdom Central Authority amongst others.

In regard to the ICU's performance the Report states that the persons the IPS contacted in the area of extradition and MLA were highly satisfied. It goes on, however, to note that there are no internal or external performance indicators to gauge the efficiency of its work. It suggested timescales for dealing with certain work, although in the way here are inadequate information management systems. More generally in regard to performance, the varied, international and non-quantifiable nature of the work of the ICU leads to precise conclusions being impossible. What must suffice are various general statistics, and anecdotal comments. The value of the latter is enhanced when made by foreign partners on account of the ICU practically relying upon the goodwill of criminal justice professionals in third countries. This goodwill is greatly affected by the quality of staff within the ICU and the relationships that they have developed.

Conclusion

The Report of the IPS into the ICU is illuminative, bringing to light information not accessible to the public – readily in

any event. It makes eleven recommendations, addressing aspects of its work in the three areas discussed above. The recommendations can be categorised as operational, strategic, IT-related and procedural. Operationally, the Report recommends that the ICU continue to take a co-ordinated approach to the maintenance of its international profile, be flexible in the allocation of work for skill-development purposes and staff-transferability, and introduce key performance indicators. The Report recommends in regard to strategy that the ICU prepare and publish a remit and purpose. Procedurally, the development of a warrant-requirement checklist, the collation of a list of all EAW and international cases, and the publication of guidance on the withdrawal of warrants are all recommended. The Report also recommends that deficiencies in the ICU's IT system be addressed, or the system itself be replaced. Finally, the Report states that the uncertain position of International Co-operation Resource Deputes (ICRDs) – a specialist role designed to focus on international work across COPFS, be addressed.

The ICU, contrary to the impression perhaps arising from the recommendations, should be commended. It efficiently processes extradition and MLA requests and more generally represents Scotland in various transnational criminal fora. It is evident that the ICU's work is considerable and important. Of course the number of cases dealt with by the ICU is only a fraction of the total of dealt with by the COPFS. However, transnational criminality and the movement of persons are here to stay, crime should be punished and Scotland must not become a safe-haven for criminals. The Report was critical of several aspects of the work of the ICU. However, it appears that these generally lie at the feet of the COPFS itself, not the ICU. Structural changes within the COPFS affecting the ICU, inadequate IT systems and opacity surrounding ICRDs, for example, are factors outside its authority. Notably, the COPFS accepted all the recommendations and commenced two reviews following the publication of the Report. Overall, the work of the ICU exists at the confluence of decreasing public resources and an increasing volume of transnational work. In that light it has performed well in administering transnational criminal justice and upholding the regard in which Scots law and its legal profession is held.

*Dr Paul Arnell is a Reader in Law at Robert Gordon University. An occasional contributor to *SCOLAG Legal Journal* as well as many other Scots and international law journals, his research interests are within public international law, particularly in international criminal law, extradition, jurisdiction and human rights.

SCOLAG LEGAL JOURNAL Have Your Say on Law and Justice in Scotland

We are interested in the views and opinions of those with experience of working in any aspect of Scots law. If you would like to contribute articles or commentary then please contact the editor in writing:

The Editor, SCOLAG Legal Journal, PO Box 23800, Edinburgh EH7 6WE or email: editor@scolag.org