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# REPORT FOR CONGRESS

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# INTERPOL RED NOTICES

*This report concerns the treatment of INTERPOL Red Notices for the arrest and extradition of wanted persons in Australia, Canada, and the United Kingdom.*

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**AUSTRALIA**

**INTERPOL RED NOTICES**

*Executive Summary*

*Australia will not arrest a person on the basis of an INTERPOL Red Notice. Australia will only arrest a person for the purpose of extradition where a foreign country with which it has an extradition relationship makes a provisional arrest request or where a formal extradition request has been accepted. A magistrate must issue an arrest warrant in order for an arrest to be lawfully carried out.*

The website of the Australian Attorney-General's Department provides information about extradition and mutual assistance arrangements, including the relationship between INTERPOL Red Notices and arrest requests and warrants. It specifically states that “[f]or the purposes of extradition, Australia does not arrest a person on the basis of receiving a Red Notice.”<sup>1</sup> This is because the arrest powers of Australian law enforcement officers do not extend to acting on Red Notices: where a person is wanted for offenses in a foreign country an arrest can only be conducted if an arrest warrant has been issued by a magistrate in accordance with the provisions of the *Extradition Act 1988* (Cth).<sup>2</sup>

In addition to the procedures relating to formal extradition requests, the *Extradition Act 1988* provides for provisional arrest warrants to be issued in situations where there is an “urgent request to arrest a person pending receipt of an extradition request.”<sup>3</sup> In order to issue a provisional arrest warrant a magistrate must be satisfied that:

- An application for an arrest warrant has been made, in the statutory form, on behalf of a country that is an “extradition country”;<sup>4</sup>

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<sup>1</sup> Australian Attorney General's Department, Extradition and Provisional Arrest, [http://www.ag.gov.au/www/agd/agd.nsf/Page/Extraditionandmutualassistance\\_Extradition\\_Extraditionandprovisionalarrest](http://www.ag.gov.au/www/agd/agd.nsf/Page/Extraditionandmutualassistance_Extradition_Extraditionandprovisionalarrest) (last visited Oct. 15, 2010).

<sup>2</sup> *Id.* The website also states that Australian law enforcement officers can only arrest people for offenses that would also be offenses under Australian law.

<sup>3</sup> *Id.* See also *Extradition Act 1988* (Cth) s 12, available at <http://www.comlaw.gov.au/comlaw/Legislation/ActCompilation1.nsf/all/search/5AD10D9C8A2F3F55CA256F71004E838E>.

<sup>4</sup> *Extradition Act 1988* (Cth) s 12(1)(a). Section 5 defines “extradition country” as being any country that is declared by the regulations to be an extradition country. There are separate regulations relating to each extradition treaty. See, e.g., *Extradition (United States of America) Regulations 1988* (Cth) reg 3 (declaring the United States of

- There is an arrest warrant for the person in the extradition country or the person has been convicted of an offense in the extradition country;<sup>5</sup>
- The offense to which the warrant or conviction relates is an “extradition offence”;<sup>6</sup> and
- The person is believed to be outside the country making the provisional arrest request.<sup>7</sup>

Individual extradition treaties may list specific requirements for the contents of applications for provisional arrest.<sup>8</sup> A treaty may also include a statement that “the facilities of the International Police Organisation (Interpol) may be used” to transmit a request for provisional arrest.<sup>9</sup>

Provisional arrest warrants may be executed in any part of Australia.<sup>10</sup> A person arrested pursuant to a provisional arrest warrant can only be held for the time specified in the relevant extradition treaty.<sup>11</sup> If the country that made the provisional arrest request does not make a formal extradition request within that time then the person can apply to be released.<sup>12</sup>

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America to be an extradition country), available at <http://www.comlaw.gov.au/comlaw/Legislation/LegislativeInstrumentCompilation1.nsf/0/B3BAFA2D6758A7C6CA256F71004344FE?OpenDocument>. For general information about Australia’s extradition and mutual assistance relationships with other countries, including country lists, see Attorney General’s Department, Extradition and Mutual Assistance Relationships, [http://www.ag.gov.au/www/agd/agd.nsf/Page/Extraditionandmutualassistance\\_Relationshipwithothercountries\\_ExtraditionandMutualAssistancerelationshipswithothercountries](http://www.ag.gov.au/www/agd/agd.nsf/Page/Extraditionandmutualassistance_Relationshipwithothercountries_ExtraditionandMutualAssistancerelationshipswithothercountries) (last visited Oct. 15, 2010).

<sup>5</sup> *Extradition Act 1988* (Cth) s 12(1)(b) (requires that a magistrate be satisfied that a person is an “extraditable person,” as further defined in s 6).

<sup>6</sup> *Extradition Act 1988* (Cth) s 5 (defines “extradition offence” as an offense against the law of a country for which the maximum penalty is death or imprisonment for a period of not less than twelve months, or conduct which is required to be treated as an offense under an extradition treaty).

<sup>7</sup> *Extradition Act 1988* (Cth) s 6(B)(c).

<sup>8</sup> See *Extradition Act 1988* (Cth) s 11 (allowing for regulations to modify the requirements in the Act in order to fulfill treaty obligations). See, e.g., *Extradition (United States of America) Regulations 1988* (Cth) sch 2, art 8 (setting out the requirements for an application for provisional arrest).

<sup>9</sup> See, e.g., *Extradition (United States of America) Regulations 1988* (Cth) sch 2, art 8(1).

<sup>10</sup> *Extradition Act 1988* (Cth) s 57.

<sup>11</sup> Attorney-General’s Department, *supra* note 1. The time limit in the individual extradition treaties are either forty-five days or sixty days. See, e.g., *Extradition (United States of America) Regulations 1988* (Cth) sch 2, art 8(4) (stating that “[a] person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of arrest pursuant to the application of the requesting State if the executive authority of the requested State has not received the formal request for extradition and the supporting documents required in Article XI.”)

<sup>12</sup> Attorney-General’s Department, *supra* note 1.

There have been several reported situations where the subjects of INTERPOL Red Notices have been present in Australia.<sup>13</sup> In some of these cases the Australian Federal Police and/or Attorney-General's Department have made statements regarding the inability to arrest the person on the basis of the Red Notice, saying that a provisional arrest request or extradition request by the relevant country was required in order for an arrest warrant to be issued.

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October 2010

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<sup>13</sup> See Natasha Robinson, *Interpol Dagnet to Pursue Captain Dragan*, THE AUSTRALIAN, Apr. 8, 2010, <http://www.theaustralian.com.au/news/nation/interpol-dagnet-to-pursue-captain-dragan/story-e6frg6nf-1225851117636>; Press Release, INTERPOL, Australian Arrest of War Crimes Fugitive Wanted by Croatia Praised by INTERPOL (May 13, 2010), <http://www.interpol.int/Public/ICPO/PressReleases/PR2010/PR032.asp>; Angela Powell, *Australia 'Protects Interpol Suspect'*, THE WEST AUSTRALIAN, Aug. 24, 2010, <http://au.news.yahoo.com/thewest/a/-/breaking/7810621/australia-protects-interpol-suspect/>; *Applicant M 117 of 1007 v Minister of Immigration and Citizenship* [2008] FCA 1838 (involving cancellation of visa of a person who was the subject of a Red Notice), available at <http://www.austlii.edu.au/au/cases/cth/FCA/2008/1838.html>; *Federal Republic of Germany v Gregory Parker* [1998] FCA 803, available at <http://www.austlii.edu.au/au/cases/cth/FCA/1998/803.html>.

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**CANADA**

**INTERPOL RED NOTICES**

Canada is a member of Interpol and the Royal Canadian Mounted Police (RCMP) distributes Interpol's Red Notices to assist in the identification and apprehension of international fugitives. However, Canada's federally-organized RCMP and provincially or municipally organized police forces are not authorized to arrest persons on the basis of a Red Notice. As the RCMP has stated, "An arrest warrant from another country has no legal status in Canada."<sup>1</sup>

Under Canada's Extradition Act, police forces may arrest persons under a provisional arrest warrant or an arrest warrant obtained pursuant to an Authority to Proceed issued by the Minister of Justice.<sup>2</sup> In order to issue a provisional arrest warrant or an arrest warrant obtained pursuant to an Authority to Proceed, a judge must be satisfied that the Canadian government has received a request for either a provisional or "straight" arrest from an extradition partner.<sup>3</sup> The term "straight" is used to distinguish arrest warrants that do not have to be reissued prior to an extradition or committal hearing from provisional arrest warrants, which must be reissued prior to those types of hearings.<sup>4</sup>

Although police agencies cannot arrest a person on the basis of a Red Notice published by Interpol, the issuance of a Red Notice can lead police authorities to international fugitives who have violated Canadian law. For example, in 2007, the Canada Border Services Agency arrested Richard Steve Goldberg near Montreal. Mr. Goldberg was one of the ten most wanted criminals in the United States. He was charged with being in Canada illegally.<sup>5</sup> Failing to appear for examination at the border is an offense under the Immigration and Refugee Protection Act.<sup>6</sup>

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<sup>1</sup> *Interpol Notices*, ROYAL CANADIAN MOUNTED POLICE, <http://www.rcmp-grc.gc.ca/interpol/notices-avis-eng.htm> (last visited Jan. 5, 2011).

<sup>2</sup> Extradition Act, S.C. 1999, c. 18, §§ 12-13, 16, [http://laws-lois.justice.gc.ca/eng/E-23.01/page-2.html#anchorbo-ga:l\\_2-gb:s\\_12](http://laws-lois.justice.gc.ca/eng/E-23.01/page-2.html#anchorbo-ga:l_2-gb:s_12) (last visited Jan. 4, 2011).

<sup>3</sup> *Id.*

<sup>4</sup> GARY BOTTING, CANADIAN EXTRADITION LAW PRACTICE 50 (2005).

<sup>5</sup> Press Release, Public Safety Canada, One of the Ten Most Wanted Criminals in the U.S. Arrested by the Border Services Agency (May 13, 2007), <http://www.publicsafety.gc.ca/media/nr/2007/nr20070513-eng.aspx>.

<sup>6</sup> Immigration and Refugee Protection Act, S.C. 2001, c. 27, §§ 18, 124, <http://laws-lois.justice.gc.ca/eng/I-2.5/index.html>.

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**UNITED KINGDOM**

**INTERPOL RED NOTICES**

*Executive Summary*

*There is no readily available public information on the legal status of an INTERPOL Red Notice in the UK. The competent agency for handling Red Notices is the Serious Organised Crime Agency. While there is no publicly available information on how these notices are processed, it appears that they are implemented under the Extradition Act 2003 and bilateral extradition treaties.*

**I. Introduction**

As crime has become increasingly more international, national police forces have sought ways to increase cooperation in order to become more effective. The International Criminal Police Organisation (INTERPOL) Red Notice has enabled increased communication between member countries' police forces. However, its status varies by country. The Red Notice is a request for the provisional arrest of wanted persons by a national jurisdiction (or an International Criminal Tribunal), with a view to extradition.<sup>1</sup>

Although many member countries of INTERPOL give a Red Notice the same legal effect as a request for provisional arrest (a provisional arrest request is an urgent request to arrest a person, pending receipt of an extradition request) Red Notices are not international arrest warrants binding member countries to execute arrests. The legal status of a Red Notice is subject to the domestic law of each member country.<sup>2</sup>

**II. Legal Status of Red Notices and Applicable Procedures**

The Serious Organised Crime Agency (SOCA) is the National Control Bureau for Interpol Services<sup>3</sup> in the UK. It appears that the SOCA receives and processes Red Notices that are communicated to them by foreign governments through INTERPOL.

There is no publicly available information regarding the legal status of Red Notices in the UK, however, nor is there any readily available information about the procedures regarding Red

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<sup>1</sup> Secretary General Ronald K. Noble, Opening Speech at the INTERPOL Symposium: International Police Co-operation in the Context of Public International Law, Lyon, France (Jan. 31, 2008), <http://www.interpol.int/public/ICPO/speeches/2008/SGlegalSymposium20080131.asp>.

<sup>2</sup> *Id.*

<sup>3</sup> Serious Organised Crime Agency, *SOCA Working in Partnership Worldwide*, <http://www.soca.gov.uk/about-soca/working-in-partnership/international-partnerships> (last visited Oct. 20, 2010).

Notices. Further information regarding procedures may be obtained pursuant to an intergovernmental request to SOCA.<sup>4</sup>

### III. Requests for Provisional Arrest in the UK

In the UK requests for provisional arrests with a view to extradition are controlled by the Extradition Act 2003<sup>5</sup> (hereinafter, the Act), extradition treaties, and regulations promulgated by SOCA.

In the most recent bilateral extradition treaties to which the UK is a party, a contracting state can request, either directly or through INTERPOL, the provisional arrest of a wanted person.<sup>6</sup> The application for a provisional arrest must contain a description of the person, his or her location, details of the offense, and other relevant criteria.<sup>7</sup> The requesting state will then be notified of the decision on its request.

Once the requests are communicated, either directly or through INTERPOL, by the relevant authority, the Act specifies the subsequent procedures that need to be complied with. The Act states that requests for extradition are dealt with according to the status of the requesting country as either a “category 1” or “category 2” territory. A category 1 territory is a European Union country that has implemented the European Arrest Warrant<sup>8</sup> (EAW). A category 2 territory is any country not included in the first category. This includes EU members not a party to the European Convention on Extradition or the London Scheme for Extradition<sup>9</sup> within the Commonwealth, or parties to bilateral extradition treaties with the UK.<sup>10</sup>

#### A. Category 1 – Requests Under an EAW

The EAW is implemented in Part 1 of the Extradition Act 2003. Under the Act, extradition requests from category 1 territories should be made to the designated authority, which is SOCA if the person is in England, Wales, or Northern Ireland, or if the person is known to be

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<sup>4</sup> Information on the process for submitting an inter-governmental request can be obtained from SOCA by mail at: Serious Organised Crime Agency, P.O. Box 8000, London, SE11 5EN, England, or by phone: 011-44-370 496 7622.

<sup>5</sup> Extradition Act 2003, c. 41, available at <http://www.legislation.gov.uk/ukpga/2003/41/contents>.

<sup>6</sup> See, e.g., Extradition Treaty between the United Kingdom of Great Britain and Northern Ireland and the United Arab Emirates on Extradition, art. 11, Dec. 6, 2006, Gr. Brit.-U.A.E., Gr. Brit. T.S. No. 6 (2008) (Cm. 7382), <http://www.official-documents.gov.uk/document/cm73/7382/7382.pdf>.

<sup>7</sup> *Id.* art. 11(3).

<sup>8</sup> Home Office, *Extradition from the UK: Extradition Act 2003 - part 1*, <http://www.homeoffice.gov.uk/police/extradition-intro1/extrad-part-1/> (last visited Oct. 20, 2010).

<sup>9</sup> The London Scheme for Extradition Within the Commonwealth, [http://www.thecommonwealth.org/shared\\_asp\\_files/uploadedfiles/%7B56F55E5D-1882-4421-9CC1-71634DF17331%7D\\_London\\_Scheme.pdf](http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7B56F55E5D-1882-4421-9CC1-71634DF17331%7D_London_Scheme.pdf) (last visited Oct. 20, 2010).

<sup>10</sup> Home Office, *Extradition from the UK: Extradition Act 2003 - part 2*, <http://www.homeoffice.gov.uk/police/extradition-intro1/extrad-part-2/> (last visited Oct. 20, 2010).

in Scotland, the Crown Office and Prosecutor Fiscal.<sup>11</sup> However, it is unknown whether the requesting national authority makes these requests directly to the competent UK authority or through INTERPOL.

A person subject to an EAW may be arrested by a police or customs officer on the basis of the certified EAW itself.<sup>12</sup> In circumstances of urgency the person may be arrested by a police or customs officer who has reasonable grounds for believing that an EAW has been or will be issued (provisional arrest).<sup>13</sup>

## **B. Category 2 – Requests Pursuant to Extradition Treaty or Convention**

An extradition request from a category 2 territory must be made to the Secretary of State. The request is “valid” if it states that it is a request for a person accused or convicted of an offense and it is made by an appropriate authority of the requesting territory, such as a diplomatic or consular representative.<sup>14</sup> If the request is deemed valid the Secretary of State will issue a certificate and send the request to the court.<sup>15</sup> A judge may then issue an arrest warrant providing that the offense is an extraditable offense and the evidence meets the necessary thresholds.<sup>16</sup>

In circumstances of urgency the requesting territory may ask the police to apply for an arrest warrant before the request has been certified.<sup>17</sup> This is known as a provisional warrant, as discussed in Part I, above. A police or customs officer may execute it.

## **C. No Arrangements with the Requesting Country**

The UK will generally not entertain a request for extradition from a country with which it has no arrangements.<sup>18</sup> This to ensure that the person extradited will only be dealt with for those matters in respect of which his extradition is ordered.<sup>19</sup> However, the Home Office has reportedly stated that extradition to non-treaty countries may be considered on an *ad hoc* basis.<sup>20</sup>

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<sup>11</sup> Home Office, *supra* note 8.

<sup>12</sup> Extradition Act 2003, c. 41, § 3, <http://www.legislation.gov.uk/ukpga/2003/41/section/3>.

<sup>13</sup> *Id.* § 5.

<sup>14</sup> *Id.* § 70.

<sup>15</sup> Home Office, *supra* note 10.

<sup>16</sup> *Id.* § 71.

<sup>17</sup> *Id.* § 73.

<sup>18</sup> Richard Kerbaj & Dominic Kennedy, *Sack Mohamed Ali Harrath, Scotland Yard urged*, THE TIMES (London), Dec. 16, 2008, <http://www.timesonline.co.uk/tol/news/uk/crime/article5349169.ece>.

<sup>19</sup> Crown Prosecution Services, *Extradition*, [http://www.cps.gov.uk/news/fact\\_sheets/extradition/index.html](http://www.cps.gov.uk/news/fact_sheets/extradition/index.html) (last visited Oct. 20, 2010).

<sup>20</sup> BBC News, *Pakistan seeks arrest of Bhutto*, Jan. 26, 2006, [http://news.bbc.co.uk/2/hi/south\\_asia/4650234.stm](http://news.bbc.co.uk/2/hi/south_asia/4650234.stm).

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