

Foreign National Offenders and Detainees

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Foreign National Offenders and Detainees

Part one - Policy

Policy Summary	West Yorkshire Police (WYP) complies with Authorised Professional Practice (APP) which contains information to assist policing, and has established a local policy procedure to provide clear standards and guidelines for dealing with foreign nationals and requesting extracts of criminal records for foreign national offenders (FNOs).
Aim	<p>The aims of the policy procedure are to:</p> <ul style="list-style-type: none"> • Inform staff of their responsibility to identify persons fitting a foreign national profile; • Provide guidance when dealing with FNOs who are subject of investigation and arrest; • Outline how to make requests via the ACPO Criminal Records Office (ACRO) to obtain criminal convictions of foreign nationals from their country of birth or any other country which may hold convictions relating to them; and • Explain the process in relation to responses from ACRO.
Scope	This policy procedure applies to all police officers and police staff.
Compliance	<p>Human Rights Act 1998 Police and Criminal Evidence Act 1984 (PACE) Coroners and Justice Act 2009 APP Detention and custody Data Protection Act 2018</p>

Chapter 1 Principles

Legislation	The Coroners and Justice Act 2009 made it mandatory for foreign convictions to be considered in all court cases for all foreign nationals who are defendants, victims or witnesses.
Human Rights	<p>An ACRO International Conviction Exchange request form must be submitted for all foreign nationals to which this legislation applies, using the Niche module where a person is arrested or V/A'd, or a Form 144 where not yet arrested, V/A'd or for victims and witnesses.</p> <p>NB Consideration must be given regarding submissions to non European Union (EU) countries regarding that country's record on</p>

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human rights before completing the ACRO International Conviction Exchange request. The Force must assess threat, risk and harm to family and or associates still living in that country.

If a ACRO International Conviction Exchange request is completed and sent to ACRO, and they consider that the enquiry poses any risk, they will return it to the initiating (submitting) officer with the reasons why they have not forwarded this to the destination country.

Antecedent Information

The purpose of making an application is to ensure that the Force has full antecedent information about the person it is dealing with. This will enable:

No	Reason
1	A full conviction history to be provided to criminal justice partners at the earliest opportunity; and
2	<p>Investigators, the CPS and the courts to make a fair and comprehensive assessment of the person who may be a defendant or witness.</p> <p>For defendants, this:</p> <ul style="list-style-type: none">• May provide additional grounds for remand and an opportunity to establish any additional risk information about them; and• Promote early liaison with Home Office Immigration and Enforcement (HOIE) to identify FNOs and improve removal rates of FNOs, where applicable.

Force Undertaking

Previous convictions can be sought for any foreign national, including those outside the EU.

West Yorkshire Police **will** obtain foreign national convictions for all identified foreign nationals in respect of:

- All indictable offences.
- All either way offences.
- Drink or drug driving/in charge offences; and
- All foreign national victims and witnesses.

When and Where to Obtain Previous Convictions

Requests for convictions must not be limited to suspects in police detention and must be submitted in relation to victims, witnesses and suspects as part of the investigative process.

Requests can be made to:

- EU member states, for all offence types; and
- Non-EU (Interpol) countries, for more serious offences, i.e. indictable only.

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**Use of
Previous
Convictions**

Convictions for foreign nationals from EU member states can be used to inform the court process in ongoing UK cases, and may have other useful applications surrounding bad character evidence, intelligence, and information which may impact on a person's occupation and in relation to any risk they may pose to individuals or the general community.

For EEA and all other countries conviction information can only be used for intelligence purposes with the exception of USA, Jamaica and Albania. Where this information is required for court then an International Letter of Request (ILOR), via CPS to the designated country will be required to request disclosure.

The courts are obliged to consider convictions obtained from outside the UK when dealing with cases in UK courts.

Sets of previous convictions obtained from ACRO can only be used for the single occasion for which they were requested. For example, if a detainee is under arrest on occasion (A) and is arrested days later for a separate matter, occasion (B), a new ACRO request must be submitted.

Foreign National Offenders and Detainees

Part two – Policy Procedure

Chapter 1 Identifying a Foreign National

Flowchart

The flowchart below summarises this policy procedure and required actions. It includes powers and a summary of disposal options from custody to help investigating officers adhere to Force policy procedure:

Foreign National Offenders - Summary of policy procedure and required actions

The Coroners and Justice Act 2009 made it **mandatory** for foreign convictions to be considered in all court cases for all Foreign Nationals who are **defendants, victims or witnesses**. Where a foreign national is arrested the Niche ACRO module must be completed or where not arrested a Form 144 ACRO Convictions History must be completed to obtain FN conviction history for all subjects to which this legislation applies. This flowchart is intended to provide guidance to investigating officers when dealing with Foreign National Offenders (FNOs) as part of the investigative process. This guidance should be followed prior to any arrest (where possible), in custody or any out of custody investigative process (e.g. investigations conducted by means of Voluntary Attendance procedures). **BEFORE** dealing with a FNO, all attempts should be made to confirm the identity of the offender (local systems, PNC, PND, i24/7 and Schengen (SISII)). This applies to **EU and non EU (non British) citizens**. If the FNO is in custody, the FNO must be submitted from the Niche Custody Record. Due to the importance of this issue and the risk some individuals may pose, Police Forces are measured on the volumes of ACRO submissions and it is expected that the forms are submitted

NB: THERE IS NO POWER TO SEARCH FOR OR SEIZE DOCUMENTS UNLESS THE SUBJECT IS UNDER ARREST

In ALL cases make early contact Home Office Immigration Enforcement (HOIE) or Immigration Enforcement Command and Control Unit (CCU) and take the following steps:

NB: DO NOT contact HOIE office at Normanton Custody which is not staffed 24 hours.

CONFIRM THE IDENTITY OF THE SUBJECT. Obtain persons full ID details including: date and place of birth (town/village), parents' details and ID numbers, etc. Does the person have any identification documents (Passport, ID cards, VISA or HOIE letter) **OR** are previous ID documents scanned on Niche? **NB** Driving licence and bank cards are **not** forms of ID.

Yes

No

Do you suspect either:

- a) documents to be fraudulent? **or**
- b) the person presenting them to be an imposter?

Consider offences under the Fraud Act 2006 (e.g. making a false representation etc.) or immigration offences.

NB When contacting HOIE, request "Forgery Finder" check to confirm documents belong to the person presenting them.

Yes

If under arrest, and address provided or is known, seek consent to search address, **or** seek Inspector's authority to search and seize:
s18 PACE for fraud and other offences; **or**
s44-46 Borders Act 2007 (search for docs relating to ID only)

NB

- i) Ascertain if the subject possesses keys to the property (to prevent forcing entry) and the location of any docs to assist in the search).
- ii) The search power under the Borders Act is *limited* and ceases when the docs are located.
- iii) If seized, documents can only be retained if there are offences relating to them (e.g. Fraud, etc.) HOIE will only seize and retain the documents if there are Immigration offences. HOIE will seize docs via Custody where applicable.
- iv) All immigration detainees should be taken to Normanton custody.

No

1. Copy and scan documents onto Niche documents tab (these will be viewable in future).
2. Fingerprint at the earliest opportunity. Compare LiveScan fingerprints against Immigration Fingerprint database.
3. Ensure HOIE are updated regarding the results of search (if any documents found).

Disposal / Finalisation from custody:

There are a range of custody disposals available. Part 2 of this flowchart provides guidance for the differing disposal options. HOIE must be updated before release as they may require papers to be served on the detainee. The disposal outcome will have implications on the seizure and retention of documents and the potential for subsequent deportation of FNOs. Docs can only be seized/retained if there are offences relating to them, e.g. fraud, immigration, etc. as detailed in under policing powers.

POLICE BAILED

Contact HOIE/CCU – they will consider review if deemed High Risk.

Retain ID papers as part of bail conditions, where appropriate.

FOREIGN NATIONAL OFFENDER CAUTION

- 1) EU – Nothing further to do.
- 2) Non EU – contact HOIE.

CHARGED

Charged and bailed

Retain ID papers as part of bail conditions where appropriate. If documents seized by police (fraud etc.), normal CJ disposal process applies. If documents seized by HOIE (for Immigration offences) HOIE responsibility to return docs to detainee.

Charged and detained (remanded)

If documents seized by police (fraud etc.), normal CJ disposal process applies. If documents seized by HOIE (for immigration offences) then HOIE responsible for liaising with establishment where detainee remanded/sentenced (Contact 6th Hub for assistance).

Some FNOs may be victims of human trafficking/other crimes. Human trafficking unit can offer further advice

Obtaining Identification Information

During any contact with any person believed to be a foreign national, including booking them into custody, you must obtain full identification details from them as these are needed to **confirm** identity and are required for the ACRO International Conviction Exchange request form:

- Date of birth;
- Place of birth (must obtain details of town or village);
- Nationality;
- Identity numbers (identity card number or PESEL number if Polish (see below);
- Self defined ethnicity; and
- Parents' details.

Confirm Using Local Systems

All attempts to confirm the identity should be made by checking local systems:

- Police National Computer (PNC);
- PND; and
- i24/7

This applies to EU and non-EU people, i.e. **all** non-British citizens.

Immigration and Enforcement

In all cases when dealing with a foreign national, you must make early contact with HOIE or Immigration Enforcement Command and Control Unit (CCU).

Note: Do **not** contact HOIE at Normanton Custody Suite as it is not staffed 24 hours.

Official Documents

You must use any paperwork or documents in the possession of the foreign national, i.e. passport, visa, identity card or HOIE letter to ascertain their nationality or check if any previous identity documents have already been scanned onto Niche.

NB Drivers licences and bank cards are **not** forms of ID which can be used to confirm identity.

Consider PACE and Immigration Offences

You must consider if:

- Any documents in possession of the foreign national are fraudulent; or;
- The person presenting them is not the one named on them (imposter).

In these cases, you must:

- Consider offences under the Fraud Act 2006 (e.g. making a false

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representation) or immigration offences;

- Request a “Forgery Finder” check when contacting HOIE to confirm the documents belong to the person presenting them.

You must:

- Copy and scan any documents located onto the Niche documents tab (these will be viewable on future occasions); and
 - Seize any documents suspected of being fraudulent as part of the investigative process.
-

Interpreters

You must establish whether the foreign national can speak, and fully understand, English. If they cannot, you should use the services of an interpreter.

Interpreters must now be sourced via the e-portal on the intranet via Computer Systems - Interpreters. A PIN number and password will be required, see the Interpreters policy.

Taking of Fingerprints

You must take the fingerprints of any detainees, including FNOs, at the earliest opportunity in custody. If you suspect them of being a foreign national, you must:

- Take a full ten-print fingerprint set on LiveScan; and
- Transmit this to the HOIE (Immigration Fingerprint) database.

They will be able to confirm if the detainee is recorded or not on the Immigration Fingerprint database which will help to confirm identity.

Contact with Embassy or Consulate

You may need to contact the foreign national’s embassy or consulate as per Police and Criminal Evidence Act 1984.

A list of embassies can be found on the Custody Services webpage.

Custody Disposals

There are several potential finalisation disposals from custody and each needs officers and staff to take some action.

In **all** cases, you must ensure you update HOIE before releasing the detainee as they may need papers serving on them.

The disposal outcome has implications on the seizure and retention of documents and the potential for subsequent deportation of FNOs.

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Chapter 2 Police Powers of Search and Seizure

Under Arrest	<p>If the subject is under arrest and an address has been provided or is known, you should seek:</p> <ul style="list-style-type: none"> • Consent to search the address; or • An inspector's authority to search and seize using the following powers: <ul style="list-style-type: none"> - s18 PACE for Fraud and other offences; or - s44-46 Borders Act 2007 (you will only be able to search for documents relating to the foreign national's identity). <p>NB There is no power to search for or seize documents unless the subject is under arrest.</p>
Important - Before Searching	<p>Before conducting a search, you must ascertain if the detainee possesses keys to the property (to prevent forced entry) and the location of any documents (to assist in the search).</p> <p>The search power under the Borders Act is a limited power and ceases when documents subject of the search are located.</p> <p>If you seize documents, you can only retain them if there are offences relating to them, e.g. fraud, etc.</p>
Immigration Offences	<p>HOIE will only seize and retain the documents if there are immigration offences and will seize documents via Custody, where applicable.</p>
Copy and Scan onto Niche	<p>You must copy and scan any documents located during your search onto the Niche documents tab (where they will be viewable on future occasions).</p> <p>If you suspect the documents are fraudulent, you must seize these as part of the investigative process.</p>
Home Office Immigration Enforcement	<p>HOIE must be updated at each stage of the investigation and they may be able to assist investigating officers. Further information or documents found may assist in the future deportation of the FNO.</p>

Chapter 3 Obtaining Previous Convictions

Investigations You can request previous convictions from ACRO at any stage of an investigation. However, it would be prudent to make a request (subject to sufficient information) before any pre-planned arrest as the response to requests can take *up to* ten working days.

A request should be considered where the credibility of a witness in a court case may be in doubt or for a Criminal Record Bureau check.

You should refer to the Information and toolkit section for a flowchart of this process.

Branches of ACRO Two separate branches of ACRO will manage all requests, for:

State/Country	These will be managed by...
EEA member states	UK Central Authority for the Exchange of Criminal Records (UKCA-ECR); and
Non-EEA countries	Non-European Union Exchange of Criminal Records Team (NEU-ECR).

Country Data Requirement Information Before you submit an application, you should consult the 'Country Data Requirement' information sheet for the target country to check what mandatory data is required to make the application.

The information sheet is available from the Foreign Conviction Requests webpage (available via the A-Z index / P / previous Convictions – How to obtain criminal records from abroad.

This sheet will also detail any countries which are unable to provide conviction history.

You must make every effort to obtain the required information. If it is not possible to obtain all the mandatory data, you should **not** submit the application because ACRO will not be able to process it. You must endorse the OEL on Niche to this effect.

Submitting the Request for Criminal Records Information

You must make your request via the form 144 on Niche.

If the foreign national is in custody, this must be completed using the Niche ACRO module. This will be done by custody staff.

If the foreign national is being dealt with by way of Voluntary Attendance the OIC must complete the Niche ACRO module.

To submit an application for criminal records for a foreign national detainee, you should:

Step	Action
1	check the 'Country Data requirement' information sheet for the target country or countries to establish: <ul style="list-style-type: none"> • if the country can provide conviction history; and • the mandatory information required to make an application.
2	Where arrested or V/A'd complete the Niche ACRO module or where not arrested or V/A'd a Form 144 'International Conviction Exchange request form' available in Niche for (From the occurrence open the person record then on the occurrence events/ reports tab right click, select new and then the 144 form). Note: This form is also available in word from the crime menu;
3	If you complete a Form 144 when fully completed, email it to the IAU ACRO mailbox. You can email the form directly from Niche by using the email button on the floating tool bar. You must ensure that a copy of the form is correctly saved in the Niche person record.
See flowchart .	

Additional Help

If you encounter problems with the request or are unsure if the correct or sufficient information to make the request has been collected, you should contact the International Liaison officer at the International Assistance Unit, available 24/7.

There is a guidance document available from the force intranet via the A – Z index under 'Previous Convictions'.

Conviction Extracts

You will be emailed a scanned copy of the extract from the criminal records sent to West Yorkshire Police by the Central Authority in the target country.

If you are no longer the investigating officer, it still remains your responsibility to update Niche with the reply.

Additionally, if the foreign national has criminal convictions, you will be provided with a certified translation of these extracts detailing the convictions and disposals they have received. These can be used in court if required.

Chapter 4 Updating PNC

Offences

If the UKCA-ECR or NEU-ECR makes an enquiry of another country in relation to one of their citizens and receives back information of criminal offending which relates to an offence which is the equivalent of one of the UK offences indicated below it will record that offence on PNC.

Offences are:

- Armed robbery
 - Arson/criminal damage etc. endangering life with a sentence of 10 years or more
 - Causing explosions/making/possessing explosives
 - Child stealing
 - Endangering/destroying aircraft/ships with a sentence of 15 years or more
 - GBH/wounding with a sentence of 10 years or more
 - Genocide
 - Kidnapping
 - Murder
 - People trafficking
 - Poisoning/administering noxious substances
 - Possession of firearms to resist arrest
 - Possession/supply/manufacture/selling/purchasing of prohibited weapons/ firearms/chemical weapons/nuclear weapons
 - Rape
 - Sexual offences against children and mentally disordered persons (including indecent photos)
 - Supply/manufacture/import/export of drugs with a sentence of 8 years or more
 - Terrorism/membership of a prescribed organisation
-

PNC Record Created

Once a PNC record has been created, the UKCA-ECR OR NEU-ECR will simply pass the information received to who initiated the request **for use in the case for which it was requested.**

Offences notified as a result of a request that are not on the above list must not be recorded on the PNC, as the information **can only be used by the receiving force for the purpose for it was originally requested.**

These offences will be notified direct to the requesting officer. A copy of the reply should be saved into the case file on Niche for inclusion on the court file or report which relates to the investigation for which the request was made.

**Detainees
Wanted in
Other
Countries**

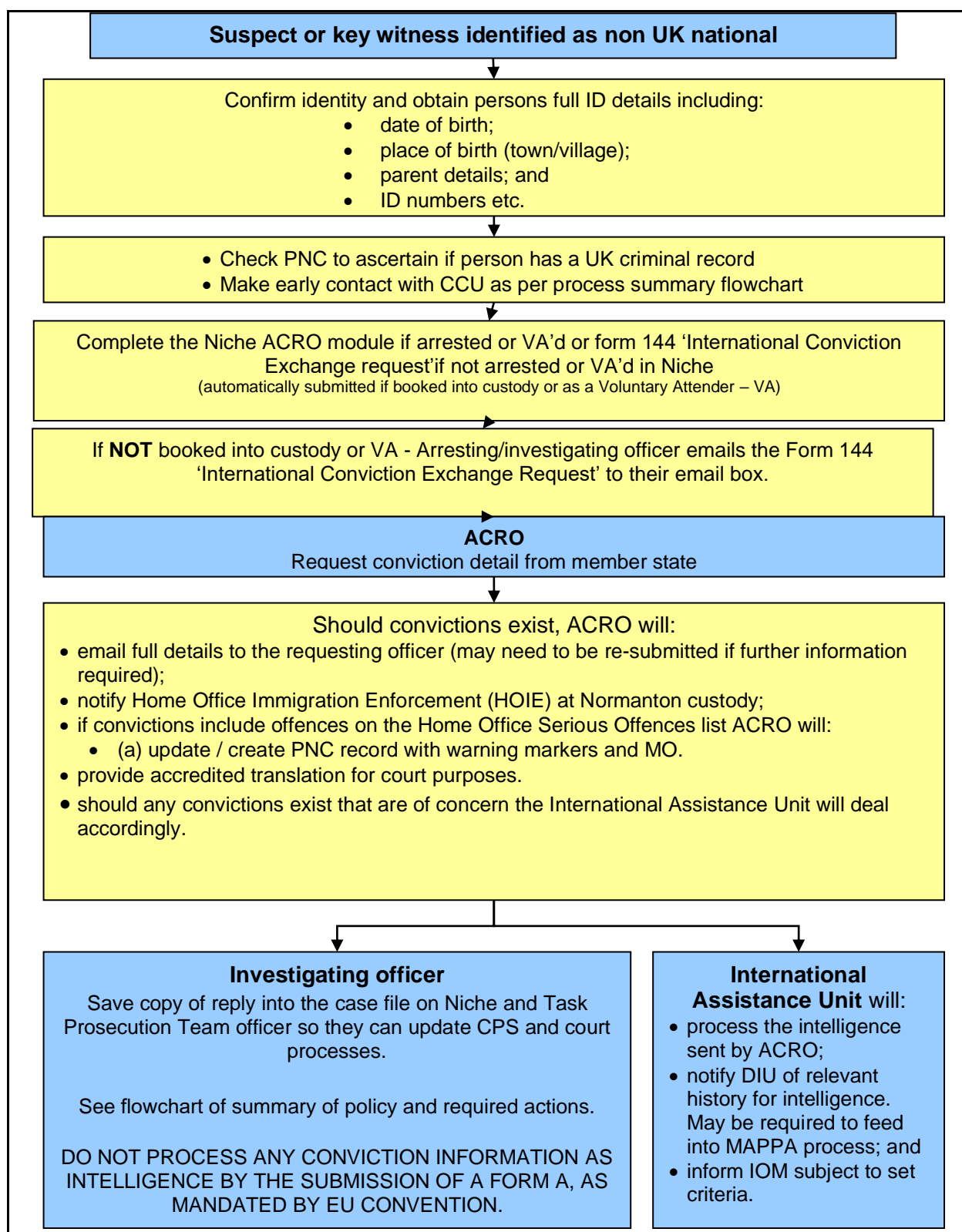
For persons subject of a Certified TACA Warrant refer to that specific policy procedure.

If the person is shown as wanted in a non UK EU country you should contact the National Crime Agency (NCA) 24 hour International Desk for advice.

Foreign National Offenders and Detainees

Part three – Information and Toolkit

Flowchart



EU Member States

The UKCA-ECR can send requests for criminal record information to EU Member States;

Austria	Italy
Belgium	Latvia
Bulgaria	Lithuania
Cyprus	Luxembourg
Czech Republic	Malta
Denmark	Netherlands
Estonia	Poland
Finland	Portugal
France	Roma
Germany	Slovakia
Greece	Slovenia
Hungary	Spain
Ireland	Sweden

Non-EEA Member States

The NEU-ECR will deal with requests to all other countries that are signed up to Interpol agreements.

Frequently Asked Questions

Information

The following table lists the most frequently asked questions.

Who can make requests and for what reasons?	
A.	Any law enforcement body can make a request provided it relates to an ongoing criminal investigation.
What countries can requests be made to?	
A.	The UKCA-ECR can send requests to any EU Member State. For a full list refer to the 'UKCA-ECR list of EU Member States'
Does the subject of the request have to be an EEA national?	
A.	No, checks on nationals of any country can be requested if there is reason to believe they have convictions in an EU Member State.
What information do I need?	
A.	<p>The 'UKCA-ECR Member State Request Form' details the information required for making a request.</p> <p>Also, the 'EU Member States Requested Information' spreadsheet provides a guide as to what information each Member State considers essential and desirable in order to establish a positive match with their records.</p> <p>As a general rule however, the more information that can be provided on a subject the better. If the target country rejects your request due to a lack of information, the UKCAECR will be</p>

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	happy to resend it if any further details on the subject can be obtained.
How long will it take?	
A.	Under the EU Trade and Co-operation (TACA) agreement the receiving Central Authority has 20 days to respond to a request. While usually you will receive a reply well within this time period, if the document contains a high number of convictions, the translation of these may cause a slight delay.
Is my request urgent?	
A.	If you know you will require conviction information much more quickly than the 20 day turnaround time (i.e. the subject is already at trial), it is possible for the UKCA-ECR to flag the request as urgent. While this does not alter the required response time for the receiving Central Authority the request is usually treated with a higher priority.
Who do I contact if my request is delayed?	
A.	You should contact the International Assistance Unit SPOC.
How are any previous convictions sent to me?	
A.	In most cases you will be emailed a scanned copy of the extract from the criminal records sent to us by the Central Authority in the target country. Additionally, if the subject has criminal convictions, you will be provided with a certified translation of these extracts detailing the convictions and disposals received by the subject. These can be used in court if required.
Are convictions added to the subject's PNC record?	
A.	The UKCA-ECR will add any convictions that come back from the target country to the subject's PNC record if one exists. If there is no existing PNC record one will only be created where convictions relating to serious offences are received (as stated on the Home Office Serious Offences list).
Can I get any information other than that which has been supplied by the UKCA-ECR (MO for offences etc.)?	
A.	If MO is required for intelligence purposes only, you can initiate an Interpol Request. However, if required evidentially CPS will need to be contacted to issue an International Letter of Request.
Can I contact foreign Central Authorities direct?	
A.	No, the TACA decision details that communication should only take place between Central Authorities and not come direct from the requesting party.
The subject of the enquiry has denied these convictions relate to them, can I confirm their identity through fingerprints or photographs held in the target country?	
A.	Disputes received by the UKCA-ECR usually either concern the way convictions are translated and entered on a subject's record or a denial that the convictions relate to the subject at all. In both cases, the UKCA-ECR should be made aware of these disputes and will address them, where possible, through the use of fingerprint exchange with the target country.

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Do I need to obtain a witness statement to certify the reliability of the translation of a subject's criminal record that has been provided by the UKCA-ECR?	
A.	All documents translated by the UKCA-ECR translation bureau are carried out by qualified and vetted translators who have been sourced in accordance with ACPO guidelines. Since the UKCA-ECR has come into operation our translation documents have been presented in courts many times and have been accepted without witness statements.

Useful Information

ViSOR Offences

If previous conviction checks reveal sexual or serious violent offences deemed suitable for inclusion on ViSOR, and these have not previously been known about in the UK, the UKCA-ECR will forward the details of these offences as well as the email chain relating to the request to the relevant force PPU (Public Protection Unit). You will be informed if this has been done when you are sent the convictions relating to your request.

Polish PESEL Numbers

The Polish PESEL number is an 11-digit ID number that begins with the person's date of birth in the format YYMMDDXXXXX.

Poland specifically request that this number is sent where possible as it provides a good way of making a positive match with records held for that person. Whereas a match can be made without this number if other matching relevant information is provided, the Polish Central Authority is legally bound not to release information unless a secure match can be made.

PESEL numbers can be found on the back of all Polish ID cards.

ID Documents

If you are in possession of ID documents or a passport relating to the person but are unsure if it contains any relevant identification information the UKCA-ECR is happy for you to email or fax an image of it to us along with your request.

EEA Arrest Warrants

Occasionally, it is detailed on the extracts from a foreign national's criminal record that they are wanted in their home country for sentence execution

This sometimes refers to an internal rather than EEA wide warrant, however, officers are advised to contact NCA on their 24 hour International Desk in these cases as they are aware of arrangements in this area and will advise as to any possible extradition proceedings.

Foreign National Offenders and Detainees