



The Scottish Parliament
Pàrlamaid na h-Alba

Criminal Justice Committee

The Rt Hon Shabana Mahmood MP
Lord Chancellor and Secretary of State for Justice

and

The Rt Hon Yvette Cooper MP
Secretary of State for the Home Department

Copied for information to: The Rt Hon David Lammy MP, Secretary of State for Foreign, Commonwealth and Development Affairs and The Rt Hon Ian Murray MP, Secretary of State for Scotland

Via email only

28 May 2025

Dear Lord Chancellor and Home Secretary

Priorities for the Scottish Criminal Justice System in the forthcoming review of the Trade and Cooperation Agreement between the United Kingdom and the European Union

I am writing to you in the wake of [research work](#) which has been undertaken for the Criminal Justice Committee by members of the Scottish Parliament Academic Fellowship. The purpose of this work by the Committee is to inform parliamentary scrutiny and ensure that key Scottish and UK stakeholders work to deliver on the specific needs of the Scottish criminal justice system in the forthcoming review of the Trade and Cooperation Agreement (TCA) between the United Kingdom and the European Union in 2026.

Between March 2023 and January 2024 Gemma Davies, Associate Professor of Criminal Law at Durham University, and Helena Farrand Carrapico, Professor of International Relations and European Politics at Northumbria University, undertook research on behalf of the Committee. The aim of this research has been to [assess the actual impact](#) of the UK's withdrawal from the European Union on Scotland's criminal justice system. The Committee took written and [oral evidence](#) from Professors Davies and Farrand Carrapico on 30 April 2025.

This work is intended provide Members of the Scottish Parliament and key stakeholders in Scotland and in the UK Government, with a roadmap of the implications of the signing of the TCA on Scotland's criminal justice system to date.

UK-Scottish cooperation

The Committee is of the view that some of the issues highlighted in this research report could be addressed through enhanced cooperation with the European Union. Such enhanced cooperation could take place through separate multilateral agreements, entered into by the UK Government, or through amendment to the Trade and Cooperation Agreement.

Negotiations on criminal justice matters under the Trade and Cooperation Agreement as they pertain to Scotland, will be the responsibility of the Home Office (for UK Government policy relating to international data sharing for law enforcement purposes) and the Ministry of Justice (for the criminal justice system), in coordination with the Foreign, Commonwealth and Development Office.

As such, we wish to know if the UK Government will seek to address the following issues highlighted by our research, during the 2026 review of the TCA-

- The UK is not yet sharing vehicle registration data with EU Member States. Is the UK developing its technical capabilities so that it can evaluate and begin to share vehicle registration data with EU Member States, as already provided for in the TCA?
- Losing access to SIS II means that wanted notices must be circulated through the Interpol i24/7 database which makes it less likely that wanted people are identified and arrested as officers in the EU do not have direct access to i24/7. However, if a TCA warrant issued by the UK could be circulated on SISII this problem would be ameliorated. It is accepted that the UK cannot have direct access to SISII, but this would not prevent introducing a mechanism for TCA warrants issued by the UK to be circulated on SISII via Europol. Will the UK Government look to mitigate the risk of law enforcement in EU Member States not accessing Interpol i24/7 in the same way they do the Schengen Information System II?
- Judges in some EU member States will only issue a TCA warrant if there is 'clear connection' to the UK. The same requirement was not needed to issue a European Arrest Warrant (EAW). Amendment to the TCA could provide a clearer legal basis for the issuing of a TCA warrant at the same time as an EAW is issued removing the need for a clear connection to the UK. Will the UK Government look to address this?
- The EU plans to make key databases interoperable and therefore centralised. This may mean the UK could lose access to vital data currently provided for in the Trade and Cooperation Agreement. Continued access to biometric and air passenger data when Prüm and PNR become centralised and interoperable databases is vital to the safety of the UK. The UK must reach an agreement on its own internal position, so it is prepared to open discussions on this issue with the EU as early as possible, as provided for in the Trade and Cooperation Agreement. Can you provide us with a view on the UK Government's position on access to EU databases into the future?

- Although the UK opted in to ECRIS-TCN before leaving the EU this is not provided for in the Trade and Cooperation Agreement. Will the UK seek to negotiate access to the ECRIS-TCN system, so UK law enforcement has a complete picture of the criminal record of any third country national who has spent time in the EU before entering the UK?
- The UK has lost access to the European Investigation Order. Our research indicated that further improvements to the provisions on sharing of evidence are needed. Cooperation needs to be more closely aligned to the European Investigation Order than currently provided for, as reliance on Mutual Legal Assistance is outdated and slow. Will the UK Government look to address this?
- Although the UK opted in to the EU's e-evidence package before leaving the EU this is not provided for in the Trade and Cooperation Agreement. Will the UK Government seek to negotiate an agreement on access to electronic evidence (e-evidence) now the EU has finalised its own internal rules and already opened negotiations with the USA?
- The UK has more limited participation in Europol now than it did when it was a Member State of the EU. Will the UK Government seek to enhance the UK's cooperation with Europol, subject to an agreement on funding, especially in regard to:
 - The inability of UK police officers to be employed within the Europol Operational and Analysis Centre;
 - Lack of access to Europol training; and
 - The ability to initiate and lead a Joint Investigation Team.
- Due to the introduction of the nationality bar into the Trade and Cooperation Agreement, and the loss of mutual recognition, there is an increase in the number of individuals who are wanted in the UK, sometimes for serious offences, but cannot be surrendered/extradited from the EU state they reside in. This is leading to impunity. In such cases the UK can seek to transfer criminal proceedings to the state where the accused resides. There is no formal agreement or set of rules governing this process and to date prosecutors have found this process challenging. At the time our academic researchers conducted interviews for our work, no case had been successfully transferred. Will the UK Government seek to negotiate a multilateral agreement on the transfer of criminal proceedings when extradition/surrender is not possible or is refused?
- The UK is yet to notify the Specialised Committee on Law Enforcement and Judicial Cooperation that, on the basis of reciprocity, the condition of dual criminality will not be applied to the offences listed in Article 599(5) of the TCA.¹ Twelve EU countries have made such a notification, but to be effective this requires the reciprocity of the UK. The effect of the UK's decision is that dual

¹ Which are also punishable in the requesting State by a custodial sentence for a maximum period of at least three years.

criminality must be established in all cases with all EU Member States. The impact of this decision needs to be understood and revisited. This decision may be causing unnecessary complexity and delay during extradition hearings. How will the UK Government look to address this?

- The Trade and Cooperation Agreement does not include provisions which replace the suite of Framework Decisions which facilitated transfer of custodial sentence, pre-trial bail or probation supervision between member states. Will the UK Government seek to negotiate an agreement on transfer of custodial sentence, pre-trial bail or probation supervision between member states?
- The UK Government should continue to work with EU Member States to understand domestic legislative impediments to police-to-police cooperation and seek to develop bilateral agreements which address the impediments or remove them, where legally possible. What work is the UK Government undertaking to address domestic legislative impediments with EU Member states?
- What actions are the UK Government seeking to carry out to further develop the governance structures of the TCA so as to ensure greater transparency and accountability? Will the UK Government seek to introduce political mechanisms that will enable the TCA to evolve in parallel with UK and EU domestic changes to police and judicial cooperation instruments over time?

The Committee is seeking a written response to these questions by **Friday 29 August 2025**.

The Committee has also written in similar terms to the Cabinet Secretary for Justice and Home Affairs in the Scottish Government, the Lord Advocate, the Chief Constable of Police Scotland, as well as the chairs of the House of Commons Home Affairs Committee and Justice Committee, and the House of Lords European Affairs Committee.

All of these letters are available on the Committee website.² Any responses received will also be published in due course.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Audrey N: cjh'.

Audrey Nicoll MSP
Convener

² Correspondence is available on the Committee's Inquiry webpage: <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-criminal-justice-committee/business-items/research-on-impact-of-brexit-on-law-enforcement>