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The Scottish Parliament
Edinburgh
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By Email: justice.committee@parliament.scot

23 June 2025

Dear Convener,

I thank you for your letter dated 28 May 2025 addressed to both myself and the Cabinet Secretary for Justice and Home Affairs, in relation to the Committee's work on the review of the UK-EU Trade and Cooperation Agreement. I am grateful for the opportunity to respond to the questions posed to myself and Crown Office and Procurator Fiscal Service.

I shall answer the questions you have posed to me in turn: -

- 1. The research undertaken for the Committee highlights reported backlog of extradition cases in Edinburgh Sheriff Court. Can you set out the current position with extradition cases, and what the average timescale is for their completion?*

Following Brexit which occurred on 31st January 2020, with correlating increased complexity in extradition law with EU Member States, and also the pandemic, which commenced in March of 2020, with the consequential closure of non-essential courts, extradition cases in Scotland are taking longer to progress. With regards to management information concerning both the volume of cases or journey time of cases through the court system, I would advise that COPFS neither manages that business nor is the official holder of such records and questions in that regard would best be directed to Scottish Courts and Tribunal Service, having responsibility for the management of court business.

- 2. The research undertaken highlights difficulties in transferring proceedings to EU Member States when a transfer is in the public interest. Is COPFS*



putting any additional protocol or guidance document in place to ensure decisions on transfer are consistent, transparent and fair to all stakeholders including victims?

At the commencement of the TCA in January 2020, difficulties were encountered in relation to extradition from EU Members states who had either a full or partial Nationality Bar: these states would no longer extradite their own nationals to Scotland. This issue was identified by my officials, resulting in creation of a policy, ensuring processes were in place to address the issues presented. That policy has been in operation for 4 years and is contained within an Operational Instruction to the staff of COPFS.

The Policy ensures that in all cases, where an EU Member State refuses extradition due to a nationality bar, consideration is given to the viability of a Transfer of Proceedings to that EU Member State to allow them to carry out the Prosecution in that Member State's country. These decisions are all taken by Crown Counsel after a full and detailed examination of the circumstances of the case and consultation with the victim. This ensures consistency of approach. Critical in this decision making is the impact on all victims and witnesses of a decision being taken to transfer the criminal proceedings to another European State.

3. What is the adequate level of resources needed to be able to transfer proceedings when extradition is unavailable or refused?

It is not possible to be specific about the adequate level of resource required to fund Transfer of Proceedings cases. The TCA 2021 provides that the EU Member State refusing extradition will bear the cost of conducting the prosecution.

It is not necessary, therefore, in Scotland for the payment of the cost of the prosecution in that foreign state. There are however ancillary costs such as the physical transfer of productions which fall to be borne by Scotland. Criminal prosecution cases vary greatly in their size and circumstances, and some have a far greater volume and complexity of productions than others, therefore incurring greater expense. To date these costs have been absorbed by COPFS and PSOS. In the event of a case incurring extraordinary expense early identification of that factor would be made and an approach made for assistance.



I note that you have also asked both myself and The Cabinet Secretary for Justice the following question, namely:

4. *The research undertaken for the Committee highlights that poor prison conditions in Scotland have led to requests for assurances in extradition/surrender cases. This, the research states, is causing delay in Scotland receiving wanted persons from overseas and increases the risk that extradition is refused. What is the position of the Scottish Ministers and COPFS to this? Can you reassure the Committee that conditions in the prison estate in Scotland will not give rise to delays or refusals by EU member states in extradition/surrender cases?*

I have had the benefit of sight of the response sent by The Cabinet Secretary for Justice in relation to this question. I would add to her response that I had been concerned about the increasing number of requests from the Courts of EU Member States seeking assurances from Scottish Government in relation to prison conditions. I corresponded with the Cabinet Secretary in the course of 2024 in relation to this matter.

As a consequence, my officials along with officials of Scottish Government and of the Prison and National Health Services, have worked together to devise a process to enable swift, detailed and adequate assurances for individual Requested Persons to be provided to Foreign Courts to minimise any potential delay in proceedings.

I hope this response in answer to your questions is of assistance in relation to the Committee's work on the review.

Yours sincerely,

THE RIGHT HONOURABLE DOROTHY BAIN KC
LORD ADVOCATE