

F/T: 0300 244 4000
E: scottish.ministers@gov.scot

Audrey Nicoll MSP
Convener
Criminal Justice Committee
The Scottish Parliament
Edinburgh
EH99 1SP

By Email

24 June 2025

Dear Convener,

Thank you for your letter dated 28 May in relation to the Committee's work on the review of the UK-EU Trade and Cooperation Agreement (TCA). I am grateful for the opportunity to respond on behalf of the Scottish Government.

The Scottish Government has long-supported closer working relations with the EU and member states on law enforcement and judicial cooperation (LEJC). These relations ensure our police and prosecutors are better placed to tackle criminal activity, including serious and organised crime in Scotland. I am pleased that the UK Government has committed to improving relations with the EU and to building closer cooperation with our closest neighbours and partners.

Leaving the EU meant that the UK left the world's most highly developed and sophisticated ecosystem for LEJC cooperation. Brexit therefore made the UK and Scotland less safe than we were during our EU membership.

While the TCA mitigated some serious risks and issues with the UK leaving the EU, more can and should be done to ensure Scottish operational partners have the tools, data and support they need to combat criminality both at home and abroad and the Scottish Government will continue to push the UK Government to have the closest possible LEJC relationship with the EU and its member states. There are a number of positive developments following the 19 May UK-EU Summit that the Scottish Government supports and looks forward to working with UK counterparts in order to further mitigate the damage of Brexit.

A paper outlining Scottish Government's priorities for the UK-EU LEJC relationship was shared with UK Government officials before the 19 May summit and a public version will be published in the near future.

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I will respond to the committee's questions in turn.

- 1 | *The research undertaken for the Committee highlights an overall increased workload for both Police Scotland and the Crown Office and Procurator Fiscal Service in police and judicial cooperation post-Brexit. It is vital that both organisations have the funding and personnel required to keep the public safe. To what extent is the additional resourcing and budgetary need of post-Brexit work being met by Scottish Government funding to the Scottish Police Authority/Police Scotland and COPFS?*

In 2025-26, the Scottish Government increased police funding to £1.64 billion, an increase of £90 million on 2024-25, to support police capacity and capability.

This will support frontline service delivery and allow Police Scotland to make progress with key areas of transformation as outlined in their three-year business plan.

We have increased capital funding to £70 million for investment in the police asset base including estate, technology, fleet and investment in body worn video.

How these resources are deployed is a matter for the Chief Constable as set out in the Police and Fire Reform (Scotland) Act 2012.

As you are aware, the budget for the Crown Office and Procurator Fiscal Service (COPFS) is separate from the Justice portfolio budget. The 2025-26 budget confirms a COPFS resource budget of £225.4 million, and £12.4 million in capital funding.

COPFS is a demand-led organisation with the responsibility to meet state obligations to deliver justice. It operates within a complex and evolving criminal justice system. Funding and resource levels reflect the increasing volume and complexity of the service's casework

- 2 | *Will the Scottish Government's 2026/27 budget provide any specific supports to assist Police Scotland and COPFS to properly engage in the upcoming UK-EU review process of the TCA?*

The Scottish Government cannot comment on the provisions within future budgets.

Consideration of funding for 2026/27 will commence in the coming months.

- 3 | *The research undertaken for the Committee highlights that Scottish bodies are not consistently consulted when bilateral agreements, including Memoranda of Understanding are negotiated between the UK Government and an EU Member State. The UK Government has signed 24 (at the time of writing) bilateral declarations with EU Member States, since 2021, which cover areas of criminal justice. What steps are Scottish Ministers undertaking with UK counterparts to address this and ensure Scotland's interests in criminal justice are fully engaged as part of the UK Government's negotiations with the EU, or other international partners?*

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As you will be aware, the negotiation of international treaties is reserved to the UK Government, however Scottish Government expects to be involved in the early stages of international negotiations that will affect the development of both devolved policy and Scotland as a distinct jurisdiction.

Scotland's distinct legal system and prosecutor-led criminal justice system often face the same barriers to cooperation as their counterparts in the rest of the UK, but the solutions required are often different. Solutions designed with only the England and Wales system in mind may fail to facilitate, and could potentially hinder, LEJC between Scottish operational partners and their EU member state counterparts. It is therefore imperative that Scottish authorities are consulted when the UK plans to negotiate an international agreement which covers criminal justice.

My officials regularly engage with their UK Government counterparts working on improving LEJC as part of various formal structures and boards chaired by UK Government officials. While my officials often take those opportunities to press the importance of a Scottish voice in the UK's international negotiations, it is not always the case that UK Government advises Scottish Government that negotiations on bilateral criminal justice cooperation agreements or memoranda of understanding have opened with another state. There are examples of good engagement in such negotiations, where I am regularly updated on their progress by UK Government Ministers, however there are also examples where we receive negotiated treaties or other instruments near the conclusion of negotiations with little notice and little opportunity to set out our own priorities or to properly consider their provisions.

My officials regularly call for more consistent and timely consultation on international agreements, but the quality and timing of that consultation often appear arbitrary. Despite 25 years of devolution giving the power to the Scottish Parliament to design distinct justice policies for Scotland, the UK Government has no obligation to consult with Scottish Ministers when it makes bilateral agreements that can affect those distinct policies. Such an approach can be problematic and, in the worst case scenario, can result in the UK Government making legal obligations for the Scottish criminal justice system with which it is impossible or unduly burdensome to comply.

Regarding the recent UK-EU Summit, the UK Government's failure to meaningfully involve Devolved Governments in negotiations in advance is deeply disappointing, and in stark contrast to the transparent and consultative approach the EU has taken with its Members States. While there was engagement with UK Government officials in the lead up to the summit, it remains frustrating that the Scottish Government received no reply to its priorities for the LEJC relationship with the EU, shared with UK Government counterparts well in advance of the summit.

The Scottish Government asks UK Government to do better going forward, and we stand ready to engage constructively and positively in the next phase of EU dialogue.

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- 4 | *The TCA overall is governed by the UK-EU Partnership Council – a body created by the TCA to ensure its implementation. There is, at present, no provision for Scottish Parliaments to scrutinise Partnership Council decisions before they take place or ensure alignment with Scottish interests. Do the Scottish Ministers intend to provide regular statements to the Parliament to address this deficit? Will you keep the Committee regularly informed, in writing, of discussions between Scottish and UK ministers on Partnership Council decisions?*

Scottish Government has an agreement in place with the Constitution, Europe, External Affairs and Culture Committee (CEEAC) to provide regular updates relevant to the TCA, including in relation to meetings of the TCA Partnership Council and Specialised Committees, as well as meetings of the four nations Inter-Ministerial Group (IMG) on UK-EU Relations, which the UK Government has committed to convening ahead of Partnership Council meetings to enable discussion with the Devolved Governments.

- 5 | *At present, there is no representation of the Scottish Parliament in the UK-EU Parliamentary Partnership Assembly (PPA), which hinders the representation of Scottish interests. Would Scottish Ministers support any discussions/decisions with the UK Government and UK Parliament to ensure MSPs are represented in the PPA on a cross-party basis?*

The Scottish Government recognises the vital importance of the PPA in scrutinising the workings of the TCA and the wider UK-EU relationship.

Representatives of the Scottish Parliament's CEEAC Committee are currently able to attend meetings of the PPA with observer status only.

The Scottish Government believes it is vital that devolved interests are appropriately represented in all facets of TCA governance structures. We support representatives from the devolved parliaments being afforded full membership of the UK delegation.

- 6 | *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 members states in extradition/surrender cases?*

Foreign authorities sometimes request assurances from Scotland in response to an extradition request because they must be satisfied that requested persons will not be subject to treatment that breaches their human rights. The most commonly sought assurances relate to prison standards and the nature of healthcare available in prisons. A request for an assurance on such standards does not mean that prison conditions are poor. Assurances, by their nature, require more work to be done in order to secure the extradition of a requested

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person, therefore, all cases where assurances are sought necessarily involve some element of additional delay.

Pre-Brexit, assurance requests from the EU were rare due to the principle of mutual trust and respect accorded between EU member states. However, the TCA does not present cooperation between the UK and EU as being based on mutual trust. The Scottish Government's position is that a return to mutual trust with our European partners would be beneficial and we shared this with the UK Government ahead of the recent UK-EU Summit, however did not receive a reply.

The result is that post-Brexit the number of assurances and the complexity of the specific asks increased as courts, both Scottish and foreign, must consider the system the requested person will be surrendered to in greater detail and with greater scrutiny due to the loss of mutual recognition between the UK and EU. Requests for assurances from EU member states and the subsequent delays they cause are a consequence of Brexit and they are only likely to increase further.

I am aware of one extradition which was temporarily blocked by an Irish court in 2023 following a negative judicial finding regarding the first set of assurances provided. The requested person was subsequently extradited to Scotland in 2024 following the provision of updated assurances by the Scottish authorities. There are no examples that I am aware of where extradition to Scotland has been refused, showing that our system is safe, secure and able to receive requested persons into our care effectively.

Like the rest of the UK and other countries in Europe, we have experienced a significant rise in our prison population. As well as this increase in numbers, the prison population is now more complex and demanding to manage, with prisoner groups that need to be separated and an ageing population with increasing, complex social care needs. Despite these challenges, the Scottish Prison Service continues to provide assurances when called upon to do so by foreign authorities and works with COPFS and Scottish Government colleagues where necessary to ensure those assurances are robust.

In an extremely challenging fiscal environment, we have increased investment in the SPS resource budget by 10% to £481.5 million in 2025/26 to support this. We are also modernising the estate, with £355 million of capital funding allocated to SPS in 2025/26 to progress the estate priorities of HMP Highland and HMP Glasgow. We remain committed to driving forward change and improving conditions for those in detention across Scotland and I am grateful for the dedicated work of SPS and partners which helps ensure our prisons are well run, safe and orderly to accommodate those who present the greatest risk to the public.

I hope the committee finds this helpful.

Yours sincerely,


ANGELA CONSTANCE

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