JUSTICE COMMITTEE

AGENDA

9th Meeting, 2020 (Session 5)

Tuesday 3 March 2020

The Committee will meet at 10.00 am in the Mary Fairfax Somerville Room (CR2).

1. **Declaration of interests:** Alasdair Allan will be invited to declare any relevant interests.

2. **Sentencing (Pre-Consolidation Amendments) Bill (UK Parliament legislation):** The Committee will consider the legislative consent memorandum lodged by Humza Yousaf (LCM(S5)32).

3. **Preparations for Brexit:** The Committee will consider correspondence from Police Scotland and the Crown Office and Procurator Fiscal Service.

4. **Justice Sub-Committee on Policing:** The Committee will consider a proposal for a new member.

5. **Children (Scotland) Bill (in private):** The Committee will consider a key issues paper to inform its Stage 1 report.

6. **Defamation and Malicious Publications (Scotland) Bill (in private):** The Committee will consider its approach to Stage 1 oral evidence taking.

Stephen Imrie
Clerk to the Justice Committee
Room T2.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5195
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The papers for this meeting are as follows—

**Agenda item 2**

Paper by the Clerk

**Agenda item 3**

Paper by the Clerk

**Agenda item 4**

Paper by the Clerk

**Agenda item 5**

PRIVATE PAPER

**Agenda item 6**

PRIVATE PAPER
Justice Committee

9th Meeting, 2020 (Session 5), Tuesday 3 March 2020

Legislative Consent Memorandum - Sentencing (Pre-consolidation Amendments) Bill

Note by the Clerk

Introduction

1. The Sentencing (Pre-consolidation Amendments) Bill is a UK Government Bill introduced in the House of Lords on 21 January 2020. The Bill is currently nearing Report stage in that House. As such, the Scottish Parliament needs to take a view on legislative consent before the Bill has reached its last amending stage.

Legislative consent process

2. The process for considering consent to the relevant provisions in a UK Bill essentially commences with the publication, normally by the Scottish Government, of a Legislative Consent Memorandum (LCM). This LCM relates to a Bill under consideration in the UK Parliament which contains what are known as “relevant provisions”. These provisions could:

- change the law on a “devolved matter” (an area of policy which the UK Parliament devolved to the Scottish Parliament in the Scotland Act 1998); or
- alter the “legislative competence” of the Scottish Parliament (its powers to make laws) or the “executive competence” of Scottish Ministers (their powers to govern).

3. Under an agreement formerly known as the “Sewel Convention”, the UK Parliament will not normally pass Bills that contain relevant provisions without first obtaining the consent of the Scottish Parliament. The consent itself is given through a motion (a Legislative Consent Motion) which is taken in the Chamber – but the detailed scrutiny is undertaken by a Scottish Parliament committee on the basis of a memorandum. The motion must normally be decided on before the Bill reaches its final amending stage at the UK Parliament in the House in which it was first introduced (although this can be as late as the last amending stage in the second house). On occasion, a memorandum is lodged which invites the Parliament to note that the Scottish Government does not intend to lodge a legislative consent motion on a particular bill.

4. The detailed procedure for scrutiny of Legislative Consent Memorandums and Motions is set out in Chapter 9B of the Parliament’s Standing Orders.
Sentencing (Pre-consolidation Amendments) Bill

5. The Sentencing Code will apply largely to England and Wales only. However, there are a small number of provisions in the Sentencing (Pre-consolidation Amendments) Bill relating to the transfer of Orders between UK jurisdictions, two of which extend and apply to Scotland. A summary of the clauses in the Bill that require an LCM is as follows (clause numbers relate to the print of the Bill on introduction):

**Transfer of community orders to Scotland or Northern Ireland**

Schedule 2 – Paragraph 101(6)

This clause amends the existing limits on the Scottish courts to alter the terms of community orders that have been transferred to Scotland from England and Wales. It means that a court in Scotland would need to consider the limits on unpaid work that are in place in England and Wales on the day of re-sentencing.

**Transfer of suspended sentence orders to Scotland or Northern Ireland**

Schedule 2 – Paragraph 103(7)

This clause is intended to clarify the existing process determining how local authority officers in Scotland supervising offenders serving transferred suspended sentence orders would refer matters back to the courts in Scotland and, if necessary, back to the courts in England and Wales. In particular, it addresses the fact that the Offender Rehabilitation Act 2014, read across to the Criminal Justice Act 2003, would appear, on a literal reading, to prevent the English and Welsh courts taking an offender back for re-sentencing following a breach in Scotland.

6. On that basis legislative consent of the Scottish Parliament is being sought, and a legislative consent memorandum was lodged by Humza Yousaf MSP, Cabinet Secretary for Justice, on 5 February 2020. The LCM can be accessed in the Annex to this paper.

**Scottish Government Legislative Consent Memorandum**

7. The LCM states that it is the view of the Scottish Government that it is preferable in terms of good governance that the relevant provisions which fall within the legislative competence of the Scottish Parliament should be considered by the UK Parliament in order to ensure that required changes to clarify and simplify how suspended sentences and community orders imposed by courts in England and Wales operate where an offender transfers to Scotland are made timeously.

8. The LCM (Annex, paragraph 11) sets out the Scottish Government’s draft motion.
Action

9. **Members are invited to consider whether to agree with the recommendation of the Scottish Government that the legislative consent motion should be agreed by the Scottish Parliament.**

10. **Members are also asked to agree that the Convener should arrange for the publication of a short, factual report on the outcome of the Committee's deliberations.**
LEGISLATIVE CONSENT MEMORANDUM

SENTENCING (PRE-CONSOLIDATION AMENDMENTS) BILL

Background

1. This memorandum has been lodged by Humza Yousaf MSP, Cabinet Secretary for Justice, under Rule 9.B.3.1(a) of the Parliament’s standing orders. The Sentencing (Pre-Consolidation Amendments) Bill was introduced in the House of Lords on 21 January 2020. The Bill can be found at:


Content of the Sentencing (Pre-consolidation Amendments) Bill

2. In 2014, as part of its 12th Programme of Law Reform, the Law Commission for England and Wales undertook a project designed to consolidate and codify the law relating to sentencing procedures. The Commission published its final report on 22 November 2018 alongside a draft Sentencing Code Bill and a draft of the Sentencing (Pre-consolidation Amendments) Bill.

3. The Sentencing Code is a consolidation of legislation governing sentencing procedures in England and Wales which aims to ensure that the law in this area is comprehensible and operates within a clear framework. In order for the Sentencing Code to operate as intended, the Sentencing (Pre-consolidation Amendments) Bill makes a number of mostly technical changes to the existing legislative framework and makes provision to remove the need for sentencing courts to refer to different historical versions of sentencing procedure law, depending on the specific commencement criteria for the sentence in question (i.e. the date of the commission of the offence, the date of charge, or the date on appearance in court).

4. Neither the Sentencing Code nor the Sentencing (Pre-consolidation Amendments) Bill make any changes to existing offences and penalties, nor do they introduce any new substantive law or sentencing disposals.

Provisions Which Relate to Scotland

5. The Sentencing Code will apply largely to England and Wales only. However, there are a small number of provisions in the Sentencing (Pre-consolidation Amendments) Bill relating to the transfer of Orders between UK jurisdictions, two of which extend and apply to Scotland.

6. A summary of the clauses in the Bill that require an LCM is as follows (clause numbers relate to the print of the Bill on introduction):
Transfer of community orders to Scotland or Northern Ireland

Schedule 2 – Paragraph 101(6)

This clause amends the existing limits on the Scottish courts to alter the terms of community orders that have been transferred to Scotland from England and Wales. It means that a court in Scotland would need to consider the limits on unpaid work that are in place in England and Wales on the day of re-sentencing.

Transfer of suspended sentence orders to Scotland or Northern Ireland

Schedule 2 – Paragraph 103(7)

This clause is intended to clarify the existing process determining how local authority officers in Scotland supervising offenders serving transferred suspended sentence orders would refer matters back to the courts in Scotland and, if necessary, back to the courts in England and Wales. In particular, it addresses the fact that the Offender Rehabilitation Act 2014, read across to the Criminal Justice Act 2003, would appear, on a literal reading, to prevent the English and Welsh courts taking an offender back for re-sentencing following a breach in Scotland.

Reasons for seeking a legislative consent motion

7. The Bill applies largely to England and Wales. However, it makes a small number of minor changes to devolved law which are intended to clarify the law as it relates to the operation of community sentences and suspended sentences imposed by courts in England and Wales on offenders who move to Scotland. Although it would be technically possible to legislate for the devolved areas through a Bill in the Scottish Parliament, we consider it preferable to legislate in one Bill so that users of the eventual legislation in this area can refer to a single Act, rather than to two Acts operating together.

Consultation

8. The Law Commission’s consultation on the Sentencing Code and associated documents can be found at: https://www.lawcom.gov.uk/project/sentencing-code/.

Financial Implications

9. The provisions of the Bill which extend to Scotland have no significant financial implications.

Conclusion

10. It is the view of the Scottish Government that it is preferable in terms of good governance that the relevant provisions which fall within the legislative competence of
the Scottish Parliament should be considered by the UK Parliament in order to ensure that required changes to clarify and simplify how suspended sentences and community orders imposed by courts in England and Wales operate where an offender transfers to Scotland are made timeously.

Draft Legislative Consent Motion

11. The draft motion, which will be lodged by the Cabinet Secretary for Justice, is:

“That the Parliament agrees that the relevant provisions of the Sentencing (Pre Consolidation Amendments) Bill, introduced in the House of Lords on 21 January 2020, relating to the transfer of community orders and suspended sentence orders imposed by courts in England and Wales to Scotland, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

SCOTTISH GOVERNMENT
February 2020
Introduction

1. At its meeting on 14 January 2020, members agreed to write to Police Scotland and the Crown Office and Procurator Fiscal Service asking for an update on Brexit, the state of preparations following the UK’s departure as a member state and the implications on civil and criminal law and policing in Scotland. Responses from both bodies are set out in the Annex A to this paper.

2. Members may also wish to note that the Scottish Police Authority considered these issues at its meeting of its Board on 19 February 2020. Members may find the following paper of interest:

   http://www.spa.police.uk/assets/126884/441011/601841/607005/item5

3. Members may also wish to note that the UK Government published a paper on its proposed Future Relationship with the EU on 27 February. Annex B contains the an extract of the relevant chapter on justice and security.

Action/recommendation

4. Members are asked to discuss the responses and associated documents, and advise what, if any, further action is required.

Justice Committee Clerks
February 2020
POLICE SCOTLAND

Dear Convener

RE: BREXIT

Thank you for your letter received on 22\textsuperscript{nd} January 2020, regarding Brexit and the request from the Justice Committee for a written briefing.

As you are aware, we have now left the EU on the 31\textsuperscript{st} January 2020 with a negotiated deal. This has enabled UK Law Enforcement to continue to utilise EU Justice and Home Affairs (JHA) measures with minimal changes to the current arrangements.

As we have moved into the transition phase, Police Scotland continue to ensure that the importance of these measures, and any issues specific to Scotland, are communicated to the Scottish and UK Governments.

Whilst the possibility of “no-deal” has been significantly reduced, we still stand to lose access to vital Justice and Home Affairs measures post December 2020, therefore we continue to prepare for a policing landscape devoid of these tools and implement plans to mitigate associated risks.

In terms of the written briefing, I can update you on the points you raise:

\textbf{Police Scotland’s Plan in 2020/21 for Police Officer and Staff numbers including any budget impacts in order to manage the challenges of Brexit.}

In December 2019 the UK and Scottish Governments stood down no-deal Brexit preparations due to the decreased likelihood of the UK leaving the European Union without a withdrawal agreement at the end of January 2020. As a result Police Scotland have started and continue to review the arrangements that are in place for Brexit planning including the consideration of risks associated with the transition period and the threat of a no deal exit at the end of this period in December 2020.

Currently, 400 additional officers have been deployed to strengthen our international and border policing capability and in a Force Reserve. During the year, the Force Reserve has proved critical in providing...
flexibility in responding to acute demand of all types across the Force. It is the intention of the Chief Constable to retain this flexibility not only for the risks associated with Brexit but also for the other extraordinary demand anticipated during 2020/21 which includes the UEFA Euro 2020 and COP26.

In terms of COP26, and to ensure that the maximum number of officers are available to be deployed during November 2020, the Chief Constable has directed that this year’s officer recruitment programme be brought forward with a view to having the full year’s volume of recruits recruited and training before the conference commences.

The bringing forward of probationer recruitment will incur additional costs however we will, before we commit to such costs, seek confirmaiton that these are additional COP26 related costs and as such will be recoverable on a marginal basis. Overall, Police Scotland will operate to its c17,234 officer numbers and ensure we continue to operate within our existing budget.

EU Justice and Home Affairs (JHA) measures

Europol

Police Scotland are represented in Europol by a Detective Inspector who is embedded within the UK Liaison Bureau. During the transition phase this arrangement will remain unchanged as the UK negotiate continued access to Europol. Standalone bilateral agreements are not being pursued by the UK within Europol at this stage as maintaining membership with the agency is a priority. The opportunity to establish bilateral agreements out with the Europol arena with EU Law Enforcement is currently under review with partners within the UK. Police Scotland’s requests for Cross Border Surveillance (Article 40 of the Schengen Agreement) are routed through the National Crime Agency (NCA) and not Europol. These too will remain unaffected during the transition period.

European Arrest Warrants (EAW) / European Investigation Orders (EIO)

We will continue to utilise the European Arrest Warrant (EAW) during the transition period. Article 62 of UK Withdrawal Agreement confirms that the EAW system will continue to operate for those arrested during this period. Article 185 though, allows EU Member States to refuse to extradite their own nationals during the transition phase. To date Germany is the only country to publically declare this is their intention, but there are indications that Poland may follow suit. The UK can reciprocate and refuse to extradite our own nationals, but the Home Office have expressed they will not exercise this right at the moment.

In respect of the European Investigation Order (EIO); Crown Office Prosecutor Fiscals Service (COPFS) have carried out preparedness exercises to ensure that all existing outgoing EIO’s have been replicated in International Letter Of Request (ILOR) format, originally for release in the event of no deal. The UK currently utilise the ILOR to request evidence from countries out with the EU and this practice will be implemented for EU Member States should we lose access to the EIO. This will be undertaken via the 1959 European Council Convention on Mutual Legal Assistance. Similarly, in respect of incoming requests the UK will require countries to reissue requests under this legislation. The most significant impact in respect of losing the EIO will be the strict timescales for response by countries, there are no such time restrictions on the ILORs.

European Protection Order

This is a Civil Process and not applicable to Police Scotland.

Recovery of Criminal Assets and Freezing Orders

EU Measures relating to the Recovery of Criminal Assets and Freezing orders are interdependent on the outcome on Europol access as this is the Home Office contingency for loss of access to current

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arrangements through the Asset Recovery Office (ARO). Consequently negotiations will be ongoing throughout the transition period in an attempt to achieve the preferred option of continued ARO cooperation through Europol.

**Schengen Information System II (SIS II) and Sharing of Criminal Intelligence**

Police Scotland have carried out a Back Record Conversion exercise for all relevant Scottish generated Schengen Information System II (SIS II) Alerts. The Interpol Notice system is the Home Office contingency for loss of access to SIS II. Where possible, we have created a dual entry and a relevant Interpol notice to mitigate risk and achieve operational readiness. Interpol notices can be viewed on an Interpol owned system granting access to Law Enforcement Agencies. Interpol have provided the NCA with a compatible format of all live Interpol notices which have been uploaded to the Police National Computer (PNC).

The UK’s connection to Prüm commenced in July 2019. We are now connected with Austria, Germany, Spain, The Netherlands, France, Poland and Romania. Early indications are that this is an extremely useful EU tool which is viewed as a priority measure therefore the UK will negotiate to maintain access to Prüm. Similarly the UK will also seek to continue access to European Criminal Records Information System (ECRIS) in respect of the exchange of criminal records, however contingency planning will also incorporate negotiations into bilateral agreements in the event that these are unsuccessful.

The UK Government Home Office is leading on an exercise to create a Joint Operating Model that defines the local to global process, quantifying the responsibilities of the various agencies such as NCA, ACRO and UK Law Enforcement. As part of this review commissioned by the International Criminality Board of the Home Office and NPCC International Portfolio, representatives have visited the International Unit of Police Scotland to identify best practice with a view to incorporating any learning into the future model.

In summary, the UK leaving the EU will unquestionably impact on our ability to conduct investigations and enquiries beyond our national borders. The reputation and relationships that have been established by Police Scotland with Law Enforcement colleagues throughout the EU and beyond will provide a strong foundation for future working relationships.

The Justice and Home Affairs measures undoubtedly provide efficient and effective channels between Law Enforcement in the UK and the EU. Regardless of the final negotiated position on the Future Security Partnership with the EU, Police Scotland will continue to work alongside partners in the EU albeit this will be less efficient and more cumbersome and bureaucratic.

Yours sincerely

**DCC Will Kerr**
CROWN OFFICE AND PROCURATOR FISCAL

Dear Convener,

COPFS Brexit Contingency Planning

Thank you for your letter of 22 January 2020 requesting an update in relation to the Crown Office and Procurator Fiscal Service (COPFS) contingency planning following the UK’s exit from the European Union (EU).

As Anthony McGeehan, Procurator Fiscal for Policy and Engagement, outlined in his letter to the Committee dated 25th September 2019, COPFS has undertaken significant contingency planning in relation to the potential impact of the UK's exit from the EU. It is engaging closely with Scottish and UK Government officials, law enforcement and wider criminal justice partners in the context of the UK Government’s intention to negotiate a future security partnership with the EU by the end of the transition period.

Ahead of the financial year 2019/20, COPFS received additional funding of £258,000 from the Scottish Government to assist in planning for Brexit. These funds allowed staff time to be dedicated to contingency planning for the impact on COPFS of the anticipated loss of European judicial co-operation tools. Following the budget settlement for 2020/21, COPFS will continue to monitor the financial impact of Brexit developments and will adapt and review its resource requirements accordingly.

During the transition period, the Crown will continue to use European judicial co-operation tools, such as the European Arrest Warrant and the European Investigation Order, with a view to securing the expeditious arrest of suspects and the recovery of evidence from EU Member States; and it will, equally, continue to respond to all incoming requests.

The Withdrawal Agreement allowed Member States to make a declaration that they would refuse to extradite their nationals to the UK during the transition period. Austria, Germany, and Slovenia have made such a declaration. The current assessment by COPFS is that it will still be possible to use the European Arrest Warrant to extradite non-nationals from those three countries and that it will also be possible to use the European Arrest Warrant to extradite German, Austrian or Slovenian nationals from other EU Member States. Where extradition is not possible as a result of a nationality bar, the Crown will consider alternatives, including transfer of proceedings and transfer of sentence.

The UK Government has committed to seeking to negotiate a Future Security Partnership Agreement with the EU by the end of the transition period. It is not possible, at this early stage, to predict the extent of UK access to the existing suite of European judicial co-operation measures at the end of the transition period; that will depend entirely on the terms of any agreement between the UK and the EU. As the Committee is aware, loss of the European Arrest Warrant and the European Investigation Order would, in the absence of agreement of equivalent arrangements, imply reversion to the sub-optimal arrangements for extradition and mutual legal assistance requests which remain available under the 1957 and 1959 Council of Europe Conventions, respectively. COPFS remains concerned about potential loss of the ability to open a case or parallel investigation with Europol and about the impact this will have on the Service’s ability to establish effective joint investigations and complementary parallel investigations.
It is anticipated that the Service will require to rely upon EU counterparts to open a case with Eurojust or Europol and to invite the participation of COPFS and/or Police Scotland within these institutions. Similarly, the UK is now a third country so far as the European Judicial Network is concerned, thereby losing direct access to this invaluable mechanism for co-operation - one which is particularly heavily used by COPFS.

The European Protection Order is administered through SCTS and COPFS is accordingly not best placed to quantify the extent of use of this tool or the impact of its loss, beyond recognising that, if it is no longer available, it would present as a reduction in protection measures for victims.

Law enforcement agencies will continue, during the transition period, to have access to EU initiatives such as the Schengen Information Systems, European Criminal Records Information (ECRIS), PRUM and FIUnet (which supports Financial Intelligence Units in the EU in tackling money laundering and financing terrorism). Thereafter, the extent of access, if any, will be determined by the outcome of the negotiations between the UK Government and European Union. Reversion to a system reliant on use of Interpol notices will inevitably result in a material loss of capability, introduce delays and increase risks to public safety.

COPFS, Scottish Government officials and Police Scotland are engaging with UK Government officials, prosecutors and law enforcement partners at fortnightly meetings of the Internal Security Delivery Board (ISDB) which is led by the Home Office. The ISDB has been convened to oversee the priorities for negotiations in any future relationship with the EU and the operational planning and implementation activity required to deliver internal security across various potential outcomes. A series of “deep dive” meetings have been scheduled to take place over the course of February and March to formulate individual delivery plans against the range of European internal security tools including the Schengen Information System (SIS II), European Arrest Warrant, Passenger Name Records (PNR), Prüm, Asset Freezing Orders and Confiscation Orders, the European Investigation Order (EIO) and European Criminal Records Information (ECRIS) and Europol, Eurojust and Prisoner Transfer. COPFS, Scottish Government officials and Police Scotland have continued to stress that any negotiations between the UK and the EU on law enforcement and security measures must recognise the independent role which the Lord Advocate has as head of the system of criminal prosecution in Scotland, respect Scotland’s status as a separate jurisdiction from the other jurisdictions of the United Kingdom, and protect and enable continued direct links between Scottish justice agencies and their EU counterparts.

The COPFS Corporate Resilience Group (CRG) will continue to monitor COPFS contingency planning and will maintain readiness against various outcomes, including the risk of a non-negotiated outcome at the end of the transition period. At the same time, COPFS will continue, so far as possible, to work alongside justice partners throughout the UK and across Europe with a view to mitigating, where possible, the adverse effects of any loss of the current EU criminal justice measures on operational co-operation.

W. JAMES WOLFFE QC
LORD ADVOCATE
ANNEX B

EXTRACT FROM THE UK GOVERNMENT’S FUTURE RELATIONSHIP WITH THE EU NEGOTIATION DOCUMENT

Agreement on Law Enforcement and Judicial Cooperation in Criminal Matters

27. The safety and security of our citizens is the Government’s top priority. The UK already has world leading law enforcement capabilities. At the end of the transition period, we will fully recover our sovereign control over our borders and immigration system, which will further enhance our security capabilities.

28. Against this background, the UK stands ready to discuss an agreement on law enforcement and judicial cooperation in criminal matters, to the extent that this is in both parties’ interests. It should include: arrangements that support data exchange for law enforcement purposes; operational cooperation between law enforcement authorities; and judicial cooperation in criminal matters.

29. The agreement should facilitate police and judicial cooperation between the UK and EU Member States; equip operational partners on both sides with capabilities that help protect the public and bring criminals to justice; and promote the security of all our citizens.

30. This should be a separate agreement with its own appropriate and proportionate governance mechanism. The agreement must not constrain the autonomy of the UK’s legal system in any way. It should not provide any role for the CJEU in resolving UK-EU disputes, which is consistent with the EU’s approach to cooperation with third countries on law enforcement and judicial cooperation in criminal matters, including between the EU and neighbouring non-EU countries on tools such as the Second Generation Schengen Information System (SIS II) and Prüm.

31. Cooperation will be underpinned by the importance attached by the UK and the EU to safeguarding human rights, the rule of law and high standards of data protection. The agreement should not specify how the UK or the EU Member States should protect and enforce human rights and the rule of law within their own autonomous legal systems.

32. The agreement should include a clause that allows either party to suspend or terminate some or all of the agreement. This should enable either the UK or the EU to decide to suspend – in whole or in part – the agreement where it is in the interests of the UK or the EU to do so.

33. In line with precedents for EU third country agreements on law enforcement and judicial cooperation in criminal matters, the agreement should not specify the reasons for invoking any suspension or termination mechanism.
Data exchange for law enforcement purposes and operational cooperation between law enforcement authorities

34. The agreement should cover the following operational capabilities.

Exchange of criminal records

35. The agreement should provide for the fast and effective exchange of criminal records data between the UK and individual EU Member States, recognising that this is an important tool for investigations, prosecutions and sentencing, as well as for wider community safety.

36. To that end, the agreement should provide for capabilities similar to those provided by the European Criminal Records Information System (ECRIS). ECRIS is a secure, automated, electronic system providing for exchange of criminal records information held on countries’ own national databases within specific deadlines.

37. These arrangements should draw on precedents for similar networks of national databases for law enforcement purposes between the EU and third countries (see Prüm below).

Exchange of DNA, fingerprints and vehicle registration data

38. The agreement should provide for the fast and effective exchange of national DNA, fingerprint and vehicle registration data between the UK and individual EU Member States to aid law enforcement agencies in investigating crime and terrorism.

39. The agreement should provide similar capabilities to those currently delivered through the Prüm system, drawing on the precedent for such cooperation between the EU, Norway and Iceland as well as between the EU and Switzerland and Liechtenstein. These precedents include a political dispute resolution mechanism with no jurisdiction in those third countries for the CJEU.

Passenger Name Record (PNR) data

40. The agreement should provide for reciprocal transfers of PNR data to protect the public from serious crime and terrorism.

41. The transfer of Passenger Name Record data from airlines to the UK or EU Member State competent authorities is an important law enforcement capability. It enables law enforcement and security agencies to identify known and otherwise unknown individuals involved in terrorism related activity and serious crime, and track criminal networks from their patterns of travel.

42. The agreement should be based on, and in some respects go beyond, precedents for PNR Agreements between the EU and third countries – most recently, the mandate for the EU-Japan Agreement.
Real-time alerts on persons and objects that are wanted, missing or otherwise of interest

43. The agreement should provide a mechanism for the UK and EU Member States to share and act on real-time data on persons and objects of interest including wanted persons and missing persons. This capability is currently provided by the Second Generation Schengen Information System II (SIS II), making alerts accessible to officers on the border as well as to front-line police officers in the UK.

44. SIS II is used by EU and non-EU Schengen members (Switzerland, Norway, Iceland and Liechtenstein). The UK will continue to use SIS II until the end of 2020.

45. The agreement should provide capabilities similar to those delivered by SIS II, recognising the arrangements established between the EU and non-EU Schengen countries (Switzerland, Norway, Iceland and Liechtenstein). The EU’s agreements with these non-EU Schengen countries include a political dispute resolution mechanism with no jurisdiction in those third countries for the CJEU.

Operational cooperation between the UK and Europol

46. The agreement should provide for cooperation between the UK and Europol to facilitate multilateral cooperation to tackle serious and organised crime and terrorism. The UK is not seeking membership of Europol. Europol already works closely with a number of non-EU countries, including the US, through dedicated third country arrangements.

47. The agreement could go beyond existing precedents given the scale and nature of cooperation between the UK and Europol. For example, the UK was the highest contributor of data to Europol for strategic, thematic and operational analysis in 2018.

Judicial Cooperation in Criminal Matters

48. The agreement should cover the following areas.

Operational cooperation between the UK and Eurojust

49. The agreement should provide for cooperation between the UK and Eurojust. Eurojust is an EU agency which brings together prosecutors, magistrates and law enforcement officers to assist national authorities in investigating and prosecuting serious cross-border criminal cases. The UK is not seeking membership of Eurojust.

50. Eurojust already works closely with a number of non-EU countries, including the US, through dedicated third country arrangements. The agreement should follow these precedents to enable ongoing cooperation between the UK and Eurojust.

Extradition

51. The UK is not seeking to participate in the European Arrest Warrant as part of the future relationship. The agreement should instead provide for fast-track extradition arrangements, based on the EU’s Surrender Agreement with Norway and
Iceland which came into force in 2019, but with appropriate further safeguards for individuals beyond those in the European Arrest Warrant.

**Mutual Legal Assistance including asset freezing and confiscation**

52. The agreement should provide for arrangements delivering fast and effective mutual legal assistance in criminal matters including asset freezing and confiscation. These arrangements should build and improve on those provided by relevant Council of Europe Conventions including the 1959 Council of Europe Convention on Mutual Legal Assistance and its Protocols, for example by providing for streamlined and time limited processes.

**Arrangements on the transfer of prisoners**

53. The agreement should establish effective and reciprocal arrangements to transfer prisoners between the UK and EU Member States, enabling prisoners to be moved closer to home and be rehabilitated in the community to which they will be released. These should build and improve on arrangements provided by the 1983 Council of Europe Convention on the Transfer of Sentenced Persons and its Protocols, and could include time limited processes.
Introduction

1. At the start of this parliamentary session, the Justice Committee established the Justice Sub-Committee on Policing, the membership of which was recommended by the Committee to the Parliamentary Bureau and agreed by the Parliament.

2. In recent weeks, Jenny Gilruth MSP has resigned from the Committee and Sub-Committee. The clerks understand that Shona Robison MSP is to be proposed by the SNP to replace Jenny Gilruth MSP as a member of the Sub-Committee.

3. Standing Order Rules 12.5.3 and 12.5.4 state:

   The membership of any sub-committee shall be determined by the Parliament on a motion of the Parliamentary Bureau. The membership of a sub-committee of a committee shall be proposed by that committee to the Parliamentary Bureau. Normally only members of the committee (other than committee substitutes) may be members of a sub-committee of that committee but, if the committee so decides, members of other committees may be appointed as members of a sub-committee.

   In considering the membership of a sub-committee, the committee shall have regard to the balance of political parties in the Parliament.

Action

4. Members of the Justice Committee are invited to discuss the recent resignation and decide whether to endorse Shona Robison MSP to the Parliamentary Bureau as a replacement for Jenny Gilruth MSP.

5. Once agreed, the Convener will write to the Parliamentary Bureau accordingly.

Clerking Team
March 2020