

Criminal Justice Committee  
Wednesday 30 April 2025  
14<sup>th</sup> Meeting, 2025 (Session 6)

# **UK-EU Law Enforcement and Judicial Cooperation in Criminal Matters under Part Three of the Trade and Cooperation Agreement: The Impact on Scotland**

## **Note by the Clerk**

### **Introduction**

1. In the wake of the signing of the Trade and Cooperation Agreement (TCA) between the United Kingdom and the European Union in 2020, the Criminal Justice Committee - in cooperation with SPICe - commissioned a piece of research work through the Scottish Parliament's Academic Fellowship programme.
2. The aim of this research work was to assess the actual impact of Brexit on Scotland's criminal justice system, focusing on the implementation of the TCA.
3. 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 this work between March 2023 and January 2024. The methodology they adopted for this work is set out on pages 12 to 13 of their main report (see link below).
4. They were tasked with exploring how Scotland has adapted to the new post-Brexit landscape in the area of criminal justice, policing and judicial co-operation, and highlight both achievements and challenges.
5. Professors Davies and Carrapico published their findings and recommendations in September 2024, and their full report is available on the Committee's website:
  - [Research on the impact of the UK's exit from membership of the EU on law enforcement and judicial cooperation in Scotland.](#)
6. The Annex to this paper contains an extract of Chapter 3 of the report which sets out a Summary of the Challenges and Policy Recommendations contained in the report.

### **Today's evidence on the Bill**

7. At the meeting on 30 April, the Committee will take oral evidence on their research from-

- **Gemma Davies**, Associate Professor of Criminal Law at Durham University
  - **Helena Farrand Carrapico**, Professor of International Relations and European Politics at Northumbria University.
8. The witnesses will begin the evidence session by making [a short presentation on the key findings of their research](#), after which they will take questions from Members.
9. The focus of the presentation is threefold:
- What has been the actual impact of the UK's exit from the EU in terms of policing and judicial co-operation compared to what was in place when the UK was a member of the EU?
  - What efforts have been made to make relations and co-operation arrangements as effective as possible?
  - What deficiencies still remain, could these be addressed and what would be required when it comes to the next review of the TCA between the UK and the EU?

**Clerks to the Committee**  
**April 2025**

# Annex: Extract from the summary of the Challenges and Policy Recommendations in the report

## 3 – Summary of the Challenges and Policy Recommendations

This section of the report offers an itemised summary of the challenges described at length in the remainder of the text, as well as the list of policy recommendations that follow from these challenges and which the authors hope will assist in mitigating the impact of the implementation of the Trade and Cooperation Agreement (TCA) on law enforcement and judicial cooperation. Policy recommendations regarding the upcoming 2026 TCA review have also been included in this section.

### 3.1- Challenges emerging from the implementation of the Trade and Cooperation Agreement for the field of Police and Judicial Cooperation

Based on the research conducted by the authors, operational deficit can be observed in the following areas:

- The UK has lost access to the European-wide database for sharing law enforcement information called the ‘Schengen Information System II’ (SISII). This was used by UK law enforcement to share and receive law enforcement alerts in real time.<sup>1</sup> SISII data held at domestic level had to be deleted. The UK will not benefit from planned improvements to SISII, which aim to improve functionality and has lost access to its networking value.
- As a consequence of losing access to SISII, the UK is now reliant on EU Member States (EUMS) uploading information and wanted notices to Interpol’s database (known as i24/7) in addition to uploading the information to SISII. If law enforcement in a Member State does not take this additional step, then the operational consequence is that a criminal wanted on a European Arrest Warrant (EAW) could travel to the UK undetected.
- Surrender Warrants issued under the Trade and Cooperation Agreement (known as TaCA warrants) cannot be circulated on SISII anymore. Instead, a Red Notice (a notification that a person is wanted) is circulated on i24/7. Unlike with SISII, police in Europe do not have direct access to i24/7 on their handheld devices. The fact that someone is wanted will only come to law enforcement notice if someone is stopped at an external EU border or otherwise interacts with immigration procedures and not during an unrelated interaction, such as a traffic stop. This means that the chances of opportunistic identification of a wanted person from the UK in the EU has in real terms ended.

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<sup>1</sup> For further information see ‘Home Office, Second generation Schengen Information System (SISII) General Information, 13 April 2015 available at [https://assets.publishing.service.gov.uk/media/5a7f85a3e5274a2e8ab4caef/SISII\\_General\\_Information\\_document.pdf](https://assets.publishing.service.gov.uk/media/5a7f85a3e5274a2e8ab4caef/SISII_General_Information_document.pdf)

- A Red Notice in most EU countries does not provide a power of arrest. Even if someone is identified through i24/7, UK officers must act very quickly to send the TaCA warrant to the relevant country for execution. Any delays in this process can result in a lost opportunity to gain custody.
- Unlike the procedure for circulating information through SISII, a TaCA warrant issued by an EUMS is only created and circulated when there is a clear connection to the UK. This is not as effective as an EAW which can be circulated to all EUMS through SISII regardless of where the individual is thought to be located. The introduction of a TaCA warrant therefore decreases the likelihood of wanted individuals in the EU being detected in the UK.
- The UK can no longer, or has limited ability, to extradite nationals from thirteen EUMS leading to impunity for serious offences. The inability to request surrender from Poland has had the greatest impact, although this is now resolved through amendment to Polish national law.
- Dual criminality (establishing the offence is a crime in both the issuing and executing state) must now be demonstrated in every extradition/surrender case increasing complexity and the risk of refusal.
- Passenger Name Records data continues to be shared but the UK must now delete data of passengers after they depart the UK, unless objective evidence can be provided that certain passengers present a risk in terms of fighting terrorism and serious crime.
- The UK will not have access to the European Criminal Records Information System – Third Country Nationals (ECRIS-TCN) - a record of previous convictions of third country nationals handed down in the EU – once operational and will have to continue to inefficiently seek this information from each EU Member State one by one, making it more difficult for law enforcement to access the complete criminal history of individuals from outside of the EU.
- The UK no longer participates in the European Investigation Order (EIO) - a streamlined mechanism for obtaining evidence and assistance from authorities in EU Member States during criminal investigations - and there are reports of long delays in obtaining evidence through outdated Mutual Legal Assistance mechanisms provided for in the Trade and Cooperation Agreement.
- The domestic legislation of some EU Member States has created barriers to obtaining police-to-police cooperation despite the signing of the Trade and Cooperation Agreement. More formal processes are sometimes now required to obtain assistance, which can lead to delays in UK investigations.
- UK police officers can no longer be employed in Europol's Operational and Analysis Centre which operates as a gateway for all information and intelligence

channelled through Europol. This may lead to a loss of expertise in the long term.

- The UK has lost access to the Europol Information System (EIS), to Europol's Analysis Work Files databases, and some access to intelligence information available to only EU Member States via the secure messaging service SIENA. It also no longer takes part in Europol's Management Board.
- The UK has lost the ability to initiate a Joint Investigation Team with a EUMS.
- The governance structure of the Trade and Cooperation Agreement does not enable the agreement to address these operational deficits, nor to adapt to the future evolution of police and judicial cooperation instruments. The TCA is, in practice, frozen in time. The remit of the Specialised Committee on Law Enforcement and Judicial Cooperation as a body is only to monitor and review the implementation and functioning of the legal text in Part Three of the TCA as it stands.
- Although the TCA overall is governed by the Partnership Council – a body created by the TCA to ensure its implementation - there is no provision for Parliaments to scrutinise its decisions before they take place.

### **3.2- Policy Recommendations**

Based on the observed operational challenges, we make the following recommendations, which we believe are within the purview of the identified Scottish authorities:

- The report highlights an overall increased workload for both Police Scotland and the Crown Office and Prosecutor 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. It is recommended that the Criminal Justice Committee of the Scottish Parliament seek further evidence from stakeholders to understand the extent to which resourcing, and budget needs are being met.
- It is recommended that the Criminal Justice Committee write to the Lord Advocate to highlight the following issues:
  - The reported backlog of extradition cases in Edinburgh Sheriff Court.
  - The reported difficulties in transferring proceedings to EU Member States when a transfer is in the public interest. We recommend that an additional protocol or guidance document be put in place to ensure decisions on transfer are consistent, transparent and fair to all stakeholders including victims. Adequate resources should be available to transfer proceedings when extradition is unavailable or refused.

- It is recommended that the Criminal Justice Committee write to the Cabinet Secretary for Justice and to the Lord Advocate to highlight that poor prison conditions in Scotland have led to requests for assurances in extradition/surrender cases. This is causing delay in Scotland receiving wanted persons from overseas and increases the risk that extradition is refused.
- It is recommended that the Criminal Justice Committee write to the Cabinet Secretary for Justice and to the Lord Advocate to highlight that poor prison conditions in Scotland have led to requests for assurances in extradition/surrender cases. This is causing delay in Scotland receiving wanted persons from overseas and increases the risk that extradition is refused.
- It is recommended that the Criminal Justice Committee write to the Chief Constable of Police Scotland to emphasise the need for training across all of Police Scotland, so officers know when and how to use the available tools to obtain assistance from law enforcement overseas and how to best utilise Joint Investigation Teams. All officers should know they have the power to arrest based on an Interpol Red Notice.
- It is recommended that the Criminal Justice Committee highlight to the Scottish Government the following concerns about how Scottish interests are represented:
  - 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.
  - There is no process for enabling the Scottish Parliament to scrutinise Partnership Council decisions to ensure alignment with Scottish interests.
  - There is no representation of the Scottish Parliament in the UK-EU Parliamentary Partnership Assembly (PPA), which hinders the representation of Scottish interests. At the time of writing, the UK Government had also not yet appointed Members of Parliament to the PPA.

The authors further believe that some of the issues discussed in this 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. We recommend that the Criminal Justice Committee write to the Secretary of State for the Home Department (in light of their responsibility for UK Government policy relating to international data sharing for law enforcement purposes), the Foreign Secretary (in light of their responsibility for the UK's relationship with Europe and the

European Union) and the Secretary of State for Justice (in light of their responsible for the criminal justice system) to highlight the following issues which the UK Government could seek to address during the 2026 review of the TCA:

- That the UK is not yet sharing vehicle registration data with EU Member States. The UK should develop its technical capabilities so that it can be evaluated 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 TaCA warrants 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 does not prevent introducing a mechanism for TaCA warrants issued by the UK to be circulated on SISII via Europol. This would 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 EUMS will only issue a TaCA warrant if there is 'clear connection' to the UK. The same requirement was not needed to issue a European Arrest Warrant. Amendment to the TCA could provide a clearer legal basis for the issuing of a TaCA warrant at the same time as an EAW is issued removing the need for a clear connection to the UK.
- 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.
- Although the UK opted in to ECRIS-TCN before leaving the EU this is not provided for in the Trade and Cooperation Agreement. The UK should seek to negotiate access to the ECRIS-TCN system, so UK law enforcement have 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. 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.
- 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. The UK

should 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 than it did as a Member State. The UK should seek to enhance the UK's cooperation with Europol, subject to an agreement on funding. The following issues are identified:
  - The inability of UK police officers to be employed within the Operational and Analysis Centre.
  - Lack of access to Europol training.
  - 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 of interviews, no case had been successfully transferred. The UK should 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.<sup>2</sup> 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 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.
- 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. The UK should 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.

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<sup>2</sup> Which are also punishable in the requesting State by a custodial sentence for a maximum period of at least three years.



- The UK Government should seek further development of the governance structures of the TCA to ensure greater transparency and accountability, as well as introducing 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.