



Meeting	Authority Meeting
Date	24 August 2023
Location	COSLA, Edinburgh
Title of Paper	Post Brexit Cross-jurisdictional Policing Arrangements
Presented By	DCC Jane Connors LVO QPM
Recommendation to Members	For Discussion
Appendix Attached	Appendix A -Police Scotland Case Studies Appendix B-TCA Provisions

PURPOSE

The purpose of this paper is to provide the Authority with an update on the UK-EU Trade and Cooperation (TCA) Implementation post Brexit.

Members are invited to note and discuss the contents of this paper and appendices.

1. BACKGROUND

- 1.1 On 23 June 2016 the UK held a referendum on its membership of the European Union; whether to remain a part of the EU or whether to leave. The UK voted 52%-48%, to leave the EU.
- 1.2 UK Policing and stakeholders within law enforcement raised concerns over any losses to cooperation with EU and recommended that we be allowed to remain part of Europol, to utilise the European Arrest Warrant (EAW), to have access to the Schengen Information System Second Generation (SIS II) and be able to be a participant in Joint Investigation Teams (JIT) as this was deemed to be key to the success of investigations both within Scotland and UK.
- 1.3 The United Kingdom left the European Union on 31 January 2020 with no agreement in place however negotiations throughout that year resulted in The Trade and Cooperation Agreement (TCA) being agreed in December 2020. The TCA is separated into seven parts, with Part 3 covering law enforcement and judicial cooperation in criminal matters (LEJCC).
- 1.4 The TCA provided a legal basis for ad-hoc information sharing between law enforcement partners in EU Law, seeking to ensure urgent information sharing is less likely to fall foul under EU or national data protection law.
- 1.5 Title XIII within Part Three sets out bespoke dispute settlement provisions for this area of cooperation, although some elements of Part Three are also excluded from the application of these provisions (Article 696).
- 1.6 Whilst there was a great deal of concern that there would be a catastrophic impact on Police Scotland's ability to serve our communities, mitigation plans have been implemented such as the roll out of the International Law Enforcement Alerts Platform (I-LEAP) and the creation of the Joint International Crime Centre (JICC) which will be explored further in this paper.
- 1.7 The shared assessment of UK Home Offices' International Crime Coordination Board (ICCB) is that the LECJ arrangements under the TCA are, in general, working well in practice, and the undernoted paragraphs will outline the current position in relation to the key measures.

2. AREAS OF INTEREST

2.1 The main areas of concern were/are as follows:

- Title II – Exchanges of DNA, Fingerprints and VRD (Prüm)
- Title III – Transfer and Processing of PNR data
- Title IV – Co-operation on Operational Information
- Title V – Europol
- Title VII – Surrender (Extradition)
- Title IX – Criminal Records Sharing
- Title XI – Asset Freezing and Confiscation

2.2 In the below paragraphs, Overview and Compliance, Evidence Gaps, Use of capability and EU issues will be explored.

2.3 Title II – Exchanges of DNA, Fingerprints and VRD (Prüm)

This section establishes reciprocal cooperation between the UK's and the EU Member States' respective law enforcement authorities governing the automated transfer of DNA profiles, fingerprints (referred to as 'dactyloscopic data' in the text) and "certain domestic vehicle registration data".

Police Scotland's access to the Prüm DNA and Fingerprint Databases provide better cooperation between police forces and law enforcement agencies in the UK and across the EU by facilitation of matching samples on each other's databases, boosting their capacity to tackle cross-border crime and protect citizens.

Unknown samples taken from crime scenes can now be compared automatically with profiles held by other EUMS, improving the speed and efficiency of data exchanges thus increasing cross-border police cooperation, particularly in combating terrorism, crime and illegal migration.

The use of Prüm has, both for EU countries and Scottish cases, resulted in the detection of offenders for crimes that would not otherwise be resolved and with further EUMS due to on-board, this will further strengthen law enforcement cooperation.

2.4 Title III – Transfer and Processing of PNR data

This Title deals with the transfer, use and processing of “passenger name record data” gleaned from flights between the European Union and the UK.

Under the TCA, the UK may soon have to delete PNR 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 interim period during which the UK may derogate from its obligations under this section of the TCA has been extended for a second and last time until 31 December 2023.

Substantial progress has been made on a new capability to permanently delete specific EU PNR data not needed to be retained. Developers are now in the final stages of working through technical steps to identify specific EU PNR data which will be subject to deletion, and to apply a risk assessment to that data to determine whether it is necessary for the purposes of preventing, detecting, investigating, and prosecuting terrorist offences or serious crime and protecting the vital interests of persons, for the data to be retained for up to five years.

Continuation of the sharing of PNR data is of crucial importance to the security of Scottish communities and the UK in general.

2.5 Title IV – Co-operation on Operational Information

Provides for national police and customs authorities (“or other authorities competent under domestic law”) that work to prevent, investigate, detect or prosecute criminal offences, execute criminal penalties, safeguard public safety, and prevent money laundering or the financing of terrorism, to “assist each other through the provision of relevant information”.

One of the most significant consequences of the UK’s new third country status is the loss of access to the Schengen Information System (SIS II). The importance of this system, and the real-time access it provides to data about persons and objects of interest, including wanted and missing persons, was of particular importance to Scottish law enforcement.

SIS II previously played a vital role in supporting the operations of UK law enforcement agencies, providing a mechanism for EU

Member States to share and act on real-time data on persons and objects of interest including wanted and missing persons.

As a substitute, UK authorities turned to the Interpol I-24/7 database however the effectiveness of this as an alternative rests upon the willingness of EU States to upload the same information onto the Interpol system that they circulate on SIS II which requires "double keying". It is difficult to quantify how much double keying is taking place and how accurate I-24/7 is compared to SIS II.

The UK's longer-term plans are to improve the exchange of alert data, between the UK, EU and third countries through the Interpol Law Enforcement Alert Platform (ILEAP). The Phase 1 purpose of ILEAP was about increasing the functionality of the Interpol system of notices to make it more readily accessible for UK policing and is being rolled out across Police Scotland from April, 2023.

2.6 Title V – Europol

The objective of this Title is to establish "cooperative relations" between Europol and the UK "domestic law enforcement" authorities for the purposes of "preventing and combating serious crime, terrorism and forms of crime which affect a common interest covered by a Union policy."

Police Scotland maintains a close relationship with Europol on law enforcement and criminal justice and will continue to share data and expertise, but the UK will no longer have a role in the overall management or a say in its strategic direction.

On a practical level, very little appears to have changed in our relationship with Europol despite now being a third country, albeit we are no longer in a position to instigate a Joint Investigation Team (JIT) and have to rely on the EUMS inviting us to attend. Whilst we are no longer members of the management committee, the UK remains one of the top third countries contributing to Europol databases and leaving the EU has not degraded our influence or ability to engage with EUMS.

We still have a Police Scotland officer seconded to the Europol UK Liaison Bureau and have seen no deterioration in the volume, speed, quantity or quality of the intelligence we share through Europol post Brexit.

2.7 Title VII – Surrender (Extradition)

This Title deals with extradition arrangements between the UK and (most) EU Member States based on the issuing of an arrest warrant. Its provisions broadly replicate arrangements under the European Arrest Warrant (EAW).

In practical terms, whilst the Nationality Bar is having an impact / delay on some surrenders of requested persons, Police Scotland continue to work very closely with the Crown Office International Cooperation Unit (COICU) to whom Transfer of Victim Proceedings is an ongoing consideration.

Extradition work by its nature is demand driven and varies year on year, however there was an increase in warrants received from abroad in the final quarter of 2020 when EUMS were concerned around the uncertainty of the surrender process post Brexit.

The International restrictions on travel as a result of Covid-19 further impacted free movement of fugitives both out of and into the UK as well as causing practical issues for policing when surrendering and returning requested persons.

Despite the difficulties caused as a result of the Nationality Bar, there is an anticipation that the number of extraditions may now be returning to what we would expect to see post Brexit with EUMS having confidence in the negotiated surrender measures within Title VII of the TCA.

2.8 Title IX – Criminal Records Sharing

Following the implementation of the TCA, it was agreed, that responses to requests for Criminal Records from an EU Member State should be replied to as soon as possible, and at a minimum within 20 days, the UK is hitting this target in 99.3% of cases.

2.9 Title XI – Asset Freezing and Confiscation

This Title is in relation to requests to identify, trace, freeze or seize should receive the same priority as domestic requests. Where immediate freezing necessary, the requested State shall comply with request within 96 hours of receipt with confiscation to take place within 45 days of receipt.

Compliance with the TCA arrangements show the number/proportion of urgent freezing requests (in- and outgoing) are complied with within 96 hours of receipt and the number/proportion of non-urgent freezing requests (in- and outgoing) complied with within same timescales as domestic cases.

There have been no major issues with EU compliance so far, although only one issue has arisen where Ireland is incorrectly requiring freezing requests to be signed by the UK judge before they will action, which is being followed up through the appropriate channels.

3. JOINT INTERNATIONAL CRIME CENTRE (JICC)

- 3.1 Over the last 2 years the National Crime Agency (NCA) and National Police Chiefs' Council (NPCC), with Home Office support, have worked together to create the Joint International Crime Centre (JICC), which will be hosted by the NCA. Police Scotland have had a Detective Superintendent seconded to the project team to ensure the interests of the force were represented.
- 3.2 One of the driving forces to create the JICC was to support UK law enforcement following UK EU Exit. The international demands on territorial policing and wider law enforcement will only grow over the next decade. Crimes committed on the streets, behind closed doors or on the internet will sometimes require international enquiries or an overseas response from international partners. Foreign nationals feature in UK investigations as suspects, witnesses and victims. The same can be said for UK nationals who live or travel overseas, accounting for dozens of requests for support from international partners every week.
- 3.3 The JICC will have a UK-wide remit and will drive, coordinate and support the response of UK policing and law enforcement to tackle international crime. It will be made up of over 300 officers at full strength, of which a third will be seconded from across policing.
- 3.4 The JICC offers a multi-agency approach to meeting the increasing international demands of territorial policing, integrated with the NCA's specialist international capabilities. Crucially, it provides a

whole-system approach to tackling international crime – focussing operations upstream, overseas and online.

3.5 The JICC launched on the 3rd April 2023 and has already embarked on a programme of continuous improvement to shorten the distance between front line law enforcement and the entirety of the NCA's international capabilities. This will include a closer relationship with the NCAs International Liaison Network of over 150 officers based in 50 countries around the world.

3.6 A Collaboration Agreement has been signed between the NPCC and NCA to underpin the responsibilities of the JICC to law enforcement in England and Wales. Due to the jurisdictional and governance differences in Scotland, a separate Collaboration Arrangement has been prepared and is in the final stages of review by PSOS Legal Teams.

4. INTERNATIONAL LAW ENFORCEMENT ALERTS PLATFORM (ILEAP)

4.1 Following the UK's EU Exit, the UK disconnected from the EU SIS II system (Schengen Information System, generation 2). The UK had been a participant in SIS II since April 2015 and, whilst we sought to retain access during negotiations, the EU took the position that it was legally impossible for them to offer SIS II to a third country outside of the Schengen area.

4.2 The I-LEAP programme will provide new alerting digital platform capabilities to police and Border Force officers in the UK, and to their equivalents in partner countries, enabling increased opportunities at the national border or within country to identify persons and objects of interest to law enforcement agencies.

4.3 It will do so by first enhancing the UK's connectivity with INTERPOL by providing law enforcement agencies with connectivity to the fixed INTERPOL's network database (FIND) system, providing real-time access to INTERPOL nominal data to UK policing, whilst also expanding access to other INTERPOL datasets. These services are being rolled out nationally to policing, the UK Border Force, and the National Crime Agency (NCA). This is the current priority of the programme.

4.4 The I-LEAP programme will seek to enhance international cooperation through improved access and use of INTERPOL data, providing increased operational value to border and law enforcement agencies. The Programme will deliver the following benefits:

- Direct and real-time connection to INTERPOL data at the point this is made available to INTERPOL member states.
- Provision of facial images on subjects of interest associated with INTERPOL notices and diffusions.
- Access to additional data fields on subjects of interest than would otherwise have been available through the police national computer (PNC) record search.
- Increased availability to law enforcement officers at the frontline

4.5 In the longer-term, the I-LEAP service will expand to provide reciprocal access to international alert data exchange with international partners, initially focussing on a potential multilateral solution with the EU followed by bilateral agreement with other partner countries who share the UK's interest in further strengthening alert-sharing capabilities

4.6 Roll-out of ILEAP began in Police Scotland on the 4th April 2023 and will conclude by 5th February 2024. To date 2000 officers have undertaken the training module and over 140,000 searches on Interpol Databases via ILEAP have been carried out.

5. CONCLUSION

5.1 In conclusion a great deal of work has been undertaken both within Police Scotland and in partnership with the Home Office and the NCA to ensure the continued safety of Scottish communities post EU Exit.

5.2 Whilst the loss of the LECJ EU Measures was of great concern to those involved in the international policing arena, the established relationships and introduction of replacement powers to mitigate the losses have ensured that we have not witnessed a degradation of

service to Scottish communities we serve or the investigations we support out with our borders. Whilst there is an increase in bureaucracy which results in slightly more cumbersome processes, that can be more protracted, Police Scotland are still highly effective in this area. This will only be enhanced further with the introduction of JICC and ILEAP.

5.2 This report is submitted for the information and consideration of the Authority for their attention and discussion.

6. FINANCIAL IMPLICATIONS

6.1 There are no financial implications in this report.

7. PERSONNEL IMPLICATIONS

7.1 There are no personnel implications in this report.

8. LEGAL IMPLICATIONS

8.1 There are no legal implications in this report.

9. REPUTATIONAL IMPLICATIONS

9.1 There are no reputational implications in this report.

10. SOCIAL IMPLICATIONS

10.1 There are no social implications in this report.

11. COMMUNITY IMPACT

11.1 There are no community implications in this report.

12. EQUALITIES IMPLICATIONS

12.1 There are no equality implications in this report.

13. ENVIRONMENT IMPLICATIONS

13.1 There are no environmental implications in this report.

RECOMMENDATIONS

Members are invited to note and discuss the contents of this report.

Appendix A

POLICE SCOTLAND CASE STUDIES

Mark Quinn

On 06 November, 2015 a European Arrest Warrant (EAW) was issued at Edinburgh Sheriff Court for the arrest of Mark Quinn, born 04/02/1964, wanted for drugs and serious organised crime offences. Information was available during the following years to suggest that Quinn had fled the United Kingdom and remained criminally active, displaying a high degree of tradecraft to evade law enforcement. The EAW was validated immediately prior to Brexit to ensure it remained live and enforceable across EU Member States (EUMS).

After prolonged investigation and intelligence development by the Police Scotland Fugitive Active Search Team (FAST) in conjunction with trusted UK based and International Partners, the location of a possible dwelling was identified for Quinn in The Netherlands.

A pre-planned operation thereafter took place on 08 October, 2021 in partnership with Dutch law enforcement Specialist Surveillance and SWAT Teams which resulted in Quinn being arrested at the identified address in Maastricht, Netherlands. This arrest was only made possible through effective collaboration with law enforcement from a number of EUMS over a prolonged period of time both pre and post Brexit with such cooperation achieved via the NCA network of International Liaison Officers (ILO) and the UK-based Foreign Law Enforcement Community (FLEC).

On 21 September, 2022 Mark Quinn was sentenced to seven years in prison at the High Court in Glasgow after being convicted for his involvement in importing and supplying millions of pounds of controlled drugs into Scotland during 2013 and 2014.

Ryan Schembri

On 11 April, 2022 a Trade and Cooperation Agreement (TaCA) Warrant was issued by the Criminal Law Courts in Valletta, Malta for the arrest of Ryan Schembri, born 05/09/1978, wanted in relation to an accusation of involvement in a multi-million euro fraud and money laundering scheme. National Crime Agency initiated contact with Police Scotland Extradition Unit citing possible financial links to Scotland.

Despite links to various countries across the world, an address in Glasgow was identified after investigation and intelligence development by Police

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Scotland Extradition Unit in conjunction with UK based and International Partners including National Crime Agency, Malta Police Force and the Office of the Attorney General in Malta. During the morning of 15 April, 2022, officers of the Extradition Unit, supported by colleagues from the joint Police Scotland and NCA Organised Crime Partnership (OCP), traced and arrested Schembri within the identified Glasgow premises.

On 28 March, 2023 a Court in Malta found that Schembri had committed fraud. During his time as a fugitive, Schembri displayed an aptitude for evading capture across the world before arriving in England leaving a limited conventional footprint in the UK, ultimately utilising tradecraft to obfuscate his relocation to Scotland. His arrest was achieved through the close working relationships developed with UK and International Partners after a warrant was issued under the framework of the Trade and Cooperation Agreement.

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TCA provision	What does it do?	Comparison with EU Membership	Current and Future Mitigation
<p>1. Operational Information</p> <p>Title IV</p> <p>(Formerly SISII)</p>	<p>Provides a legal basis for ad-hoc information sharing between law enforcement partners in EU law, meaning urgent information sharing is less likely to fall foul under EU or national data protection law.</p>	<p>One of the most significant consequences of the UK's new third country status is the loss of access to the Schengen Information System (SIS II). The importance of this system, and the real-time access it provided to data about persons and objects of interest, including wanted and missing persons, was of particular importance to Scottish law enforcement</p> <p>Interpol provides information but on a case-by-case non-real time basis.</p>	<p>The UK's longer-term plans are to improve the exchange of alert data, between the UK, EU and third countries through the Interpol Law Enforcement Alert Platform (ILEAP).</p> <p>Still dependant on EU Member States willingness to upload information to Interpol</p>
<p>2. Surrender</p> <p>Title VII</p> <p>(Replacing the European Arrest Warrant)</p>	<p>Provides for the surrender of wanted persons under a warrant issued in the other jurisdiction.</p>	<p>The system is not based on mutual recognition and therefore allows EU Member States to refuse extradition on the basis of Nationality Bars in their national laws.</p> <p>Transmission is no longer through SISII but through Interpol, which requires additional work/bureaucracy from an EU MS perspective.</p> <p>EU MS can no longer automatically circulate to the UK and EU MS.</p> <p>"Additional safeguards" around procedural rights, proportionality and trial readiness.</p>	<p>Nationality bars and Transfer of proceedings work [see below]</p> <p>Whilst the Nationality Bar is having an impact / delay on some surrenders of requested persons, Police Scotland continue to work very closely with the Crown Office International Cooperation Unit (COICU)</p>

Nationality Bars

The TCA has reintroduced bars to extradition, based upon nationality, by certain Member States.

Ten countries (Croatia, Finland, France, Germany, Greece, Latvia, Poland, Slovakia, Slovenia, Sweden) have declared an absolute nationality bar with Czechia and Austria confirming they will only extradite their nationals if the requested person consents to extradition which, in essence, is tantamount to an absolute bar.

Belgium, Ireland, Spain and Italy have declared no bar to surrender. The remaining eleven have asserted conditional bars on the basis of reciprocity, with some also requiring return for service of any custodial sentence.

In its 2016 Petruhhin judgement, the Court of Justice of the European Union (CJEU) introduced specific obligations for Member States that do not extradite their own nationals and receive an extradition request for the prosecution of an EU citizen who is a national of another Member State and has exercised his right to free movement. These rights dictate that the Member State is obliged to initiate a consultation procedure with the Member State of Nationality of the EU citizen, thus giving the latter the opportunity to prosecute its citizen by means of an EAW.

Transfer of Proceedings

The TCA provides that where a State refuses to surrender a person based on nationality, they must refer the case to their own prosecution authorities for consideration. This is likely to result in the state of nationality undertaking to prosecute the case. This will involve the transfer of the evidence recovered for the domestic case, including the statements of the victim and witnesses (commonly known as “transfer of proceedings”) The TCA provides that witnesses will be given the necessary support and means to participate in the trial such as giving evidence by video link. This will have adverse implications for victims and witnesses as they will require to provide evidence under the rules of evidence and procedure of the foreign State.

3.	Exchanges of DNA, Fingerprints and Vehicle Registration Data (Prüm) Title II	Reciprocal cooperation between the UK’s and the EU Member States’ respective law enforcement authorities governing the automated transfer of DNA profiles, fingerprints (referred to as ‘dactyloscopic data’ in the text) and “certain domestic vehicle registration data	No change- Continued access to Prüm	The UK commenced DNA exchange on 8 July 2019 and now enjoys access to over 80% of the EU’s DNA data collection. There has been a very significant hit rate .
4.	UKCRIS/ECRIS	Provides access to an EU-wide database of criminal	EU Member State should be replied to as soon as possible, and at a	It is also used by Disclosure Scotland to make criminal records

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	Title IX (Formerly ECRIS)	convictions that provides judges and prosecutors with easy access to comprehensive information on the criminal history of EU nationals.	minimum within 20 days, the UK is hitting this target in 99.3% of cases	requests for vetting/barring purposes to 12 EU Member States' authorities in respect of EU nationals from those Member States seeking to work in regulated work (positions with access to children and vulnerable adults).
5.	MLA Title VIII (Formerly the EIO, moving evidence around)	The EIO came into effect in 2017 and is in operation in all EU Member States with the exception of Ireland and Denmark. Despite being a relatively new tool, it has proved effective in standardising requests for assistance in cross-border criminal investigations and has allowed for simpler and accelerated exchanges of evidence between participating Member States. Through the EIO, any activity that can be carried out lawfully domestically can be asked for, or asked of, another Member State	Parties have agreed to build upon CoE conventions, Previously outlined issue on timelines against Scottish rules on custody will be monitored. This related to the MLA timelines (45 days plus 90 days) being 15 days longer than the usual custody limited (110 days).	Authorisation or assistance in continuing observations on a person who has strongly believed to have committed an offence or may lead to the identification or location of such a person can be requested under article 17 of the Second Additional Protocol (2001) to the Convention on Mutual Legal Assistance. Not all Council of Europe countries have ratified the protocol, or art 17. Many have declarations taking exceptions to part or all of it.
6.	Cooperation with Europol Title V (formerly Europol membership)	UK police forces now cooperate with Europol on a third country basis	Membership of Europol gives law enforcement officers and specialists direct and instant access to secure Europe-wide information sharing systems that extend their reach in tracking down individuals and tackling crime. Europol also offers analytical and operational support to	Very little appears to have changed in our relationship with Europol despite now being a third country, albeit we are no longer in a position to instigate a Joint Investigation Team (JIT) and have to rely on the EUMS inviting us to attend. The UK

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			<p>law enforcement agencies.</p> <p>UK police forces have now lost direct access to those databases, but cooperation can still take place where PS are invited.</p> <p>The UK's ability to influence the direction of Europol will be drastically reduced too.</p>	<p>remains one of the top third countries contributing to Europol databases</p>
7.	<p>Cooperation with Eurojust</p> <p>Title VI</p> <p>(formerly Eurojust membership)</p>	<p>UK prosecutors now participate on a third country basis.</p>	<p>The UK's ability to influence the direction of Europol will be drastically reduced too.</p>	<p>Working relationships are described as good and COPFS are still able to second a trainee.</p>
8.	<p>Passenger Name Records</p> <p>Title III</p>	<p>Information provided by passengers and collected by airlines in the normal course of their business. An important law enforcement tool allowing us to prevent, detect and investigate terrorism and other forms of serious crime, PNR offers advance notice of travel (in certain circumstances) and personal information for passengers which aids Police Scotland in countering serious organised crime and terrorism.</p>	<p>There are specific rules on retention of PNR data that the EU has not brought into force yet as the UK needs time to update systems for compliance.</p>	<p>Under the TCA, the UK will require to delete PNR data by December 2023 after passengers depart the UK, unless objective evidence can be provided that certain passengers present a risk in terms of fighting terrorism and serious crime</p>
9.	<p>Asset Freezing and Confiscation</p>	<p>Allow EU Member States and the UK to cooperate on the confiscation of assets derived from</p>	<p>Parties have now agreed to build upon CoE conventions for asset freezing and confiscation.</p>	<p>CRU and POCU are participating in newly established International</p>

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	Title XI	serious and organised crime		Proceeds of Crime Group. No major issues with EU compliance so far, although only one issue has arisen where Ireland is incorrectly requiring freezing requests
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