



Law Society
of Scotland

Security, law enforcement and criminal justice: A Future Partnership Paper

The Law Society of Scotland's response

8 December 2017



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The UK Government has published the '*Security, law enforcement and criminal justice: a future partnership paper*' as part of its proposals in the context of the EU Withdrawal negotiations. This paper constitutes the Law Society of Scotland's comments on that paper.

The paper has been produced by HM Government as part of a series of papers setting out key issues that form part of the Government's vision for the partnership with the EU post- Brexit. The UK Government propose working together with the EU to ensure the security of both the UK and EU in dealing with threats that are faced on an international basis.

We believe the priority must be to ensure that there is stability in the law for the public and their advisers at the date of exit from the EU. Domestic legislation passed at or following exit will be required to ensure that stability.

There must be consistency in how the law is applied in the field of security, law enforcement and criminal justice. Specific areas within the field comprise the recognition and enforcement of citizens' rights, the rule of law, promotion of the interests of justice, protection of human rights, the handling of pending cases before the European Court of Justice and the impact of the UK's exit on the devolved administrations. Paragraph 4 of the paper proposes that the closest possible co-operation between the UK and EU must be maintained and strengthened in continuing to tackle terrorism, organised crime and other threats. Many common areas of interest between the UK and EU in relation to serious and organised crime are identified in the paper such as smuggling of firearms, financial crime, human and drug trafficking and cyber-crime. Common policy areas include the management of EU's external borders to judicial co-operation in civil and criminal matters and police co-operation.

The paper identifies a number of ways that the UK and EU co-operate and must continue to co-operate in security, law enforcement and criminal justice matters. For instance, the UK has developed along with the EU various legal instruments that form a 'toolkit' facilitating operational co-operation with the EU and, on occasion, third countries. That is underpinned by Title V of Part Three of the Treaty on the Functioning of the European Union. The toolkit (and the extent of and need for co-operation and involvement are discussed in greater depth later) includes:

- EU's recent Directive on Passenger Name records adopting a pan- EU approach to processing passenger data which can identify suspicious patterns of travel both across the EU and all routes into the EU;
- Schengen Information System that alerts law enforcement agencies across the EU and Schengen area as to people and objects of interest;
- European Arrest Warrant (EAW); and
- European Internet Referral Unit to detect and combat terrorism propaganda on line.

Questions arise as to how security, law enforcement and criminal justice are to be handled at the date of exit.

Paragraph 5 identifies that *'the first duty of government is to keep people safe'* where there should be no changes that would prejudice that safety. Consideration needs therefore to be given as to what arrangements (including transitional arrangements) should be made to address that problem of safety. That can be resolved as part of the Withdrawal Agreement or the development of the UK's future relationship with the EU. What is vital is resolution to avoid uncertainty and disruption. We do not support any changes to the law which would prejudice or adversely affect the safety of the UK people.

The approach adopted in the European Union (Withdrawal) Bill:

- repeals the European Communities Act (ECA) 1972 so that the various Treaties and Regulations will then cease to have effect;
- converts directly applicable EU law (e.g. EU regulations) into UK law;
- preserves all the laws which have been made in the UK to implement EU obligations (such as EU directives);
- incorporates any other rights which are available in domestic law by virtue of section 2(1) of the European Community Act (ECA) 1972 Act including the rights contained in the EU treaties; and
- provides that pre-exit case law of the Court of Justice of the European Union (CJEU) be given the same binding, or precedent, status in UK courts as decisions of the Supreme Court or the High Court of Justiciary in Scotland.

How reciprocal arrangements between the Member States including reciprocal rights of citizens will work post exit need resolved when the UK leaves the EU such as. As a matter of law, those obligations will fall away for the UK at the point when the UK leaves the EU and the ECA is repealed. At the same point, EU Member States' obligations to the UK and its citizens will also fall away. Any such obligations that continue beyond that time would only exist if they are agreed between the EU and the UK as part of the negotiations. The UK's position and that of the EU on the recognition of the reciprocal EU citizens' rights is still to be agreed. Contingency planning is required to ensure stability as to what citizens' rights comprise at the time of withdrawal whatever the outcome of the UK negotiations may be.

General Comments

When the Scottish Parliament was established as a result of the Scotland Act 1998, it was given responsibility for a number of devolved matters which include law and order, criminal law and criminal

justice. Security, official secrets, interception of communication and defence are reserved to the UK Parliament. Under the Scotland Act 1998, international relations are outside the competence of the Scottish Parliament although the Scottish Government and the Scottish Law Officers have joined UK delegates in the justice arena at EU Justice Ministers and EU Prosecutors' meetings. The Scottish Government is obliged to implement international obligations, including those under EU law. The Scottish Government has often had input into the UK's negotiating positions as well as a role in implementing EU legislation where it affects devolved competence. The Scottish Government also scrutinises that legislation from a Scottish perspective.

Since the UK is a multi-jurisdictional state, there will be a specific impact on Scotland post withdrawal given that it has its own legal system with its own criminal and civil law, as well as its court structure and procedure, legal profession, prosecution and police force. To that extent, since the paper deals with the UK's capabilities and expertise in security, the scope as to the delivery of justice and the fight against crime and terrorism is directly relevant to criminal law and therefore of great significance to Scotland. International cooperation on internal security takes place on a daily basis at multiple levels (in both the EU and non- EU context) which co-operation directly involves Scotland and requires to continue post-withdrawal.

The paper identifies number of EU mechanisms and measures that facilitate co-operation and include areas of interest for the Scottish legal system. These are set out mostly under paragraphs 11 and 13 reflecting the toolkit referred to above and include:

- the exchange of information between Member States' law enforcement agencies and judicial bodies (paragraph 11);
- European Arrest Warrant under the Extradition Act 2003 (paragraph 13);
- participation in EU agencies such as Europol and Eurojust (paragraph 13).

Co-operation is currently necessary as it has developed over time to ensure that the EU has the means to deal expeditiously with circumstances that clearly arise where a criminal organisation is operating in a number of EU countries or a criminal is hiding in a different EU country. The UK's exit will have significant effect on the necessary exchange of information and participation in and with EU agencies.

The relationship between the UK and EU agencies will be different. However, effective measures are needed to ensure that information is continued to be shared post exit. At this stage, this should include development of plans to cover the transitional position at exit, specifically to ensure that co-operation with Eurojust and Europol all continue seamlessly. That will avoid potential problems and delays in arising from the accessing of the databases to lead in future investigations or management functions.

The paper has inevitably been developed on a UK perspective. It does recognise to the need to work with the Devolved Administrations and others as negotiations go forward on the UK's future partnership with the EU. However it does not recognise the role in the Scottish system of the courts or the Lord Advocate. We encourage the UK and the Scottish Government to co-operate with each other on raising awareness about the areas of interest and focus for Scotland now and to provide information, where relevant, from the Scottish perspective during such negotiations.

The paper refers to the UK's institutional framework for dealing with as well as the operational and administrative aspects of EU justice issues.

Though the UK Government controls the direction of the UK's involvement in EU justice policies, the Scottish Government has a key role in inputting its views into the UK's negotiating positions as well as implementing EU legislation and scrutinising such legislation. A number of Scottish Government departments are involved though in the area of security, law enforcement and criminal justice, responsibility falls mainly under the Justice Department.

Scottish bodies, including Crown Office and Procurator Fiscal Service (COPFS), the Scottish Courts and Tribunal Service (SCTS) and Police Scotland whose responsibilities are specifically detailed below, do undertake operational and administrative aspects of the EU's justice policies in Scotland where Scotland requires to work with a number of EU institutions and organisations at a government level. Representation, for instance, includes COPFS on the 'Eurojust Oversight Board' that sets out the direction of the UK's Eurojust policy and police officers based in the Europol Liaison Office in The Hague. Practical work includes dealing with outgoing and incoming European Arrest Warrants including execution of incoming European Arrest Warrants in Scotland.

Specific responsibilities of these organisations are detailed below:

COPFS: Enforcement of criminal matters is undertaken through Scotland's own prosecution service, the COPFS. The Lord Advocate is the Head of the COPFS where his position is unique. He has four main functions including head of the systems of prosecution and investigation of deaths, principal legal adviser to the Scottish Government, representing the Scottish Government in civil proceedings and represents the public interest in a range of statutory and common law civil functions.

His decision making in relation to prosecution of crime is taken independently of the Scottish Government. Prosecution decisions are taken by COPFS in the public interest acting as independent prosecutors. In relation to serious crimes (paragraph 5), indictments will run in his name as the Lord Advocate. The COPFS receives reports about crimes from the police and other reporting agencies (which will include EU based institutions working with Police Scotland). It is then solely responsible for instructing and undertaking any prosecutions undertaken in Scotland. That will include prosecution of the crimes identified in paragraph 5 where the locus is in Scotland.

Until devolution in 1999, all Lord Advocates were, by convention, members of the United Kingdom government. The post was not normally within the Cabinet. Since devolution, the Lord Advocate has been an automatically *ex officio* member of the Scottish Government and acts as its principal legal adviser. He attends and can speak in the Scottish Parliament. He is therefore not subject to normal ministerial rules of collective decision-making.

The COPFS identifies its priorities as reducing crime, which include particularly violent and serious organised crime such as these envisaged in the paper. Increasing public confidence and reducing fear of crime are also set out as commitments.¹ Any prosecutions conducted must be subject to the rules of Scottish criminal procedure and Scottish evidential requirements as to admissibility and sufficiency with requirements on corroboration and identification (specific to Scotland) needing to be met.

SCTS: The SCTS is responsible for the administration of the distinct Scottish court system. The Judicial Office for Scotland is a separate part of the SCTS and provides support to the Lord President in his role as head of the Scottish judiciary with responsibility for the training, welfare, deployment, guidance and conduct of judges and the efficient disposal of business in the courts.

The judiciary are responsible for the conduct of any trials and implementation of the law within its courts, including sentencing. There are rights of appeal within the Scottish court system with the High Court of Justiciary, being the highest criminal court of appeal, except in relation to any appeal on a devolution matter that falls to be heard by the UK Supreme Court. The case of *Cadder v HM Advocate* [2010] UKSC 43 (right of a suspect to legal advice at the police station) is an example of one such case² where the Supreme Court had a significant effect on Scots Law.

Clause 6 of the European Union (Withdrawal) Bill reflects the position in relation to EU law post exit. The legal situation is referred to as complex because EU court decisions will no longer be intended to have supremacy in relation to UK law. Just how the various clauses within Clause 6 as finally passed will be interpreted and interact is still a matter for ongoing debate.

There are calls for UK Government to set out clearly in the bill what the judges will require to do about decisions of the European Court of Justice after Brexit. These issues can be seen as just as relevant for the Scottish judiciary in relation to cases calling before them in Scottish courts. One of the main issues can best be seen when considering how Scottish judges will be required to have regard to the decisions of the European Court of Justice (CJEU) after Brexit.

As the debate in the House of Commons on 14 November shows³, there is ongoing concern on just how the law is to be applied which will present considerable difficulties for lawyers in advising to clients what the law actually is which will cause an increase in court costs, possible delay and more court time. There may well be an increase in numbers of potential appeals and until issues are resolved, there will continue to be a lack of certainty for those appearing before the courts and their advisers as to the outcome. If presented with a post exit day decision of the CJEU, the judges would naturally consider whether to have regard to it and not simply reject it out of hand. They would require sound reasons for any decision they make about

¹ (<http://www.copfs.gov.uk>)

² (<https://www.scotcourts.gov.uk>)

³ [https://hansard.parliament.uk/Commons/2017-11-14/debates/B9A99D17-80B2-43F4-BFD8-620E40A24EE9/EuropeanUnion\(Withdrawal\)Bill](https://hansard.parliament.uk/Commons/2017-11-14/debates/B9A99D17-80B2-43F4-BFD8-620E40A24EE9/EuropeanUnion(Withdrawal)Bill)

whether or not to 'have regard to' the decision. That rightfully raises a concern from the judiciary as to the basis on which post exit decisions from the CJEU are to be treated.

Police Scotland: In addition to their local policing roles, the police have a number of national specialist divisions which include specialist investigative and intelligence functions of relevance to this paper. These include organised crime and counter terrorism dedicated in keeping people safe through their work in such areas.⁴

Their work aligns with Eurojust, Europol, Cepol (European Police College) the European Agency for Fundamental Rights (FRA) and the European Network and Information Security agency (ENISA). Continued access to such organisations is required to allow for the investigation of crime and subsequent prosecutions. That will include relevant data sharing to allow for the identification of a suspect's location and the operation of European Arrest Warrants.

One of the mechanisms for data sharing includes the European Agency for the operational management of large-scale IT systems in the areas of freedom, security and justice. (CEPOL, Eurojust and Europol all form important members of eu-LISA). As can be seen, internal UK security is moving to greater use of technology and virtual networks. So too is the EU. Scotland must continue to work with EU-LISA to support its role in managing and promoting information and communication technology to implement the EU's policies in the areas of justice, security and freedom is essential. We recognise that a single country cannot ensure its security alone. Use of sophisticated, flexible and integrated systems and solutions must be maintained to enable law-enforcement, cooperation and integrated border management. Working with EU-LISA helps to address the challenges set out in the paper at paragraph 8 including irregular migration, cross-border crime and terrorism.

Scottish Government: The Scottish Government has set out '*The Strategy for Justice in Scotland*'⁵. Justice includes criminal, civil and administrative justice as well as community safety. The aim is to have:

'a justice system that contributes positively to a flourishing Scotland, helping to create an inclusive and respectful society, in which all people and communities live in safety and security, individual and collective rights are supported, and disputes are resolved fairly and swiftly'.

Scotland faces the same threats to its security as for the rest of the UK and EU. Attacks such as the Glasgow Airport and London West End terrorist attack by Doctor Bilal Abdullah⁶ have demonstrated that. It is essential that Scotland does and continues to co-operate with the relevant law enforcement agencies, networks and systems on a similar basis on which they currently do. Scotland needs to be able to fulfil its current level of commitment and responsibility. The Scottish Government has identified post exit that

⁴ (<http://www.scotland.police.uk/>)

⁵ (<http://www.scotland.police.uk/>)

⁶ (<https://www.theguardian.com/uk/2008/dec/16/glasgowairporttrial-uksecurity>)

continued co-operation and involvement is required. It needs to work to resolve the Scottish specific interest in the areas outlined in the paper.

Our observations highlight specifically in the paper where we consider that there should be a specific Scottish focus.

Specific Observations on Security Law enforcement and criminal justice: A Future Partnership Paper

Executive Summary

Paragraph 3: This outlines how the UK works with the EU Member States which includes a range of EU tools and measures which is undertaken in accordance with a shared commitment to ensure protection of rights and liberties.

The European Convention on Human Rights (ECHR) sets out basic human rights and provides a framework for the Scottish Government and all other public bodies in Scotland to act. Legal force was given through the Human Rights Act 1998 and the Scotland Act 1998. There are specific duties on Scottish Ministers and the Scottish Parliament to act in accordance with the 'Convention rights'. These Acts mean that Convention rights are directly enforceable in domestic law.

Post exit, any model for future co-operation must be underpinned by support for shared principles. That must include a commitment to safeguarding of human rights (para 39). Any proposal that would reduce or erode the rights currently enjoyed by the citizens in Scotland, for instance, even procedural rights (The roadmap on procedural rights in 2009 ensured that the basic rights of suspects and accused persons were sufficiently protected) should be resisted.

Introduction

Paragraph 6: We note the reference to health in relation to benefits to the UK and EU in coordinating efforts to protect citizens by making best use of resources and ensuring complementary action is taken in areas with common objectives. Health is a devolved matter for Scotland. See our Analysis paper 'The UK withdrawal from the EU and the potential impact on health related matters'⁷ that deals with matters disaster

⁷ <https://www.lawscot.org.uk/media/359202/hea-eu-withdrawal-and-the-potential-impact-on-health-related-matters-law-society-of-scotland-analysis-paper>

response, preparedness and prevention, appropriate discussions would need to take place with the Devolved Administrations and NHS Scotland.

Paragraph 7: This refers to the Europol, European Union Serious and Organised Crime Threat Assessment, February 2017. It identifies that 5000 organised crime groups are currently under investigation in the EU. Scotland as part of the UK is included within that figure though the exact number operating in Scotland has not been specifically identified.

Paragraph 8: Work is ongoing in Scotland considering the safeguarding of digital information, data and networks. How the use of that range of information may be deployed in the future in court prosecutions is reflected in the SCTS's Report on "*Evidence and Procedure Review – Next Steps*". That recommends a significant re-design of summary criminal procedures, in a way that takes full advantage of new technologies including the development of detailed requirements for a Digital Evidence Vault or other means of storing and managing evidence and information relevant to criminal cases and the use of a more streamlined, digitally-enabled justice process, using digitised evidence as far as possible. Such work will need to recognise the need to access relevant data from the EU both to investigate matters of security, law enforcement and criminal justice but that such evidence is admissible in the Scottish courts on an evidential basis.

Paragraph 13: SISII (Schengen Information System): Sex offenders are subject to notification requirements under the Schedule 3 of the Sexual Offences Act 2003 when convicted of specified offences and as a result, are placed on the Sex Offenders Register. Judges in Scotland decide if there is a significant sexual element to any crime arising out with Schedule 3. All offenders placed on the Sex Offenders Register are recorded and managed on the ViSOR (Violent and Sex Offender Register) database which is used by all UK police forces in Great Britain and shared in Scotland with the Criminal Justice Social Work and Scottish Prison Service. There is a clear public interest in such information that emanates within Scotland should continue to be uploaded onto SISII.

European Arrest Warrant: Though statistics have been produced which include the application of such warrants on a UK wide basis, information from the Scottish perspective⁸ is incorporated in the Table below:

⁸ SPICe Brexit: Briefing Impact on the Justice System in Scotland obtained from a FoI request to COPFS

Cases in which proceedings have been taken in Scottish Courts on an EAW	2016 48	2012-2016 541
Extradition from Scotland in relation to an EAW	2016 32	2012-2016 367
Extradition to Scotland relating to an EAW	2016 7	2012-2016 48

Any change on the operation of such warrants would be significant for Scotland. On 7 February 2017, Michael Matheson Justice Secretary on a visit to Police Scotland International Assistance Unit said

‘Organised crime and terrorism do not respect borders and it is vital that our police service can work with counterparts in Europe and across the world to help keep Scotland safe... The excellent results achieved by our International Assistance Unit shows that this collaboration is currently working well’.

The use of alternative systems for extradition would involve much more protracted process. Concerns have also been expressed by the Lord Advocate, James Wolffe:

‘The successful investigations and prosecutions undertaken by law enforcement in Scotland demonstrate the enormous benefits derived from the excellent international cooperation we have established... This work ensures the safety and security of people living in Scotland and we are fully committed to building on the strong links we have with countries elsewhere in Europe and around the world. Scottish prosecutors and police exchange information and intelligence with many other countries and this is helping us to secure the recovery of evidence we would not otherwise be able to.’⁹

We also highlighted the development of the these warrants as a good example of effective EU cooperation in our joint response to the UK Government’s call for evidence in the 2012 in the balance of competencies review

‘though the EAW system has room for improvement, and calls have been made to amend the system including a proportionality requirement...it is a far more efficient system than the previous arrangements in

⁹ (<http://www.policeprofessional.com/news.aspx?id=28403>)

place between Member States-primarily by speeding up the extradition processes. (Law Society of Scotland and Law Society of England & Wales para 3) ’

Extradition from the UK follows a number of steps whereby a European Arrest Warrant is submitted (by means of SISII). A certificate is issued (after a proportionality test is applied) which is followed by arrest, the initial hearing and then the extradition hearing. (The National Crime Agency is the authority for such warrants under SISII).

Where such a European Arrest Warrant falls to be executed in Scotland, it follows Scottish criminal procedure where such cases will be heard by a sheriff in the sheriff court. Appeals will be heard by the High Court of Justiciary unless, as above, it concerns a point of devolution when it would be heard by the Supreme Court.

Requests for extradition are made by COPFS working with Police Scotland and the National Crime Agency and partners out with the UK, where it is believed the accused may be located.

The execution of such requests is matters for the authorities of states where the accused is located. The International Co-operation Unit (ICU) functions as the central authority in Scotland for all aspects of international criminal co-operation. It handles all incoming and outgoing extradition cases and deals with all incoming and outgoing requests for mutual legal assistance (MLA), other than those enquiries passing between police forces for the purposes of gathering criminal intelligence. The ICU serves as a single point of contact based in Edinburgh with staff split between the two teams (extradition and MLA). A relatively recent case shows the operation of such warrants. (A Perth trucker fought extradition to Belgium over drugs related offences¹⁰).

Paragraph 17: In order to work out how disputes between the UK and the EU are to be resolved, we suggest in the CJEU paper/citizens’ rights paper a joint UK/EU court.

In Box 1: Real –time data sharing

The UK participates in SISII. This facilitates the real time sharing of information and alerts between the relevant authorities in participating countries. It is in operation in all EU Member States and Associated Countries that are part of the Schengen Area. Special conditions apply for the UK as it is not part of the Schengen Area. It allows the UK to exchange information with Schengen countries for the purposes of law enforcement. Each country is responsible for setting up, operating and maintaining its national system and its national Supplementary Information Request at the National Entry (SIRENE) Bureau which is part of the UK Crime Agency.

¹⁰ (<http://www.bbc.co.uk/news/uk-scotland-tayside-central-26870372>)

The UK has full access to SIS where alerts can be made known such as for those wanted for arrest for extradition. Access to the SIS has allowed where EAWs are issued, they are automatically broadcast to the police forces in Europe as well as vice versa.

Other non EU member states countries do participate in SIS. It is essential that careful consideration should be given to how access to such framework systems will continue post exit.

There are a number of sharing mechanisms in which the Scottish justice system are involved but do not appear to be not expressly mentioned ‘security, law enforcement and criminal justice: a future partnership paper’. These include Asset recovery legislation, EU funding for the establishment of Joint Investigative Teams with other Member States, EU Mutual Legal Assistance Agreements with Japan and the USA, the European Investigation Order Europol and Rights on Human Trafficking, and the Sexual exploitation of Children and Victims’ Rights. It does specifically refer to Eurojust and Europol. Exactly how relationships are to be maintained in other EU and UK organisations must be considered to avoid any gaps post exit.

In Box 2: Joint Investigations

An English example of practical co-operation has been provided. A case from the Scottish perspective can be included that was a major success as the result of effective practical cooperation¹¹. On 23 April 2015, a quantity of cocaine was seized following a joint NCA, Border Force and Royal Navy operation in the North Sea. A tug MV Hamal was intercepted about 100 miles east of the Aberdeenshire coast. There was cooperation with the French Customs Service DNRED and coordination with the UK’s National Maritime Information Centre (NMIC) plus the Maritime Analysis and Operational Centre - Narcotics (MAOC-N) based in Lisbon. A search was carried out with a large quantity of cocaine valued at £512m found and a number of men arrested and subsequently convicted. It represented the biggest single cocaine haul ever recovered at sea in Europe. Lord Kinclaven indicated:

‘You were involved in a most serious operation of commercial scale involving the transportation of cocaine by ship in an operation which crossed international and indeed intercontinental boundaries.’¹²

Paragraph 37 discusses the future role of the European Court of Justice. It refers to another paper published in the series on ‘Enforcement and dispute resolution: a Future Partnership Paper’ published on 23 August 2017 in respect of any internal security arrangements being made on the same principles as for

¹¹ (<http://nationalcrimeagency.gov.uk/news/news-listings/605-cocaine-found-after-north-sea-boat-raid>).

¹² (<http://www.dailymail.co.uk/wires/pa/article-3735625/Drug-smugglers-sentenced-cocaine-worth-500m-ship.html#ixzz4vgWQ69li>)

dispute resolution. It is assumed that it is intended that the reference is to paragraphs 9- 12 where that section is headed '*The United Kingdom's guiding principles*'.

Paragraph 12 refers to working with the devolved administrations in Scotland and Wales recognising that they have separate legal systems from England and Wales. The Scottish legal system is independent as is the Scottish court service. We refer to the reference to COPFS on Page 5 above where its responsibilities and that of the Lord Advocate, as the Scottish Law Officer in Scotland for both civil and criminal matters are more specifically set out.

The Head of the Scottish judiciary is the Lord Justice General and the High Court of Justiciary is the supreme criminal court in Scotland, except on devolution appeals.

There is a commitment in paragraph 12 to '*engage*' fully with the devolved governments to ensure that their priorities on these issues are taken into account. These should take account of the distinct nature of Scots law and engage with the COPFS the Lord Advocate and the Scottish judiciary as highlighted above.

This paper refers to disputes; any criminal enforcement and application of the law in so far it applies to Scotland would be subject to the Scottish criminal law, procedure and its courts.

Paragraph 40 notes that close working will be especially important where justice and policing are devolved. It should also take into account the separate legal systems in the UK and the distinct application and administration of Scots criminal law.



For further information, please contact:

Gillian Mawdsley
Policy Executive
Law Society of Scotland
DD: 0131
gillianmawdsley@lawscot.org.uk