



Law Society
of Scotland

Scottish Parliament Justice Committee Call for Evidence

The implications of the UK's exit from the European Union on policing and criminal justice in Scotland.

13 February 2018



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.

We welcome the opportunity to consider and respond to the Justice Committee's request in relation to the round-table session to consider the implications of the UK's exit from the European Union on policing and criminal justice.

We highlight what we consider are the key issues that underpin the Scottish position with regard to the withdrawal negotiations. Thereafter, we identify the organisations involved in relation to policing and criminal justice in Scotland and refer, where relevant to the operation of these organisations, to Europol and Eurojust, data-sharing for law enforcement purposes and criminal justice tools such as the European Arrest Warrant. We also make direct reference specifically to these topics.

The UK Government has published a series of papers setting out the key issues that form part of the Government's vision for the partnership with EU post- Brexit. In relation to the field of criminal justice, the UK Government published the '*Security, law enforcement and criminal justice: a future partnership paper*¹' as part of its proposals in the context of the EU withdrawal negotiations. The Society had the opportunity to publish its response on 8 December 2017.² Much of what is contained within that paper is pertinent to the Justice Committee's discussions. We recognise, inevitably, matters have advanced in relation to the actual withdrawal negotiations as well as through ongoing negotiations and discussions with the Scottish Government on the implications of withdrawal in respect of devolved matters.

¹ <https://www.gov.uk/government/publications/security-law-enforcement-and-criminal-justice-a-future-partnership-paper>

² <https://www.lawscof.org.uk/media/359303/the-law-society-of-scotland-response-security-law-enforcement-and-criminal-justice.pdf>

Key issues

We consider that the key issues to be considered in relation to future agreement with the EU post Brexit include stability in the law for the public and those who are required to advise on such matters.

Domestic legislation passed at or following exit will require to ensure such stability. The law must be consistent in its application especially in relation to all aspects of criminal justice and how that is and will be applied.

The UK Government has urged the closest possible continued co-operation between the UK and EU which must be maintained and strengthened to deal with the issues arising in relation to policing and the criminal justice system. That is crucial when addressing terrorism and organised crime which are continuing threats to Scotland, UK and EU. Organised crime comes in many guises. Scotland will wish to continue to deal effectively with, as examples, financial and cyber-crime, human and drug trafficking and smuggling of firearms. Policy interests in this area of criminal justice include the management of EU external borders, judicial co-operation in criminal matters and police co-operation.

We recognise that the UK is a multi-jurisdictional state.

We set out the context of the Scottish position with regard to the legislative framework that exists and reflect on the current position regarding the Brexit discussions. Thereafter, we emphasise the importance of being aware in all ongoing negotiations of the unique Scottish dimension in relation to criminal justice which must be taken into account in withdrawal negotiations. That involves the role of the Lord Advocate which we discuss fully below.

There will be an impact on Scotland post-withdrawal given its unique legal system that includes both criminal and civil law. In discussing the scope of criminal justice, its court structures and procedure, legal profession, prosecution and police force are all relevant.

Significant questions therefore arise as to how criminal justice, policing, law enforcement and security will be dealt with post exit.

Meantime, in turn, the European Commission has been considering the consequences of the UK withdrawal. Exactly what the relationship will involve is uncertain as negotiations continue. It recognises that future co-operation and arrangements do require to include:

- the exchange of security relevant data such as Europol and Eurojust,
- operational co-operation such as Europol and Eurojust

- judicial co-operation on criminal matters that include the European Arrest Warrant and collecting and exchanging evidence in cross-border criminal proceedings and other forms of assistance.³

Scottish position

The Scottish Parliament was established as a result of the Scotland Act 1998.

Responsibility was given for a number of devolved matters which include criminal justice (including criminal law) and policing (including security and law and order). However, a number of these interests do overlap with matters that are reserved to the UK Government that include, as examples, security, official secrets, interception of communication and defence. International relations lie out with the competence of the Scottish Parliament though the Scottish Government and Scottish Law Officers do attend relevant meetings at EU level with EU Justice Ministers and EU Prosecutors. As well as implementing international obligations, the Scottish Government has had input into the UK's negotiations as well as requiring to implement EU Legislation where that has affected areas of devolved competence.

As we consider the possible effects of the withdrawal, existing legislation will be required to be scrutinised. That includes UK Acts (those made by the United Kingdom Parliament that extend to the UK and/or Scotland alone), Scottish Acts (those made by the Scottish Parliament post devolution) and secondary legislation made by both Parliaments. This is the structure into which EU law fits into the law affecting the UK. The EU legal order is a supra national legal order formed by the EU Treaties and the *acquis communautaire*.

The European Union (Withdrawal) Bill (Bill) includes:

- repealing 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 ECA Act 1972 including the rights contained in the EU treaties
- provides that pre-exit case law of the Court of Justice in the European Union (CJEU) be given the same binding or precedent status in the UK courts as decisions of the Supreme Court or the High Court of Justiciary in Scotland.

³ Spice briefing Brexit update Culture Tourism Europe & External Relations Committee 9 February 2018 Issue 57. It includes slides for presentational and information purposes presented to the Council Working Party (Article 50) on 23 January 2018 future relationship covering police and judicial cooperation in criminal matters
http://www.parliament.scot/S5_European/General%20Documents/CTEER_Brexit_update_2018.02.09.pdf

As the debates and negotiations go forward, there will be greater understanding of how these provisions will affect Scotland.

Discussion on devolved matters

The Cabinet Office published a list of 111 points⁴ where EU law intersects with devolved matters in late 2017. A number of these categories do fall within the scope of criminal justice and policing and include:

- data sharing in various capacities⁵
- EU agencies including Eurojust, EU-LISA and Europol
legal aid in cross-border cases
- minimum standards legislation⁶
- mutual recognition of criminal court judgments measures & cross border cooperation – European Protection Order, Prisoner Transfer Framework Directive, European Supervision Directive, Compensation to Crime Victims Directive
Practical cooperation in law enforcement – Asset Recovery Offices
- practical cooperation in law enforcement⁷
- procedural rights (criminal cases) – minimum standards measures
- revision of legal services
- victims' rights measures (criminal cases).

These areas are important, complex and frequently very technical. They comprise highly regulated areas of policy with the law that has been created by EU Directives, Regulations and Decisions. They have been implemented by primary and secondary UK and Scottish legislation and a number of administrative, non-statutory arrangements. In addition, there are a number of areas where there is no need for legislation but greater cooperation is required as discussed below in relation to the role of the Lord Advocate and criminal justice that also needs to be factored in. We would merely stress the complexity of ensuring that all issues falling within criminal justice and policing are resolved satisfactory with certainty at the date of exit.

4 <https://www.scotsman.com/news/list-of-111-powers-snp-say-scotland-will-be-denied-after-brex-it-1-4564360>

5 Including EU fingerprint database (EuroDac), European Criminal Records Information System (ECRIS), False and Authentic Documents Online (FADO), passenger name records, Prüm framework and the Schengen Information System (SIS II)

6 child sexual exploitation, cybercrime football disorder human trafficking

7 European Investigation Order, Joint Action on Organised Crime, Joint investigation teams mutual legal assistance mutual recognition of asset freezing orders mutual recognition of confiscation orders Schengen Article 40 Swedish initiative European judicial network, implementation of European Arrest Warrant

Scottish bodies involved in the criminal justice system

Scottish bodies involved in the criminal justice system include the Crown Office and Procurator Fiscal Service (COPFS), the Scottish Courts and Tribunal Service (SCTS) and Police Scotland whose roles and responsibilities are detailed below. All undertake operational and administrative aspects of the EU's justice policies in Scotland where, as highlighted above, Scotland requires and will continue to work with a number of EU institutions and organisations at government level. Such representation includes COPFS on the 'Eurojust Oversight Board' which 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 the European Arrest Warrant, in both outgoing and incoming capacities.

Specific responsibilities of these organisations include:

COPFS: COPFS is Scotland's own criminal prosecution service. The Lord Advocate (Her Majesty's Advocate) is the Head of COPFS where he has a unique position. He is the chief public prosecutor for Scotland and all prosecutions on indictment (solemn) are conducted by the COPFS, nominally in his name. He has four main functions including:

- head of the systems for prosecution and investigation of deaths
- principal legal adviser to the Scottish Government representing the Scottish Government in civil proceedings
- representing the public interest in a range of statutory and common law civil functions.

His decision making in relation to the prosecution of crime is taken independently of the Scottish Government. Decisions to initiate prosecutions are taken by COPFS in the public interest acting as independent prosecutors.

COPFS receives reports about crimes from Police Scotland and other reporting agencies which will include EU based institutions working with Police Scotland. COPFS is solely responsible for instructing and undertaking any prosecutions where the locus of the crime is within Scotland. There are crimes which may be prosecuted in Scotland with an extra-territorial dimension. These could include potentially sexual,⁸ homicide and conspiracies⁹ and football offences.¹⁰ It may be useful for purposes of illustration to show the interaction between EU and Scots Law as one of the devolved matters identified above.

The Minimum standards legislation– football disorder:¹¹ refers under EU Law, Council Resolution of 3 June 2010 (2010/C 165/01) to an updated handbook with recommendations for international police cooperation

⁸ sections 54-56 Sexual Offences (Scotland) Act 2009

⁹ Sections 11-11A Criminal Procedure (Scotland) Act 1995

¹⁰ Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 section 6

¹¹ Number (44) on that list.

and measures to prevent and control violence and disturbances in connection with football matches with an international dimension, in which at least one Member State is involved.¹² Under Scots Law, such provisions have been included in the Police Public Order and Criminal Justice (Scotland) Act 2006.¹³

Since devolution, the Lord Advocate has been automatically an *ex officio* member of the Scottish Government acting as its principal legal adviser. He attends and can speak in the Scottish Parliament.

Priorities for the COPFS include reducing crime which includes violent and serious crimes and increasingly, historic sexual abuse which links in with a number of the devolved matters where EU co-operation is important. This can be illustrated too in relation to the Minimum standards legislation referred to above.

This includes the SIS11 (Schengen Information System) where sex offenders are subject to notification requirements under Schedule 3 of the Sexual Offences Act 2003. When convicted of specific offences, they require to be placed on the Sex Offenders Register. All offenders placed on the Register are recorded and managed on the VISOR (Violent and Sex Offender Register) database which is used by all UK police forces in UK and shared with other criminal justice agencies within Scotland. The UK's continued participation in the SIS11 is essential. SIS II now includes enhanced alerts on persons and objects (e.g. firearms, bank notes) and the linking of alerts on persons.

Increasing public confidence and reducing fear of crime are also commitments.¹⁴ Any prosecutions are conducted in accordance of the Scottish criminal and evidential procedure and requirements as to admissibility and sufficiency such as corroboration and identification (specific to Scotland) that must be met.

SCTS:¹⁵ It is responsible for the administration of the distinct Scottish court system. The Judicial Office for Scotland is a separate part of SCTS and provides support to the Lord President in his role as head of the Scottish judiciary with responsibility for training, welfare, deployment, guidance and conduct of judges and the efficient disposal of business in the courts.

The judiciary is responsible for the conduct of any trials and implementation of the law within its courts that includes sentencing. There are rights of appeal within the Scottish court system with the High Court of Justiciary which is the highest Scottish court of appeal except in relation to an appeal on a devolution or compatibility matters which require to be heard by the UK Supreme Court. The significant effect of the changes which have affected Scottish criminal law may be seen in the provision of advice at police

¹² [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010G0624\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010G0624(01))

¹³ sections 61- 65

¹⁴ <http://www.copfs.gov.uk>

¹⁵ <https://www.scotcourts.gov.uk>

stations.¹⁶ While in effect that involved Article 6 of the European Convention on Human Rights, there are many similar provisions where minimum standards measures have been seen to affect procedural rights in criminal cases in relation to:

- right to Interpretation:¹⁷ The EU Directive has provided for common minimum rules to require translations of information in effect to safeguarding the fairness of the proceedings. Scotland has enacted these provisions in the Right to Interpretation and Translation in Criminal Proceedings (Scotland) Regulations 2014¹⁸
- right to Information:¹⁹ Minimum standards ensure that suspects or accused persons are informed about the procedural rights including access to a lawyer, free legal advice, information about the allegation, interpretation and translation and the right to remain silent. A letter of Rights²⁰ must be supplied to such persons. That requires to contain information on a range of matters including consular assistance.²¹

Clause 6 of the Bill reflects the position in relation to EU law post exit. EU court decisions will no longer be intended to have supremacy in relation to UK law. Just how clause 6 will be interpreted and interact is still for debate. The UK Government does require to set out clearly in the Bill how judges will require to interpret the decisions of the European Court of Justice post Brexit. That is equally relevant for Scottish judges.

As we highlighted, there needs to be certainty with regard to the law that applies as otherwise, there will be a significant increase in the court costs, delay and court time. The number of appeals may well increase until such issues resolve which inevitably will take time. These concerns are been fully expressed by the Scottish judiciary and those who will be required to advise their clients.

Police Scotland: In addition to their policing role, the police also have a number of specialist divisions that include investigative and intelligence functions. These include organised crime and counter-terrorism dedicated to keeping people in Scotland safe through their work.²² Issues identified as being of interest to the Justice Committee include Europol and Eurojust and data-sharing for law enforcement purposes that all fall within the remit of Police Scotland.

¹⁶ *Cadder v HM Advocate* [2010] UKSC 43

¹⁷ Procedural rights are provided by the Directive 2010/64/EU on the right to interpretation and translation in the framework of criminal proceedings: <http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32010L0064>

¹⁸ <http://www.legislation.gov.uk/ssi/2014/95/contents/made>

¹⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:142:0001:0010:en:PDF>

²⁰ <http://www.gov.scot/Publications/2018/01/4470/1>

²¹ The Right to Information (Suspects and Accused Persons) (Scotland) Regulations 2014

²² <http://www.scotland.police.uk>

Police Scotland's work aligns with Eurojust, Europol, Cepol (European Police College), European Agency for Fundamental Rights (FRA) and the European Network and Information Security Agency (ENISA). There has to be continued access to these organisations to allow for the investigation of crime and subsequent prosecutions. Relevant data sharing must be allowed to identify the location of a suspect and the operation of the European Arrest Warrants.

Scottish Government: The aim of the Scottish Government in 'The Strategy for Justice in Scotland' includes criminal justice as well as community safety is:

*'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'*²³

Scotland faces a number of threats as attacks by Bilal Abdullah in 2017 at Glasgow Airport and London's West End have demonstrated.²⁴ We would stress that co-operation continues to be essential.

EU-LISA, Europol and Eurojust and data-sharing for law enforcement purposes

There are a number of EU mechanisms highlighted above that facilitate co-operation and include areas of interest for the Scottish criminal justice system. These include:

- the exchange of information between Member States law enforcement agencies and judicial bodies
- European Arrest Warrant (EAW) under the Extradition Act 2003
- participating in EU agencies such as Europol and Eurojust.

We recognise that the relationship post Brexit will need to be different. The transitional arrangements, however these are arranged, must ensure that it is seamless to avoid delays and problems in accessing the relevant information and databases which are required for future investigations or management functions.

Data-sharing includes the European Agency for the operational management of largescale IT systems (Cepol, Eurojust and Europol that are all important members of EU-LISA). There is a much greater use of technology and virtual networks requiring Scotland to continue to work with EU-LISA to support its role in managing and promoting information and communication technology. Working with EU-LISA helps address the challenges faced by the UK and Scotland today such as irregular migration, cross-border crime and terrorism. Co-operation is necessary so that the EU can deal expeditiously with circumstances that arise

²³ <https://www.dailyrecord.co.uk/news/scottish-news/glasgow-airport-bomber-bilal-abdullah-5068762>

²⁴ Doctor Bilal Abdullah <https://www.dailyrecord.co.uk/news/scottish-news/glasgow-airport-bomber-bilal-abdullah-506876>

where a criminal organisation is operating out of a number of EU countries or a criminal is hiding in a different EU country.

EU agencies – EU-LISA.²⁵ EU-LISA is a regulatory agency. The EU-LISA²⁶ was established as the European agency for the operational management of large-scale IT systems in the area of freedom, security and justice²⁷ to oversee the operational management of EU information systems dealing with asylum, border management and law enforcement. The 2017 Proposal²⁸ would give EU-LISA responsibility for managing new EU information systems, make some technical changes to implement an external evaluation and empower the agency to make EU information systems for security, border and migration management fully interoperable by 2020. The Government has decided to participate in the proposed Regulation:

“The Government²⁹ believe it is in the national interest to continue participating in EU-LISA, as this will maximise our influence over how it operates the IT systems that we take part in and for which it is responsible. We have therefore decided to opt in to the draft EU-LISA Regulation to the extent that it is not Schengen-building and not to opt out to the extent that it builds on the policing and judicial co-operation aspects of Schengen.”³⁰

.EU agencies³¹ – Eurojust: Eurojust is an EU agency tasked with supporting and strengthening cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States. This involves:

- facilitating requests for mutual legal assistance
- facilitating the execution of European Arrest Warrants
- bringing together national authorities in co-ordination meetings to agree an approach to specific cases
- providing legal, technical and financial support to Joint Investigation Teams.

Eurojust’s headquarters are in The Hague where seconded National Members (one from each Member State) form the College of Eurojust. This is responsible for the organisation and operation of the agency. Eurojust operates through National Desks, which are small teams of representatives from each Member State, headed by the National Member. National Desks function as single points of contact between the 28

²⁵ Number 39 on the list.

²⁶ Regulation 1077/2011/EU

²⁷ <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32011R1077>

²⁸ for a regulation on the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice

²⁹ Written Ministerial Statement issued by the Home Secretary (Amber Rudd):

³⁰ <http://qnadailyreport.blob.core.windows.net/qnadailyreportxml/Written-Questions-Answers-Statements-Daily-Report-Lords-2017-11-02.pdf>

³¹ Number 40 on the list

Member States to facilitate multilateral cooperation. Eurojust was established to support coordination and cooperation between national authorities in relation to serious crime with an EU-wide dimension. Its role includes meetings between judicial and police authorities and establishing coordination centres to facilitate joint law enforcement actions such as synchronised searches or arrests. This has included improved cross-border cooperation between prosecutorial and judicial authorities.

EU agencies – Europol:³²³³ The Government announced its intention to opt into the new Europol Regulation. Opting into the new regulation means that the UK will remain a full member of Europol until exit day. In 2017, it is understood Scotland handled 950 inquiries Interpol.

European Arrest Warrant (EAW): Any changes made to the way that the EAW operates would be significant for Scotland.

Figures obtained show that in 2016 there were 48 cases in which proceedings were taken in the Scottish Courts in relation to an EAW. 32 involved extradition in relation to an EAW and 7 involved extradition to Scotland. On 7 February 2017, Michael Matheson Justice Secretary when visiting Police Scotland International Assistance Unit (IAU) 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 [IAU] shows this collaboration is currently working well.’

The use of any alternative systems for extradition would involve a much protracted process where a number of concerns have been made. The Lord Advocate has recently warned that it is:

‘in the UK’s interests to ensure effective arrangements [are] put in place when it leaves the EU ...[including] arrangements for the extradition of individuals wanted for trial in other countries .. that we would become a safe haven for criminals. Equally, if we were unable to extradite to Scotland people who we wish to prosecute then plainly our criminal justice system would be prejudiced. If we were not members of the EU the extradition process would be significantly more cumbersome, both slower and more difficult to operate. Ultimately, it will be a matter for negotiation what arrangements are put in place.... as the prosecutor of crime in Scotland, it’s hugely important that the right choices are made and the right priority is given to those particular arrangements.’³⁴

He indicated similar concerns with regard to serious organised crime as:

³² Number 41 on the list

³³ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R0794>

³⁴ <http://www.scottishlegal.com/2017/02/07/lord-advocate-calls-for-european-arrest-warrant-gains-to-be-saved-post-brexite/>

"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."³⁵

The UK Government has indicated that

'Continued criminal justice cooperation is a critical justice priority for Brexit negotiations: it impacts upon the safety of citizens, of both the UK and the rest of the EU. Cross-border solutions are required to combat the growth of transnational crimes.....'³⁶

Data sharing – EU fingerprint database (EuroDac): We would highlight this as an example of the importance of data sharing though there are a number of other relevant areas.

The EURODAC Regulation³⁷ establishes an EU asylum fingerprint database. When someone applies for asylum in the EU their fingerprints are transmitted to the EURODAC central system. The UK Government decided in December 2016 to opt in to the EU proposal for the EURODAC III Regulation that governs the operation of the EURODAC fingerprint database that holds the fingerprints of asylum seekers and certain illegal entrants to the EU. This will help Member States to determine who is responsible under the Dublin Regulation for dealing with an asylum claim and to tackle illegal migration. The EURODAC database will be expanded to increase to record facial images and biographical data, increase the length of time data can be stored to five years and provide better data sharing procedures between Member States. These changes will strengthen the UK's ability to control illegal migration, prevent multiple asylum applications across Member States and protect the UK's security through data sharing with law enforcement agencies.

Miscellaneous

Practical cooperation in law enforcement: We include an example of the need for ongoing practical cooperation in law enforcement. This relates to the National Asset Recovery Offices in which COPFS is the front line in dealing with the administration and enforcement of asset confiscation. COPFS has two units dealing with confiscation of assets in civil and criminal law.

Confiscation is a strategic priority in the EU's fight against organised crime which is reflected in the EU Internal Security Strategy in Action³⁸ which confirmed the need to revise the existing EU legal framework on confiscation and asset recovery. The profits derived from organised crime are substantial.³⁹ This is

³⁵ <http://www.bbc.co.uk/news/uk-scotland-38883530>

³⁶ <https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/651/65102.htm>- The implications of Brexit for the justice system: Government Response to the Committee's Ninth Report of Session 2016–17

³⁷ https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/identification-of-applicants_en

³⁸ http://europa.eu/rapid/press-release_MEMO-10-598_en.htm

³⁹ EU sales of illicit drugs generate an estimated €100 billion per year. Organised VAT fraud in the EU also represents a similar amount.

revenue denied to all EU governments and has direct impact on the taxpayer. Through money-laundering criminals disguise the illegal origins of their wealth and protect their asset bases in order to avoid the suspicion of law enforcement agencies and prevent leaving a trail of incriminating evidence.

National Asset Recovery Offices have helped in depriving criminals of their criminal profits as they identify assets that have been illegally acquired and exchange information at EU level. Scotland has a range of legislation including the Proceeds of Crime Act 2002⁴⁰ that:

- enhances previous powers of criminal confiscation following conviction by aligning the previous schemes for drug trafficking and for other crimes onto an all crimes basis by strengthening the investigation and enforcement powers
- introduces new powers of civil recovery allowing the state to claim the proceeds of criminal activity in cases where it is not possible to prosecute or secure a conviction

Sentencing – taking convictions into account: The EU under the Prisoner Transfer Agreement⁴¹ aims to facilitate the social rehabilitation of convicted persons by ensuring that they serve their sentence in their home country. A system was established for transferring convicted prisoners back to their EU country of nationality, habitual residence or another EU country with which they have close ties. Under Scottish Law, offenders can be transferred to serve the remainder of their sentence in another Member State.

Conclusion:

How reciprocal arrangement between Member States including reciprocal rights of citizens will work post exit have still to be resolved. As a matter of law, those obligations will fall away for the UK when it leaves. At the same point, EU Member States' obligations and its citizens fall away. Contingency planning is required to ensure the stability which we highlighted at the outset.

The importance of EU co-operation can be seen for instance in relation to victims' rights measures (criminal cases) where there have been a number of legal measures adopted setting up common rules that are aimed at:

- protecting and assisting victims of crime
- dealing with victims' rights in general
- protection measures and financial compensation and
- substantive law instruments regarding trafficking in human beings and child sexual exploitation.

⁴⁰ <http://www.legislation.gov.uk/ukdsi/2018/9780111160855>

⁴¹ <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32008F0909>

The UK Government has indicated its intention to work with the devolved administrations recognising that Scotland has a separate legal system. These need to take account of the distinct nature of Scots law and engage with COPFS and the Lord Advocate and the Scottish judiciary to take account of its unique features to ensure that the safety and security of Scottish citizens is not diminished.

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