

Home Affairs Committee

Oral evidence: [Government preparations for Brexit](#),
HC 1674

Wednesday 14 November 2018

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Members present: Yvette Cooper (Chair); Tim Loughton; Stuart C. McDonald; Alex Norris; Douglas Ross; John Woodcock.

Questions 250–357

Witnesses

I: Rt Hon Nick Hurd MP, Minister of State for Policing and Fire Service, Home Office, Rebecca Ellis, Director, European Directorate, Home Office, and Scott McPherson, Director General, Crime, Policing and Fire Group, Home Office.



Examination of witnesses

Witnesses: Rt Hon Nick Hurd MP, Rebecca Ellis and Scott McPherson.

Q250 **Chair:** Minister, can we welcome you and your colleagues before us to our Home Affairs Select Committee evidence session on policing and security co-operation under Brexit and under no deal? Minister, can we first congratulate you, I gather you have been appointed as Minister for London this morning?

Mr Nick Hurd: News travels fast, Chairman. Yes, thank you for that.

Q251 **Chair:** Congratulations. We wish you well in your new post and we are glad you have not been completely reshuffled to prevent us being able to ask you questions.

Mr Nick Hurd: No, they are additional responsibilities.

Chair: We will begin our questioning with the overview of the progress you have made.

Q252 **Tim Loughton:** Minister, can we talk a bit about no deal planning? We had your Permanent Secretary and other officials yesterday facing quite a long—

Mr Nick Hurd: Yes, he is lying down on the towel every day now.

Q253 **Tim Loughton:** Indeed, good, so we hope. Perhaps he should have had it on his head when he came. Anyway, that is another matter.

When you came to the Committee in September you said that you are not going to be issuing a technical notice for the no deal planning for Brexit, as it is not an area that the public has to prepare for, but, notwithstanding what may have happened overnight or not, we may still have to prepare for it. What advice have you given to police forces as to how they might be affected and what they may need to do in the event of a no deal?

Mr Nick Hurd: Just to be clear, we are implementing no deal contingencies. That work carries on. I think you have heard very clearly from our operating partners that they will be ready. We will be ready in terms of our work, not least on the SI. In terms of the contingencies—as this Committee is extremely well aware—what we are talking about is falling back on some tried and tested tools, the Council of Europe, Interpol and, critically, bilateral channels. They are not like for like requirements. A great deal of work still needs to be done in terms of managing some of the risks around them because, clearly, they are less efficient and effective than the tools we have at the moment, so the work continues and that is the message to our operating partners.

Q254 **Tim Loughton:** What advice has been issued or has no advice been issued? Are the police constabularies effectively working to police authorities and reporting to you, or what is the overview to make sure that all the constabularies are prepared for whatever eventualities for a



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no deal?

Mr Nick Hurd: To give a clear answer to your direct question, nothing in the light of recent events and conversations has changed the direction that we have given to operating partners and the work that Richard Martin and the NCA are doing. We will keep going until we are told to stop.

Q255 **Tim Loughton:** You are happy that they are getting on with it without you having to give them any additional advice?

Mr Nick Hurd: You will have formed your own opinion about the levels of energy and professionalism in terms of their approach. There was a very clear statement from Richard that we will be fully prepared, and, as a Committee, you will reach your own view as to the underlying veracity of that. I am persuaded on the basis of the reports and briefings they give me and, in terms of the preparedness and readiness of our operating partners, they are in good shape.

There is an issue around securing agreement with the Treasury for next year's money, which is yet to be resolved but I am sure will be. With that caveat, I think our operating partners, having to work at pace and pressure, are in good shape.

Q256 **Tim Loughton:** There has been a complaint from Police and Crime Commissioners that they have not been appraised of any advice as to what their forces need to do. How included have they been on any no deal planning?

Mr Nick Hurd: My understanding is that they have been included. If there are serious concerns expressed by Police and Crime Commissioners, I would be interested in hearing that directly and we will follow that up directly with them. My direct point of contact is with Richard Martin, who leads, and with Lynne Owens at the NCA. They are the ones that gave evidence to you about the overall state of preparedness of the system and that is what they are responsible for.

Q257 **Tim Loughton:** Yesterday the story from some of the witnesses was very much what preparation was going out from the centre, around border control immigration measures, in the event of a no deal. As you say, we recently had Lynne Owens and Richard Martin talking about the downside of losing access to some of the EU security systems, and that the UK will be less safe as a result. On that basis, presumably, it is the responsibility of the Home Office to conduct a proper risk assessment of what is at risk if that turns out to be the eventuality. Therefore, has there been a formal Home Office instigated risk assessment?

Mr Nick Hurd: As you would expect and detect from the flow of documents that we put out, including the White Paper and the technical notes, there are pretty clear indications that a no deal scenario will result in a loss of mutual capability in the short term—and I stress that word “mutual”—in terms of the reality of the operating risk and threat. Again,



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you have heard directly from the head of the NCA about its undertaking to continue to monitor and update threat and risk assessments.

That is clearly necessary, but—as I am sure will become clear in our conversation—we have thought carefully about potential loss of capability, what that means in terms of public safety and the things that we may have to do to mitigate it, not least through extremely energetic bilateral arrangements.

Q258 Tim Loughton: I hear that, Minister, and I hear that you are leaving it to certain parts of crime enforcement to be taking account of all of this. Surely the Home Office should be the lead on the overall risk assessment impact, to advise Ministers in terms of decisions to make around resourcing and for Ministers to be accountable to Parliament as to what risks there are from a no deal scenario, or a deal that does not properly cater for ongoing security co-operation.

Mr Nick Hurd: I do accept that.

Q259 Tim Loughton: Has there been a risk assessment or not? It sounds as though there hasn't been. There is a series of memos going backwards and forwards but no overall risk assessment.

Mr Nick Hurd: There is a bit more than memos. Rebecca and Scott can elaborate in terms of the outputs from the Home Office and the Government, in terms of the reasons why we insist—and feel very strongly—that the best possible path for this country and our partners is the kind of security arrangement and partnership that we are advocating, precisely because the alternative is one of lost mutual capability. It is mutual capability and, therefore, if you lose capability you increase risk.

What the exact nature of that increased risk is is something that we have to monitor very carefully together as a system. Obviously, our responsibility to the British public is to mitigate those as best we can, if we are in that scenario, which we don't want to be and we do not expect to be. I don't know whether Rebecca or Scott want to add anything to that.

Q260 Chair: In congratulating you at the beginning I failed to ask your colleagues to introduce themselves, so if you could say which sections of the Home Office and which areas of work you are responsible for. Ms Ellis?

Rebecca Ellis: Rebecca Ellis. I am a Europe Director in the Home Office. One of the things I am responsible for is the Home Office's role in implementation of the contingency planning in the law enforcement space.

Scott McPherson: I am Scott McPherson. I am the Director General of the Crime, Policing and Fire Group, and, particularly relevant to this Committee, I am working with the police in terms of their operational



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preparations for any wider contingencies they may find themselves in next year.

Q261 **Chair:** Thank you very much. Do you want to add anything to Mr Loughton's question?

Rebecca Ellis: In terms of the papers that have already been published, the Minister referred to a number of them. There was a position paper on the future relationship published last year. That articulated the Government's view of the implications of losing access to these co-operation mechanisms and the reasons why it was negotiating priority to retain access to many of those measures.

There were a number of technical notes that were published earlier in the spring, May and June, when there were some discussions with the EU. Those notes were used to support those discussions. Again, those articulated the impact that losing these mechanisms would have in terms of capability.

The Chequers' White Paper then set out a lot of very similar information, again articulating that in terms of the rationale for why we would wish to retain access to the measures.

In terms of the joined up approach to preparing for this, within the Home Office we have set up an implementation programme and governance arrangements, which bring together all of the different Government Departments and the operational organisations that need to prepare here. That includes both the NCA and NPCC who you have heard from. It also includes the Ministry of Justice and the Crown Prosecution Service. It also includes the devolved administrations.

There are a wide range of organisations as part of that group, and those working methods ensure that we are able to translate any policy choices, which are made around the particular modalities of preparations, directly with the specific capabilities that law enforcement agencies are standing up.

You heard from Richard Martin about the international crime co-ordination centre that has been established. One of the primary purposes of that will be to provide advice—both in advance of a no deal situation and in real time—on full law enforcement on how it should respond to the changes in the processes. The work it is doing, the advice it is putting together, is happening hand in hand with the Home Office to ensure that we have a consistent approach across the system.

Q262 **Tim Loughton:** That is what I am getting at, so there is a mini COBRA, effectively, of different Departments working together. Is that purely officials or do Ministers sit on that?

Rebecca Ellis: The governance arrangements we have for this implementation phase of the programme, when we are getting ready, is happening at a senior official level.



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Q263 **Tim Loughton:** Who chairs it?

Rebecca Ellis: I chair it.

Tim Loughton: Thank you.

Q264 **Alex Norris:** Minister, moving on to Europol, we know that as of May the UK was participating in more than 50 joint investigating teams under Europol and Eurojust. What happens to those if there is no deal?

Rebecca Ellis: It depends on the particular nature of the joint investigation team. There are ways for non-EU Council of Europe members, particularly, to be a part of a joint investigation team, including one that includes EU members. When you look at JITs that exist in Europol, some of those will have non-EU countries associated to those even though they are not part of the EU's joint investigation team mechanism.

The particular way in which an individual joint investigation team would evolve in terms of the UK's role would depend on the specific circumstances, but there is no in principle bar to us continuing to be able to be associated with joint investigation teams in a no deal scenario, albeit that we would expect the particular modalities of that may slightly vary.

Q265 **Alex Norris:** Those third countries that participate in the way that you talk about, do they have a standing agreement or do some of them have no agreement with Europol at all and are just invited on a case by case basis?

Rebecca Ellis: There is a Council of Europe mechanism that enables joint investigation teams to happen. Most EU countries are part of both the EU joint investigation team structure and the Council of Europe mechanism. Many countries have third country agreements with Europol, so it would be a combination of that agreement, which covers their presence in the building and so on, and the joint investigation team structure that would produce the working relationship.

Q266 **Alex Norris:** Thank you. Minister, since we are talking about third party agreements and similar, we have heard previously that the Government want to go beyond current precedent for that and to have a bespoke relationship. Can you talk us through what you are after and your assessment of how well we are getting on with getting that?

Mr Nick Hurd: The underlying premise here is that, as a country, we are hugely important to the success of Europol. Therefore, the UK withdrawing from Europol is bad for everyone. I think that is recognised. Of course, there are difficulties associated with us becoming a non-member and effectively having to change the nature of the relationship. That is real and that is what will happen. We are continuing to press the case that we should have some form of special status in that context, which recognises our weight in the system and our past. We are different from different countries.



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How that will emerge, Alex, I cannot tell you yet because it is still an ongoing negotiation and I am not clear what is to be announced on that. Our ambition has not changed and certainly my sense, from the personal conversations I have had with colleagues and peers among our European partners, is they get that argument completely. It will be different but our ambition is to try to maintain, as far as possible, the capabilities that we have.

In a no deal scenario, worst case scenario, we do lose access to the databases. That does not mean we could not continue to be active in our co-operation. There are other countries that have arrangements with Europol that appear to be productive, but we want to go beyond that and continue to believe that that is possible and desirable for everyone.

Q267 Alex Norris: As you say, we have traditionally played a huge and important role in Europol—we have heard that from various witnesses—but isn't there a risk under a bespoke arrangement that we would still be a closely related party, so we would still be in certain ways subject to the strategic choices of Europol but actually have no say in what those choices are?

Mr Nick Hurd: There is certainly a risk of losing some influence, if we are not attending the management board and leading operational projects to deliver co-ordinated action, yes. In a no deal scenario, if we do not achieve what we want, there is clearly some risk of that and a risk of reducing our ability to co-operate with law enforcement partners. That is clearly one of the risks that we have to meet.

Q268 Alex Norris: That is a risk under no deal, but isn't that also a risk under the bespoke arrangement that you are seeking as well? Michel Barnier has been very clear that we will be a third country. You have set out that you want to get a closer relationship with the current President. I think there is broad support on that, but would that still mean we would not have a direct say over the strategic choices of Europol, we would just have to go along with them?

Mr Nick Hurd: That is quite possible. Again, I think it is a hierarchy of priorities in terms of what you need from that relationship and—looking at it purely through the lens of public safety and security—the most important things for us are access to information and co-operation with our partners through that agency.

As I said, our plan A is to try to achieve as closely as possible what we have at the moment. There is clearly a risk that the relationship will be different and, with that, there will be a risk of losing some influence over the future of Europol.

But I come back to the central point: I think we are the biggest single contributor of data to Europol. We are huge in that system. It is a very important system, and it is very important to our partners. Therefore, we lose capability there at our mutual peril and they get that.



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Q269 **Douglas Ross:** Good morning, Minister. To follow on that last point about the amount of data going in and so on, can you outline some of the other risks to the EU countries if we do not come up with a mutually beneficial agreement on Europol? It is not just the UK that would lose out, it is the other European—

Mr Nick Hurd: That is the point I am labouring intensively, which is if at the core of the value of the Europol system is data and collaboration and information—

Q270 **Douglas Ross:** Is that the key issue or are there others?

Mr Nick Hurd: We are a massive contributor. I stand to be corrected, but I think the last time I looked we were the second biggest contributor of data to that system. We are hugely active in that system. We have a lot of people in there and we are very much part of what makes it work. Our partners understand that.

Again, the alpha point I am trying to emphasise is, underpinning this, if there is one area of the whole Brexit negotiations where you can see the mutual interest so clearly aligned it is in the area of security and trying, as far as possible, to maintain the capabilities that are embedded in the toolbox of platforms, programmes and tools that we have built together over many years, which work and they work well. I can only say, from my direct personal experience of speaking to other interior Ministers, there is a very strong feeling behind that sentiment that we compromise on that at our peril.

For Governments public security is the number one priority. We are in negotiation and it is too early to say where that is going to come out, but I do sense—as I have said before, and nothing has changed my view on that—that that sense of strong mutual interest is very powerful.

Q271 **Douglas Ross:** You said in response to Alex Norris that you are hoping to get a special status, “but how that will emerge I cannot tell you”. How will we know how special a status you have negotiated if you we don’t know what it is going to look like?

Mr Nick Hurd: I am simply making a statement of the bleeding obvious, which is: we are still in negotiation and, therefore, we do not know what the outcome of that negotiation will be.

Q272 **Douglas Ross:** Yes, but you must be asking for something. What are you asking for?

Mr Nick Hurd: Broadly, our pitch to our partners is that we know the relationship has to change in some aspects because we will be leaving the European Union, but surely it is in our interest, as far as possible, to maintain the status quo in terms of how this relationship works. Rebecca, do you want to add anything?

Rebecca Ellis: There are two very important dimensions to Europol. One is the day to day work on specific cases, investigations, areas of common



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interest, the analysis work files and the way in which Europol's secure communication system operates. The UK is a major contributor to that—I think we are a party to 40% of transactions that happen through that system where information is shared and analysis is done.

The other dimension is around the leadership and expertise that UK law enforcement is able to bring and contribute to Europol, and the role that they are able to play in Europol in driving the strategic priorities of the organisation forward. I think we have seen a really strong contribution from the UK, particularly in the space of organised immigration crime, trafficking and modern slavery, where the UK has been at the forefront of helping support Europol. Cyber crime is another area and, of course, counter-terrorism expertise.

We are not at the point of being able to know specifically what the particular nature of our relationship will look like. The Home Secretary has been clear that there will be some changes. We are leaving the EU. There will be some differences in our relationship, so we would not expect to be a voting member of the Europol management board, for example.

Q273 **Douglas Ross:** You cannot be.

Rebecca Ellis: We would not expect to be. However, as I think you heard from Sir Rob Wainwright earlier in the summer, the volume of UK interactions with Europol is substantively different to the volume of interactions that Europol has with any other third countries.

In terms of finding a workable way of ensuring that we do not see a major drop in interactions with Europol, we believe that there is a good case—and we will continue to make the case—for a way to be found for us to interact with those Europol systems in a streamline fashion. We are at too early a stage in the negotiations to be able to be specific about what a relationship would look like.

Q274 **Douglas Ross:** Do you think it is too early in the negotiations because, surely, if there is this mutual benefit for both sides, this is something we should be able to agree far earlier than some of the many other points that will come out through Brexit, whether we get a deal or no deal? This is something that both sides agree is important to both sides, and this is something I would have thought—given the benefits you have explained and what you are asking for, given the amount of data we put in, for example—surely there should be far less resistance from the EU side than we are currently experiencing.

Mr Nick Hurd: It is an entirely logical argument being put forward. There is a fundamental principle behind all EU negotiations, which is: nothing is agreed until it is all agreed.

Q275 **Douglas Ross:** Yes, but I take from Ms Ellis—you said you were at an early stage of this negotiation. We are not really but—



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Mr Nick Hurd: This negotiation is tied into a wider negotiation, as you well know.

Q276 **Douglas Ross:** Yes, I know that, but are you getting no positive signals or are you saying this will come down to the wire, as with everything else?

Mr Nick Hurd: There is a hierarchy of signals. As you would expect, at the Interior Minister level, we have lobbied vigorously in the national interest and there is a very strong buy-in to the idea of maintaining in practice, as far as possible, the existing security arrangement. However, we are not negotiating with Interior Ministers. We are negotiating with the Commission, which has a wider perspective on this, and it is obviously very clear that we are leaving the European Union and there have to be consequences for that in terms of our status in any ongoing arrangement.

I do not have the exact quotes in front of me, but we have seen a reasonably regular stream of positive signals from Mr Barnier in relation to the security dimension of the broader negotiation. I hope that reflects the feedback that the Commission is getting from member states, particularly those responsible for public security.

Q277 **Douglas Ross:** Thank you. Over and above Europol, just the general long-term planning that has been undertaken, Minister, you asked to postpone your appearance at this meeting from October to mid-November because you would be able to update us further. What has been the progress in the last couple of weeks, which you felt you would not be able to give at the end of October but you could give today?

Mr Nick Hurd: There is clearly something going on at the moment.

Douglas Ross: To use your own words, I think that is stating the obvious.

Mr Nick Hurd: It is a bit above my pay grade. I think we would all like to see what the outcome of that is.

Q278 **Douglas Ross:** In postponing the October appearance, you must have felt that something was going to happen in early November. Has that happened? Has there been the progress that you were expecting when you said to the Committee, "Look, if I come in at 30 October that will be too early but two weeks later I will be able to give you progress on recent developments"?

Mr Nick Hurd: I think we may be about to find out.

Q279 **Douglas Ross:** Sorry, Minister, you did not think when you postponed the October meeting that the Prime Minister was going to get a deal that she felt she could sell to the Cabinet last night and today, so what did you think you could not tell us at the end of October that you would be better able to tell us in the middle of November?



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Mr Nick Hurd: To be honest, I wasn't party to that conversation with the Committee. I am here principally to talk about no deal preparation.

Q280 **Chair:** The Home Office told us that you would have statutory instruments that might be ready and would be relevant. Do you have any statutory instruments?

Mr Nick Hurd: I think we did give indicative data. We can update you on that work. That data has passed but I am assured—and Rebecca or Scott can come in on this—that to set up the contingency plans requires a statutory instrument and that—

Q281 **Chair:** Can you tell us what those statutory instruments would be on and what is the timing of them, if they are not ready now and they were due to be ready for November?

Rebecca Ellis: There is a statutory instrument that covers a range of different things. It is in an advanced state of preparation but we do not have a specific laying date for it at the moment. That is a question that is with the business managers.

In this area what we would expect the statutory instruments to do is I think three things. First, there is various tidying up of the statute book that would need to happen for a no deal situation. There are a number of obligations, for example, around specific forms and pieces of information that have to be provided to operate some of the EU mechanisms, which we would remove so that those requirements are no longer in place on law enforcement.

Secondly, there are some areas where transitioning cases on 29 March, from the EU system to the non-EU mechanism, would need a transitional provision that enables that to happen smoothly.

Thirdly, in relation to extradition, particularly the EU countries would be moved from Part 1 of the Extradition Act to Part 2 of the Extradition Act, which would enable the domestic system for operating the Council of Europe Convention to be used.

Q282 **Chair:** Are those statutory instruments ready, even if they are not laid yet or you do not have a timetable for laying them?

Rebecca Ellis: The drafting is ready.

Q283 **Douglas Ross:** Thank you. Mr McPherson, you said in your introduction that you deal with police forces' preparations. Can I ask what discussions, if any, do you have with forces outwith England and Wales, for example, Police Scotland?

Scott McPherson: I have a fortnightly conference call with the National Police Chiefs Leads who are co-ordinating preparation across the whole of the UK. The Chief Constable from Police Scotland or one of his officers always attends that conference call. We also involve the Police Service of Northern Ireland. We are very clear that, although the Home Office is not



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responsible for police forces in Scotland and Northern Ireland, obviously because they are devolved responsibilities, that we want to be co-ordinating preparation across the whole of the UK.

Q284 **Douglas Ross:** There is an extensive and comprehensive dialogue between the forces and, even though they are not within your remit, they are not being left out of the Home Office discussions and deliberations?

Scott McPherson: Absolutely.

Douglas Ross: Thank you.

Q285 **Chair:** If I can pursue this issue about the timetables and timings a little bit further. Ms Ellis, you said that, in the event of no deal, there would need to be a new operational agreement with Europol about what the UK's relationship would be. How far are you in drafting that?

Rebecca Ellis: Do you mean in terms of a third country agreement between Europol and the UK?

Chair: Yes.

Rebecca Ellis: In any scenario, for Europol to have a relationship with a third country, there has to be a proposal from the European Commission.

Q286 **Chair:** You are not the ones drafting the no deal Europol agreement?

Rebecca Ellis: We have a series of plans in place that would enable us to support a way of interacting with Europol but would be as forward leaning as possible, but to construct that formal future relationship between the UK and Europol in a no deal scenario there would need to be a proposal from the Commission. That would need to be agreed by the Council.

Q287 **Chair:** Has the European Commission drafted such a proposal as a contingency plan if we needed something very quickly in place in the event of no deal?

Rebecca Ellis: I do not know the answer to that.

Q288 **Chair:** Have you asked?

Mr Nick Hurd: There is a broader issue that goes beyond the Europol specific—and I am sure the Committee is wise to this—that, in terms of our contingency planning and the outcomes that we are working towards, in terms of the fall-back mechanisms, there is a heavy dependence on our European partners in doing things, on which you are drilling down into one example, and the Committee needs to be aware of that.

Q289 **Chair:** That is why we are trying to get to the bottom of whether that contingency planning has actually happened or not. Have you asked the European Commission whether it has made provision for an operational agreement in the event of no deal, and whether it could get it in place quickly, how long it would take if it also has to be agreed by the Council as well?



Rebecca Ellis: We have a number of ongoing conversations with the Commission and with member states in this space. It will not come as a surprise, as in other areas, that it is a sensitive and difficult matter for the Commission to speak directly to us about no deal planning, and so those are not live conversations at the moment.

Q290 **Chair:** There are no live conversations with the Commission about no deal planning, and is that on everything: on the data sharing and data access, on extradition, all of those sorts of things? Can you confirm, on all of the policing and security co-operation, there are no live conversations with the Commission about what would happen in the event of no deal?

Mr Nick Hurd: There are lots of live conversations with member states in relation to the Commission.

Rebecca Ellis: There are live conversations with member states. We will continue to seek to open communications with the Commission and discuss no deal preparations. That remains the case across the piece.

Q291 **Chair:** On Europol you depend on the Commission. On the extradition and the data sharing, are you dependent on the Commission in both of those as well or are you having direct conversations with individual member states on those?

Rebecca Ellis: All of the contingencies that we are preparing for are not dependent on the Commission. Even the arrangements we are looking at to try to interact with Europol do not depend on any action at EU level, so the contingencies around the Council of Europe Convention, around the Interpol system do not depend on the EU.

We have discussions with member states at all multiple different levels about preparations here with a view to, as far as we can, ensuring that not only are we fully prepared but they are as well.

Q292 **Chair:** Okay. Can I just follow up Douglas Ross's questions on the timetables and so on for the security treaty? Minister, when you said that "nothing is agreed until everything is agreed", does that mean that there isn't a separate track aimed at a separate security treaty?

Mr Nick Hurd: We will wait to see what comes out of what is being discussed at the moment, in terms of any degradation. In practical terms, as I understand it—and we do not lead on the negotiation, as you fully appreciate—the discussions around security co-operation are inextricably linked with the wider conversations and, therefore, I come back to the point that I do not think anything will be fully agreed until everything is agreed.

Q293 **Chair:** Clearly, that is not the case because we obviously have—as we understand it—a withdrawal agreement deal to be put to Parliament under which a lot of things have not yet been agreed.



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Mr Nick Hurd: Sorry, yes. In terms of the withdrawal agreement, I understand that that agreement will look at the agreement in the round. I hope that includes the security dimension.

Q294 **Chair:** Security is effectively being traded off with other things that are part of the negotiations because, as we had understood it—and we supported that in our report—the Government’s intention was to keep the security treaty as a separate track. Is that happening?

Mr Nick Hurd: Again, I do not lead on the negotiation. I am not sitting at that negotiating table but I do not think there is any suggestion of trade-offs. I think, in terms of any withdrawal agreement, it will be presented in the round.

Q295 **Chair:** In terms of your contingency planning then, you have to plan both for the event of no deal but also for potential gaps between the transition and the security treaty being in place and so on. What is the Home Office’s assessment of how long it would take to get a security treaty, from date of agreement with the Commission through whatever ratification processes it needs, and whatever subsequent domestic legislation processes it would need, to implementation?

Rebecca Ellis: Not to be obtuse but I think it depends on the terms of that agreement. If the agreement were a relatively straightforward arrangement whereby we would continue to participate directly in the measures as they are currently constructed, that would be relatively straightforward in implementation terms. The extent to which an agreement diverges from that would be likely to produce longer lead times in terms of implementation.

Q296 **Chair:** In terms of the legal process and the timescales and delays that you need to build into the process, how long would it need? Are you expecting this to be a separate treaty, which will need to go through the normal treaty ratification processes, and how long do you anticipate that taking through the EU processes?

Mr Nick Hurd: I think the answer is the same. It depends what the agreement is.

Q297 **Chair:** But surely you must have some estimate of this?

Mr Nick Hurd: No. It depends how it is done.

Q298 **Chair:** I do not think these are difficult questions because there is a question about: if one of the options is that this is going to have to be a standalone treaty, which is the way it was described to us by the Home Office at an earlier stage in this process, there will be a normal timetable for ratification for it to go through individual member states and so on.

The reason I am asking this is because we want to know how much you are already planning and working backwards from—whatever the end date is likely to be for a transition period—what you need to have in place and by when, and, therefore, when you need a security treaty agreed by



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in order to have everything in place by whatever the date ends up being. Is it December 2020, or whatever other date we are about to have emerge from the Prime Minister's deliberations in the next couple of days?

Rebecca Ellis: We are planning for a range of different scenarios, as you would expect, which do indeed work back from the different possible dates that we are talking about, for example around the end of any implementation period. The time this would take depends not only on the substance of the agreement but also on the form of it.

The Government's position is set out in the paper that was published a year last September and in the summer. There should be a clear agreement on security that aims, as far as possible, to maintain the current levels of capability and co-operation.

The specific form that that would take, and the extent to which that would be in a standalone vehicle or as part of a wider agreement, is a question that cuts across the wider Brexit negotiating space. I think that the statement that there should be a clear and specific agreement on security is not to prejudge questions about the particular interaction that that would have with other aspects of negotiations.

Q299 **Chair:** Sure, but we are trying to get to the bottom of the contingency planning here. If you are doing proper contingency planning, I would have expected you to have an assessment of what the timetables are likely to be for different things and, therefore, what the possible contingencies are.

Given that the former Home Secretary was very clear to us that she was looking for a standalone security treaty, which we would therefore expect to go through the normal ratification for treaty processes as opposed to an Article 50 process—now I accept that that might change and that there might be differences, however it seems at least to be a central scenario worth planning for—in those circumstances, how long do you estimate will be needed for a treaty like that to go through the normal ratification processes? Are we talking about nine months, 12 months, two years?

In which case, if again the central scenario and the expected deadline for the end of the transition period is December 2020, by what date do you think you need to have the security treaty agreed with the Council and, if it is not agreed by then, what are your contingency plans or what is your process for drawing up contingency plans? That is all I am trying to get to.

Mr Nick Hurd: That is fine, Chair. We came here to talk about contingency planning for a no deal specifically, and I think we had an exchange on this the last time I was here. What I would like to undertake to do is to write to the Committee in quick order to refresh the responses I gave at that time, to update them for our current understanding of what has been discussed with our partners in the six months or so since we



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last spoke on that because I think the situation may have evolved. They are entirely reasonable questions but, to give you a proper answer, I am going to need to come back to the Committee in writing, which we will do in quick order.

Q300 **Chair:** Okay. I am troubled because it does feel like this is important information that, first of all, you would need to be on top of for the contingency planning but—

Mr Nick Hurd: No, but the thing is I think what we—

Chair: Just a second, let me finish the question: also, Parliament will need to know the answer to this in order to be able to fully assess the consequences of whatever agreement is being put to Parliament.

Mr Nick Hurd: Yes. I understand and accept that point, but I think what we have been trying to labour is there are a lot of variables here that make it very difficult to give the kind of crisp, concise answer that you are looking for. Therefore, I think we need to come back in writing to you. We came here today to talk about contingency planning for a no deal scenario.

Q301 **Chair:** Then what is your level of involvement in the discussions around the security treaty?

Mr Nick Hurd: We do not lead on the negotiation. We obviously link very closely with DExEU colleagues, but my priority in coming here today was to talk about our planning for a no deal scenario.

Q302 **Chair:** Of course. I am just interested in your involvement as a team in the security treaty negotiations.

Mr Nick Hurd: They are limited.

Q303 **Chair:** Are you confident that there is enough emphasis being put on a security treaty and security issues in the negotiations?

Mr Nick Hurd: Yes. Ultimately, it is the Prime Minister that leads the negotiation. Anyone who has heard her speak on this subject knows how strongly she feels about the priority she attaches to our unconditional commitment to European security and our determination to maintain our capabilities. Obviously, speaking as a longstanding former Home Secretary, this is something she believes and feels very strongly about, because she ultimately leads the negotiation. The short answer to your question is, yes.

Q304 **Chair:** That does not necessarily mean there have been enough discussions of it in practice in the negotiations. Are you monitoring the level of discussions that are happening in the negotiations? Evidence that we had—this was admittedly a few months ago—that I think was given to the House of Lords European Committee said there had only been one hour of negotiations on future security and policing co-operation. Are you monitoring how much discussion there has been since then?



Mr Nick Hurd: We liaise with our colleagues who are leading on the negotiation. My primary role is to liaise with my peers and Interior Ministers, to press the point around the importance of the security partnership going forward. That has been my primary responsibility as well as working with colleagues to oversee our contingency arrangements specifically in relation to no deal.

What I would say to your underlying concern is, if you look at the utterances of Mr Barnier, he has made encouraging noises about this area, which must reflect the fact that they are being emphasised in our negotiations with him, and I assume with some intelligence because of representations made to the Commission by member states.

Q305 **Stuart C. McDonald:** Good morning, panel. One of the key concerns I think of this Committee, and also of the witnesses that have appeared before us, is possible loss of access to key databases in the event of a no deal Brexit, in particular access to ECRIS and PNR. Can you reassure us that you have done detailed impact assessments about what the impact of losing access to those databases would be?

Mr Nick Hurd: You mean a generic one or specific to—

Stuart C. McDonald: Either or both.

Mr Nick Hurd: As things stand, the general position when you get into the specific databases, in a no deal scenario we will—and it is “we” because it is mutual—lose capability on day one, in terms of having lower levels of information and lower levels of co-operation. That is the day one baseline. We can move off that baseline in terms of action we can take to mitigate it, not least through bilateral arrangements. That is the reality of a no deal scenario day one. I think we have always been clear about that. There are things that we can do to mitigate it, but that is the reality.

In the case of the passenger name records, there is an additional complication in the sense that there is no non-EU alternative available. Whereas, for all the other issues we have a tried and tested alternative already but in terms of PNR we don’t. We are working through our options on that. Again, I come back to some of the statements that Mr Barnier has made, which are very encouraging in terms of the EU’s interest in helping us to agree an ongoing process that, as far as possible, maintains the status quo in terms of our co-operation.

Q306 **Stuart C. McDonald:** Can I turn to some of these databases, starting with the Schengen Information System? The evidence we have is that in a single year there can be something like 540 million searches from the UK of that database. How on earth can you possibly deal with loss of access to a database that is being used so frequently?

Mr Nick Hurd: If we drop out of SISII—and we do not want to—we will be going back to where we were in 2015, effectively. I do not remember the Government of that day telling us that we had an insecure system. It would be a step backwards undoubtedly, and we do not want to do it, but



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that is the perspective. We get huge flows of information through SISII and they are valuable. It is a different platform than the Interpol arrangements. The functionality is different. They are designed in different ways. We can make Interpol work. We have done it before but it would be a step back, undeniably.

Q307 Stuart C. McDonald: Sure. This is all pretty broad but what I want to get a sense of is: to what extent has the Home Office developed an understanding of what this means for a police officer who needs a bit of information, which they would have had from SISII, or somebody working for the Home Office?

Mr Nick Hurd: It is an entirely valid point because SISII—as I think you have heard from our operating partners—is something that is deeply embedded in our processes and systems. That is not restricted to the border or NCA. That is the officer on the streets using the system and using a system that works well.

If we have to—and we do not want to, we do not expect to be—we will have to fall back to alternative mechanisms that are tried and tested. We have used them before but they are clunky and less efficient. Then, as you have heard from our operating partners, we have to invest, and are investing, in making sure that our police system is prepared for that because it is a change in the way of working.

Also, critically—to the point I laboured before—we have to work with our European partners to make sure that they are making the necessary operating changes to how they work as well. None of this is ideal, which is why we don't want to be in this place but that is what we have to plan for.

Q308 Stuart C. McDonald: One of the contingency systems that you were speaking about—and excuse me if I do not get this right—is the Interpol I-24/7 system.

Mr Nick Hurd: Yes.

Q309 Stuart C. McDonald: The evidence we have is that that is a more restricted and slower service. Can you give us an idea about where the deficiencies in that system are compared to SISII?

Rebecca Ellis: I would not describe them as “deficiencies”. The two systems are quite different in their nature. While both of them provide a platform for moving information around about wanted individuals or wanted objects, the nature of the two systems is quite different. SISII is a real time live system that is fully integrated into police and border systems across Europe. For example, you will find that in a lot of countries every single stolen vehicle will be entered on to the SISII system, regardless of whether that is of international interest or if that vehicle is likely to have been moved elsewhere.



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The Interpol system is not a system that is directly integrated into our system in the UK. Interpol alerts are received in the Interpol bureau and they are then added onto the system. The Interpol system is also used specifically by countries for disseminating information that is of international interest.

The nature of the two systems, in terms of the volume of information that you would expect to have on there, is fundamentally different. The difference in the quantity of information does not, in and of itself, directly translate to a difference in the value of the information in terms of its international significance.

Q310 **Stuart C. McDonald:** You are saying to me that they are significantly different in what they are trying to do. What else does the Home Office need to do to try and replace the lost capability, and what else are you working on to try to replace the loss of capability if we do not have access to SISII?

Mr Nick Hurd: In terms of the support that police officers are being provided with, you heard from Richard Martin and Lynne Evans that one of the purposes of the international crime co-ordination centre, which is being set up, is to sit behind the shoulders of police officers to ensure they understand, for example, when they are running a check on the PNC that they will no longer be returning information from a SISII check, and to help them to understand any additional steps they might need to go through; for example, if they are looking at a case that appears to have an international dimension, where they may need to go to, to be able to request information from another country on a bilateral basis.

Q311 **John Woodcock:** Say you get what you want and we can remain in SISII, how simple a process is that? What structural changes at a UK level, at EU level, member state level have to happen if any?

Mr Nick Hurd: To stay in SISII?

John Woodcock: Yes.

Rebecca Ellis: If there were to be a straightforward agreement that the UK could stay part of SISII, there would not need to be any specific technology changes.

Q312 **John Woodcock:** No such instruments, nothing at a similar level to Europol?

Rebecca Ellis: In terms of the specific domestic implementation, I cannot provide you with that information instantly. I would not expect there to be anything major that was required.

Q313 **John Woodcock:** We are potentially four months away from falling out.

Rebecca Ellis: Sorry, Mr Woodcock, you are talking about us remaining part of SISII on 29 March?

John Woodcock: Yes.



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Rebecca Ellis: No, there would be no changes required.

Q314 **John Woodcock:** No changes, good. If I come back to what you were talking about on statutory instruments regarding Europol, on the best case scenario, how long would that take to get through the House of Commons?

Rebecca Ellis: We would not anticipate requiring a statutory instrument from Europol. You are talking about a no deal situation?

John Woodcock: Yes.

Rebecca Ellis: The statutory instrument we would expect would be an affirmative instrument that would require a vote in both Houses, so however long it took to schedule that debate.

Q315 **John Woodcock:** When you say “how long” this was due to be brought by this point. It has not been put forward. Are you confident that there is time to get that through in time for it needing to be? What is the latest point by which that would need to be tabled?

Rebecca Ellis: I think that is a matter for the business managers.

Q316 **John Woodcock:** Clearly, you need to be aware of it because—

Mr Nick Hurd: There are processes and timetables. I think our instinct would be to want that to not be rushed through because Parliament will need to look at it carefully. The SI is the least of my concerns in relation to no deal contingency planning.

Q317 **Chair:** I would just ask you about the European Arrest Warrant arrangements. Ireland has repealed its 1957 domestic legislation underpinning the previous old extradition arrangements. In those circumstances, what legal way will you have to extradite people between Belfast and Dublin?

Mr Nick Hurd: I am not sure the premise is right.

Rebecca Ellis: We do not understand that is the case. Ireland continues to have the necessary legislation in place to operate the 1957 convention and does so with a number of non-EU countries, including Norway.

Q318 **Chair:** You think that the 1957 legislation will be applicable in Ireland?

Rebecca Ellis: We believe that we would be able to operate the 1957 convention, yes, with Ireland.

Mr Nick Hurd: It uses the convention with Norway and Switzerland, doesn't it?

Rebecca Ellis: Yes.

Q319 **Chair:** We have been given information to the contrary but—

Mr Nick Hurd: Shall we write?



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Chair: Yes, it would be very helpful to have the reassurance. It would also be good to have the reassurance that you know for certain, for you to be able to tell us with confidence rather than just saying you believe. That would be very helpful.

Rebecca Ellis: I can tell you with confidence we had experts discussing the matter with our Irish counterparts very recently, but as the Minister said we will write.

Q320 **Chair:** Because it is not the information that we had from the police as well. What is your assessment of how long it will take to use the 1957 extradition arrangements compared to the current system?

Mr Nick Hurd: Are you talking about in terms of process a request, Chair?

Chair: Yes.

Rebecca Ellis: It partly depends on the specific country that we are co-operating with, I think. There are countries—for example, the EEA countries, including Norway and Switzerland—where we are able to extradite under the Council of Europe Convention within a matter of months rather than years. In the past there have been some statistics used that suggest that proceedings can take a very long time. In our experience, things have improved over the years and for proceedings under the 1957 convention to take years rather than months is not the norm.

Mr Nick Hurd: It depends a bit upon the volume as well, doesn't it?

Rebecca Ellis: Yes. Obviously, the more cases that come through the UK system onto the 1957 convention, because those take more time in terms of court time, then that would put increased pressure on the systems in the UK. As you would expect, we work very closely with our colleagues in the Ministry of Justice to ensure that we understand the likely volumes and are able to plan for the downstream implications on the criminal justice system.

Mr Nick Hurd: Chair, what is undeniable—as you have heard from other sources—is we are talking about tools that are clunky than the existing tools. That is undeniable because there are more stages.

Q321 **Chair:** The police told us that there is only one extradition court. Are there other plans to expand that if we have to?

Rebecca Ellis: We are working with the Ministry of Justice to ensure that we collectively are able to assess the volume of extradition requests that are coming in, and what that means and requires in terms of planning for the system.

Q322 **Chair:** I do not really know what that means other than you are working on it. Given that we only have five months before this may be the issue that we have to deal with, what is the plan? Is one extradition court



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enough or do you need more?

Mr Nick Hurd: We would not rule out more but we think there are a range of ways we can handle the impacts without doing that, and we want to sort those through beforehand, so that is where we are at.

Q323 **Chair:** The Irish extradition arrangements do obviously contradict with what I think the Northern Ireland police have been saying. How closely are you working with the police if we have had different information from the police about what extradition arrangements are in place?

Rebecca Ellis: We work very closely with the Northern Ireland police and they are involved in a number of the different co-ordination groups that we operate. I think for us to write to you confirming what the situation is is the best way forward. There may have been some confusion over there used to be some legislation that was specific to the Ireland/UK extradition relationship, which was repealed but that is not the same as the 1957 legislation being repealed but, as the Minister said, I think the best thing for us to do is to write and put that beyond doubt.

Q324 **Chair:** How many countries will you not be able to extradite their own nationals?

Rebecca Ellis: Under the 1957 convention?

Chair: Yes.

Rebecca Ellis: I think the number that Richard Martin gave you was 18 or 19. We expect that would be the right sort of ballpark. However, the operation of a restriction on own nationals first is something that operates under the 1957 convention. It is available to members of the Council of Europe to say that they wish to use it. However, there are a number of areas where we have—including recently with Albania—reached an agreement to disapply that restriction, so that is also an option open to us.

Q325 **Chair:** Are there discussions taking place so far with those individual member states where this is an issue, the 19 or 20 member states?

Rebecca Ellis: There are discussions taking place with all member states around contingency planning. I hope you understand why I am not able to go into the specific details about the status or terms of those discussions with an individual country but, at operational and other levels, there are discussions taking place with a focus on extradition, among other things.

Q326 **Chair:** Specifically in relation to extradition, if you think about the main countries that we currently extradite from—Spain we extradited 320 people back from Spain over the last eight years, Ireland 240, the Netherlands 177, Poland 98, France 95 and Germany 64—of those top countries, how many will we not be able to extradite their own citizens back?



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Rebecca Ellis: At this point, I would not be in a position to confirm the specifics for an individual country. Those are discussions that are ongoing.

Q327 **Chair:** In the absence of any additional measures being put in place, which of those countries can we not extradite people from? For example, if you are more confident about Ireland, will we be able to extradite Irish citizens back?

Rebecca Ellis: I am not in a position to go into the specifics for any individual member state. What I would say is that the own-nationals bar does not operate to create impunity. Most of the countries that use it operate it because they will take over the prosecution and prosecute in their own country, because they have general extraterritorial jurisdiction over their own nationals. There are a number of cases where a country has refused to extradite to the UK, on the basis of an own-nationals bar, but the proceedings have been successfully transferred to that country and the prosecution has proceeded successfully.

Q328 **Chair:** Our police would have to pass over all of the information and the case? Would that mean that the victims and witnesses would also have to travel to those other countries and sit through a foreign court system in order to be able to get justice?

Rebecca Ellis: That will depend entirely on the case, the circumstances of the case concerned and what the right and sensible way forward would be. Decisions will be made on a case by case basis.

Q329 **Chair:** A lot of these cases we are talking about are child sex offence cases—one of the most common themes Arrest Warrants are used for—and homicide, rape and grievous bodily harm cases. In those sorts of cases, where at the moment the country has in place a constitutional bar on being able to extradite somebody, are we effectively saying the victims and the witnesses in those cases would have to go to Germany or Poland—or the other countries currently in the 19 or 20—and sit through a court case abroad in order to get justice?

Mr Nick Hurd: We want to avoid that, of course. That is an important point, Chair, because we are talking about a scenario where our absolute priority is to avoid all of this. We are trying to avoid it.

Q330 **Chair:** We should take that as read, we all want to avoid no deal and we support the Government's attempts to avoid no deal.

Mr Nick Hurd: Yes.

Chair: What I am trying to get is for us to be honest with everybody about what the consequences of a no deal situation.

Mr Nick Hurd: I have been extremely honest today in saying we will lose information, we will lose co-operation and we will lose capability. By "we" I mean we and our European partners.



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In the specific case of the European Arrest Warrant, we will basically be going back to 2004 in terms of a baseline. As Rebecca has pointed out, there is a range of countries that have constitutional difficulties; Germany being a clear and explicit outlier. There is a lot of work to be done in terms of bilateral negotiations to try to mitigate that risk and avoid that scenario that we want to avoid.

Q331 **Chair:** Let us just take Germany, where we know there is a constitutional bar. In the circumstances of Germany, are we effectively saying either a court case does not go through or it has to take place in Germany and the victims and witnesses would have to travel there?

Mr Nick Hurd: My understanding is they will not extradite their own nationals outside of the EU in any scenario. Therefore, the emphasis is on bringing justice to bear in that city.

Q332 **Chair:** We have those 19 to 21 countries. Given we only have five months left, I still think we need more clarity from you on how many of those countries you are having detailed discussions with about having some kind of legislation that overcomes the constitutional bar.

Mr Nick Hurd: There is a range of discussions. There is a fundamental challenge here, as—in the spirit of candour and honesty—I have alluded to before. At the moment, in terms of what I call the diplomatic capital, it is focused on securing a deal. That is not just us; it is our partners and the steer from the Commission to member states.

The range of conversations we are having with member states on contingency no deal preparation is patchy, because the clear political priority is to security the deal. As and when there is a clear political signal from us—and frankly the Commission—the priority is no deal contingency planning, then the gears will shift. Speaking very frankly, that is the stage where we are at. It is patchy. We are making more progress in some areas than others.

Q333 **Chair:** If we are honest, given there is only a limited number of you and there are 19 or 20 different countries and there is going to be a huge number of different priorities to deal with transport arrangements, airplanes and whatever else it might be, the chances of you getting in place contingency arrangements with all of those 19 or 20 countries to allow own-country extradition by the end of March looks like zero, fair?

Mr Nick Hurd: I would not put a number on it because underlying this there is some complication, countries might be prepared to extradite to the UK to face trial in which conditionality—

Q334 **Chair:** I am not saying you will not make progress on any of them. I am saying is there any chance that you can get it in place what potentially involves domestic legislation through all of those 19 or 20 countries, alongside everything else we are going to be asking for in a no deal preparation? Seriously, is there any chance you are going to get that in place in 19 or 20 countries?



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Mr Nick Hurd: Not by March, no.

Rebecca Ellis: Our focus for March is being ready, from a UK perspective, to operate the baseline contingency so we are in a good position to ensure the police and the organisations in the UK have the necessary understanding, guidance, systems and processes in place to operate those contingencies.

Where we expect to be on 29 March is not where we expect to be three months, six months or one year further down the line.

Mr Nick Hurd: Yes, it is a baseline.

Rebecca Ellis: Our focus for the moment is on ensuring we are well placed to operate the baseline, and we believe we are.

Q335 **Chair:** If there is an Arrest Warrant out on 29 March does it completely fall on 1 April?

Rebecca Ellis: We have had this situation arise before in reverse when, for example, countries have acceded to the EU and have moved in the opposite direction. The approach we have in the UK is, once the proceedings have reached a certain stage, they continue to be implemented under that part of the Extradition Act. The specific arrangements for each of the individual other countries will vary.

If we are talking about outgoing requests the UK makes, then we have already put in place the preparations to be able to, ahead of time, have an agreement on a case by case basis with the country as to what will happen for specific Arrest Warrants that are outstanding as of 29 March.

Q336 **Chair:** If we arrested somebody on 29 March under a European Arrest Warrant but had not yet extradited them to France, Poland or wherever, will we still be able to do that on 1 April or 7 April, or will we have to release them?

Rebecca Ellis: The way in which our domestic extradition legislation is constructed is that, if they were to be arrested before the date of exit, we would continue with those proceedings under Part 1 of the Extradition Act, which is the part that deals with extradition.

The specific arrangements do vary between other countries but, for those where we are seeking somebody to be returned, we are ensuring preparations are in place so we can have that direct discussion on a case by case basis between the relevant prosecutors to ensure the case transitions smoothly.

As I said, this is not an unprecedented situation because we have had countries move between the Council of Europe Convention and the European Arrest Warrant as countries accede.

Q337 **Chair:** We heard from the police evidence a description about what would happen if the alert comes up through an Interpol system. Instead of



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being able to simply arrest, as currently—where there is an Arrest Warrant on SIS II—the police would have to go to a magistrates’ court and in the words of Richard Martin, “We’ll be lucky if they’re still there by the time we get back from the magistrate”. Have you done a risk assessment of the scale of the consequences of not having that combination of SIS II and the European Arrest Warrant in place, and what it will mean in terms of the number of people being arrested or the number of dangerous criminals or suspects being able to be arrested quickly once they have been found?

Rebecca Ellis: In terms of the interaction between the two, it is right an Interpol warrant has to be the subject of a warrant before an arrest can be made on the basis of that red alert. That is the system that applies currently for non-EU countries, for example the USA. In terms of getting of warrants from the Magistrates’ Courts, that can be made to happen very quickly in urgent cases.

Q338 **Chair:** The concern from the police was there will obviously be huge efforts made for a very small number of live terror investigations, for example, but their concern was the higher volume in rape cases, organised criminals and so on. Have you done an assessment of what the additional delays are likely to be and what the additional impact might be in terms of the number of suspects you then might not be able to catch and follow through?

Rebecca Ellis: The investment, including the funds that have been allocated by the Home Office to NTA and NPCC, is partly being used to invest in capability and resourcing in the international bureau in NTA that enables these issues to be handled. The team there is being expanded so there is more capacity to deal with and respond quickly to Interpol notices when they come up.

In terms of the specific implications of that, that was the subject of the Minister’s comments earlier around the nature and extent of security assessments that are ongoing on a range of different fronts.

Q339 **Chair:** You are going to need additional staff just to stand still effectively or not to stand still, to mitigate the lower level of security?

Mr Nick Hurd: The fall-back processes are more clunky and less automated so they require different processes and more resources.

I come back to the fundamental point here, we do not want to be in this situation because it is a step back and that is why we are doing everything we can to avoid it.

Q340 **Chair:** What is your assessment, in terms of the total number of additional staff you will need in place—within police forces, the Home Office, the Border Force or whatever—to deal with those sorts of policing and security co-operation issues, compared to the status quo?



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Rebecca Ellis: This financial year there are around 160 additional people being put in place before the end of March.

Q341 **Chair:** Next financial year? I realise you have negotiations ongoing with the Treasury, but in terms of the number of people—

Mr Nick Hurd: We have had some indications from Richard and Lynne about the additional people they need. That is part of what they have submitted to us in terms of their request for funding. That is absolutely consistent with what we have asked the Treasury for.

Q342 **Chair:** You do not have a separate assessment yourself of the number of people you think might be needed, not just within the NCA, for example?

Rebecca Ellis: The analysis that has been used to put the bid together to the Treasury has been done absolutely hand in hand with the NCA and NPCC.

Q343 **Stuart C. McDonald:** I know we are running short of time. We have covered SIS II and what can be done to mitigate the lack of access there. Could you briefly give us a flavour of the work the Home Office is doing to look at alternatives or ways of mitigating the loss of access to ECRIS and PNR data that happens in April, if there is no deal?

Mr Nick Hurd: I talked to PNR before. There is a challenge there because there is not a non-EU alternative available. Everyone is aware of that, which is why I think in part Mr Barnier has tried to be as constructive as possible in his remarks on the mutual interest in trying to work our way around that. There are some legal issues that both we and our European partners have to work through and some options are being worked up, which have not been cleared or finalised yet. We are aware it is a problem because there is not an off-the-shelf alternative.

Q344 **Stuart C. McDonald:** Is there one for ECRIS?

Mr Nick Hurd: ECRIS is easier but, again, we are in a situation where we are moving from a system that works well in terms of automation and speed into something that is less good, which is symptomatic across the board.

Stuart C. McDonald: Thank you.

Q345 **John Woodcock:** In terms of individual member states sharing their information with us in the event of no deal, can you tell us about the results of your work to determine what countries might refuse or might need extra legislation to be able to provide that information outside of the current system?

Mr Nick Hurd: That is part of our ongoing engagement with member states on this issue. John, I will be very frank, that is a patchy process with some member states engaging more productively than others in terms of strictly no deal contingency planning. However, what is clear is that there are opportunities—very important opportunities—to structure bilateral agreements about the sharing of data where there is clear



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mutual interest in doing that. We have a reasonably high level of confidence that is possible.

I come back to the point of a clearer political steer that the priority is no deal planning. We need to see a gear change in terms of those conversations. That will not happen until they get a clear steer from the Commission, and then we get a clear steer that that is the priority.

Q346 **John Woodcock:** I think we would have hoped and expected that our civil service system and embassies could at least have scoped what structure or legislative changes might be needed in other countries.

Mr Nick Hurd: We are doing that work.

John Woodcock: What you are saying is, "We are doing the work" but it is not done. You cannot, at this moment, say what countries would need a legislative change?

Rebecca Ellis: I do not think we are in a position to go into specifics about individual countries. From the work and discussions, we have had so far, we expect that the majority of the changes that will need to take place in other member states are operational rather than legislative.

For example, in the UK we need to implement the Council of Europe Convention, we need a statutory instrument to move countries from one part to the other party. So far, on the basis of our consultations including through embassies—as you have indicated—we expect the majority of changes to be operational changes.

Mr Nick Hurd: That is our assumption but we are double checking.

Q347 **John Woodcock:** Minister, we could potentially have sympathy for you, in that you can only work with the resources you are given, but it is a really worrying thing that you have not been able to focus the system on this. Yes, we can say it is not wanted and we can say, "Hopefully, it is not likely". Let us see what happens in the next 24 hours, but the fact that we are four or five months out and do not know what will be required from other countries is a worry, isn't it?

Mr Nick Hurd: We have a belief and an assumption that we are double testing. The underlying reality, John, is that the whole political process is focused on getting a deal, because it is what everyone wants and the mutual interest is very strong there. However, at the end of March, if we are in the situation where we do not want to be and do not expect to be, we will be ready but we will be ready with a set of tools and fall-back mechanisms that have the advantage of being tried and tested but that represent a step back. We are being very candid about that. There are things we can do to move off the baseline and improve that situation through bilateral agreements but at the end of March we will be ready. You have heard from the operating partners and the police that we will be ready, in terms of any legislative changes that we have to make, and we



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will be falling back on the specific mechanisms that we have described, which are tried and tested.

However, to make this work there is a dependence on our European partners to change some of their operating processes. At the end of March, if we are in that situation we do not want to be in, then we move off that baseline in terms of mitigating risks through the—

Q348 John Woodcock: I do not see how you can genuinely say you are confident it will all be fine and we suddenly will snap into a process where all the focus will be on security.

Mr Nick Hurd: John, if I have understood you correctly, you are probing our levels of confidence about the ability to move off the baseline by structuring and negotiating bilateral agreements to share data and therefore improve, for example, the baseline of Europol where we would be excluded from the database. That is what you are talking about. I am saying at the end of March we will be in a baseline position where—I have been very candid—we will be falling back on mechanisms that we have used before, which work but are less effective and less efficient. If we come out of SIS we are going back to 2015. If we come out of the European Arrest Warrant we are going back to 2004. No one wants that. However, we know they work up to a point and we can see an opportunity to improve on them through bilateral agreements.

I am being frank with the Committee: at the end of March we will be in the baseline position and will work to improve from there.

Q349 John Woodcock: From a security point of view, there will be a clear case for extending Article 50. Aside from all the rest of it, from a security point of view, there will be a case for extending in the event of—

Mr Nick Hurd: I would not want to get drawn into that. I just want to be clear with the Committee about where we expect to be at the end of March. Others will decide about the—

Q350 John Woodcock: The Cabinet and the Prime Minister will decide on the balance of priorities. However, it is important for the Committee and for the public to know, looking at this from a security point of view, we would be better served as a nation by extending the current arrangement rather than going into—

Mr Nick Hurd: As you said, that will be others for decide.

John Woodcock: You have an expertise, as the policing Minister, and you can give a factual answer on that.

Mr Nick Hurd: Our responsibility in the context of this conversation is to make preparations so, if we are in the situation where we do not want to be—and we do not expect to be because the mutual interest is so strong to avoid this scenario—we have a baseline position to improve on going forward that is workable. It is not ideal. I have been very clear that it is a step back in time, but it is a baseline from which we believe we can



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improve. We do not want to be there and do not expect to be there. What I have tried to communicate is that is where we expect to be at the end of March if, as I said, we are in a worst-case scenario and are in a no deal situation.

Q351 **Chair:** You are putting in all this effort for a reason. You are putting in all this effort, first of all, to get a deal and then, secondly, to put in place mitigating arrangements and contingency plans because you are recognising there is a problem if we have no deal.

Effectively, if we do end up with no deal, do you think the country will be less safe?

Mr Nick Hurd: I think I have been very clear that, as things stand at the end of March, if there is no deal, we will have a set of fall-back mechanisms that are tried and tested. If we fall out of SIS II, we will go back to arrangements that were in place as recently as 2015. If we fall out of the European Arrest Warrant, we will effectively go back to 2004. That is a step back and I have been very clear that amounts to a loss of capability. If you lose capability you increase risk. Therefore, in that scenario, we will have to monitor risk and threat very seriously—as we have undertaken to do—and we will have to improve on that baseline through intensive bilateral work.

Perspective is important. For national security we do not rely on the EU mechanisms, as important as they are. We have some fall-back mechanisms that are tried and tested. However, they are less effective and they are less efficient than what we have at the moment so it would be a step back.

Q352 **Chair:** That is increased risk also at a time when a lot of those international crimes—including things such as trafficking and organised crime across borders—have increased.

Mr Nick Hurd: Yes, you heard that directly from Lynne. That is why her input into this process, in terms of that ongoing assessment of threat and response of organised crime to that scenario, is a very important part of our planning.

Q353 **Chair:** Effectively you have told us that undoubtedly, if there is no deal, we will have a loss of access to data and—

Mr Nick Hurd: We will have less information.

Chair: —there will be gaps on extradition and delays in extradition compared to the current arrangements. Then we have a gap as we do not really know how far you are going to get, or even how far you are getting at the moment, in terms of where there might be domestic gaps in the legislation or where there might be constitutional bars on extradition of a country's own citizens and on Europol, where effectively it is a bit out of our hands and will have to wait for the Commission. Is that a fair assessment?



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Mr Nick Hurd: That is not entirely fair, particularly on the Europol point. Although that may be technically true they have to do something to trigger a process. What I have laboured—because I believe it to be hugely important—is that underlying this conversation is a very strong sense of mutual interest to avoid this sort of worst-case scenario you are talking about.

Q354 **Chair:** We all understand that. The risk and the thing we are concerned about, is that sometimes—because everybody assumes we all want something to happen—people take their eye off the ball and it ends up not being sorted out in time because everybody is worrying about the things they are still arguing about instead.

Mr Nick Hurd: It will be sorted, Chair. It will just be less good than we have at the moment and we can improve it.

Q355 **Chair:** You have not yet provided us with reassurance it will be sorted. The particular additional thing that will be useful to have is further information around the progress with individual countries. I am not asking for the details of yesterday's negotiation with an ambassador. I am asking for an assessment of which countries do have constitutional bars, which countries have a problem with their own domestic legislation, which countries we are in dialogue with and which countries we are not, and what the team is that is in place having those discussions.

It would be extremely helpful very rapidly to have the assessment around the overall security treaty and the longer term plans, because I think Parliament will need that before we get to any vote on the Prime Minister's withdrawal agreement. Also, in particular, to have your assessment of how long it would take to get a security treaty through European processes. Then working backwards from whatever the end point is around the transition, at what point you will need a security treaty or some form of security arrangements to be agreed through whichever process. Even if you have not yet triggered it, to have what your process will be for contingency planning around policing and security co-operation for any future gaps in capability as well.

As a final factual point as well, it would be very useful to have of the 520 million SIS searches that Stuart McDonald referred to, what proportion of this are police, what proportion of those are Border Force and what proportion of those are immigration. Perhaps you can provide that to us now?

Mr Nick Hurd: No.

Chair: It would be very helpful to have that breakdown.

Mr Nick Hurd: This is an ingenious attempt to revisit your attempt to get this out of the Permanent Secretary yesterday. There are issues. What I can say—I think I can say this—is that everyone visiting the UK is checked. Of the 130 million people, they have all been checked.



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To the rest, Chair, we will obviously do our best to give you what you want. When I talk about it being sorted, I am talking about a very narrow scope—which I believe to be the focus of this session—of what happens on 30 March. I have been very clear that is a baseline position. A lot of what you are talking about is not about that, it is about how we move off that to improve that baseline in a no deal scenario or, what we all want, which is the planning and the contingencies around a security treaty. When I say “sorted”, I am talking about a very narrow scope around preparation for falling back on tools and mechanisms in a no deal scenario, base case scenario, and being very candid that it is a step back. I am also asking for some perspective that in the case of something like SIS II we are talking about a step back to where we were in 2015.

Q356 Chair: On the no deal scenario, the area we have not had reassurance on is extradition. It is not clear what discussions you are actually having, because you are being vague and just saying, “Discussions are happening”. We have no idea whether that is one phone call from a Home Official to somebody in Germany or intensive discussions with lots of different countries.

Mr Nick Hurd: There may be a limit to what we can say.

Chair: Are you looking at detail of what the plans are around, for example, support for victims or witnesses who have to go to court trials elsewhere and whether you are looking at the domestic legislation. That kind of thing on the extradition no deal would be very helpful.

Mr Nick Hurd: We will do our best. Moving to your last point, there may be some limits to what information we can give about the status of some of these conversations, as you will appreciate, but we will do our best.

Q357 Chair: On the wider issue. in terms of the timetable for the security treaty, by all means ask the Home Secretary to send us a letter back if this raises broader points, but I do think we do need to have that sense of the timetable and the planning around the security treaty and some of the points that Douglas Ross raised at the beginning.

Mr Nick Hurd: I understand that, Chair.

Chair: Thank you very much for your time. We really appreciate it.