



House of Commons
Northern Ireland Affairs
Committee

**Cross-border co-operation
on policing, security and
criminal justice after Brexit**

Fourth Report of Session 2019–21

*Report, together with formal minutes relating
to the report*

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Northern Ireland Affairs Committee

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Summary

The new security partnership between the UK and the EU, concluded as part of the Trade and Co-operation Agreement (TCA) between the two parties in December 2020, has welcome implications for cross-border security on the island of Ireland. Before the announcement of the TCA, we heard concerns that a failure to secure a deal on security could lead to a reliance on cumbersome extradition processes, and create intelligence blind spots for criminals to exploit. The agreement mitigates these concerns and, importantly, provides a platform for UK and Irish law enforcement agencies to build on their already well developed systems of co-operation, which are to the mutual benefit of all on these islands. Now that an agreement on UK-EU co-operation in this field has been reached, however, the Government and the Irish Government should convene the British-Irish Intergovernmental Conference as soon as possible to discuss security co-operation as part of ongoing efforts to minimise the opportunities for organised crime gangs to exploit the Common Travel Area.

Over the past two decades, the Police Service of Northern Ireland (PSNI) and An Garda Síochána, Ireland's national police service, have made great progress in developing co-operation mechanisms to tackle cross-border criminality on the island of Ireland. These means of co-operation and information sharing will become increasingly important now that the UK has left the EU and lost direct access to many EU Justice and Home Affairs mechanisms, including its security and justice databases. The UK's data adequacy status will be key to the continuation of efficient data sharing across the Common Travel Area. Reaching decisions on data adequacy in a timely manner will therefore be critical. The Government must explain how it plans to ensure that the UK's data protection regime will continue to clear the necessary bar in future to maintain the country's data status. Ministers must proactively engage with the European Commission on this as part of efforts to ensure that data adequacy decisions are reached in good time, ahead of deadlines for their adoption, and to avoid uncertainty about the future of data-sharing arrangements on the island of Ireland. The Government will also need to consider, and explain how it plans to mitigate, the risk of there being a difference between the tools and systems that UK law enforcement agencies use for cross-border information sharing and those that Irish and other EU authorities have access to.

As part of this process, the Government must set out how it plans to mitigate, limit or eliminate delays in receiving arrest warrants from EU partners following the UK's loss of access to the Second-Generation Schengen Information System (SIS II). The new extradition arrangements agreed as part of the TCA will avoid the significant delays that might have occurred if the UK and Ireland had had to rely on the cumbersome 1957 European Convention on Extradition. They include many of the features of the European Arrest Warrant and, importantly for co-operation between the UK and Ireland, mean that extradition will continue to be subject to judicial control rather than operating through political channels. However, the UK's loss of access to SIS II following the end of the transition period has the potential to create delays in UK law enforcement and crime agencies receiving arrest warrants from their counterparts in the EU when the location of a suspect is not known. The Government must address this issue.

The UK-EU Specialised Committee on Law Enforcement and Criminal Justice Co-

operation provides a forum for the Government to seek to develop its co-operation with the EU and, thereby, enhance cross border co-operation with Ireland. The Specialised Committee will have a crucial role in developing and monitoring the law enforcement, security and criminal justice arrangements in the TCA, and its important work would benefit from the formal input of devolved representatives. When the Committee is established, the Government should invite representatives from the Northern Ireland Executive to participate in its proceedings in order to articulate their perspective on security co-operation on the island of Ireland.

Organised criminals seeking to exploit the Common Travel Area will no doubt adapt to the new security environment that they face, and while we are assured that the TCA has kept the lights on, the Government and the EU should continue to develop their security relationship. A strong UK-EU security relationship will help to bolster the already well established mechanisms of co-operation between UK and Irish agencies to maintain the security of the Common Travel Area.

1 Introduction

Background

1. The open border between Northern Ireland and Ireland is the only land border within the Common Travel Area, the special travel zone between the Republic of Ireland and the UK.¹ It is also the UK's only land border with an EU Member State. The border is 310 miles long, running from Lough Foyle in the west to Carlingford Lough in the east,² and includes more than 300 crossing points.³ The “porous” nature of the border means that close co-operation is required between UK and Irish law enforcement agencies to tackle cross-border criminality.⁴
2. The Police Service of Northern Ireland (PSNI) and An Garda Síochána, Ireland's national police service, have established high levels of operational co-operation.⁵ Other UK and Irish law enforcement agencies, such as HM Revenue & Customs and the Irish Revenue Commissioners, have similarly well developed connections.⁶ Some arrangements for cross-border co-operation have not been subject to direct change as a result of the UK's exit from the EU.⁷ These include the work of the Joint Agency Task Force.⁸ Other aspects of operational co-operation between UK and Irish law enforcement agencies were, however, underpinned by EU police and judicial co-operation mechanisms.⁹ Agreements, such as those allowing for efficient extradition arrangements through the use of the European Arrest Warrant and real-time information-sharing through EU security and justice databases, allowed criminals to be sought across jurisdictions and brought to justice.
3. The loss of access to EU Justice and Home Affairs tools on 1 January 2021, at the end of the transition period, meant that replacement measures needed to be agreed before that date to facilitate effective policing, security, and criminal justice co-operation on the island of Ireland. Although responsibility for policing and criminal justice was devolved to the Northern Ireland Executive in 2010, the negotiation of international treaties is an excepted matter reserved to the UK Government.¹⁰ The Northern Ireland Department of Justice, as well as law enforcement agencies in Northern Ireland such as the PSNI, were therefore reliant on the Government negotiating replacement mechanisms to enable effective policing and criminal justice co-operation with the EU.¹¹

1 House of Commons Library briefing, [The Common Travel Area and the special status of Irish nationals in UK law](#), accessed 7 April 2021. The CTA also includes the Isle of Man and the Channel Islands.

2 Police Service of Northern Ireland ([CBC0004](#))

3 Police Service of Northern Ireland ([CBC0004](#))

4 [Q55](#) (Simon Byrne, Chief Constable, Police Service of Northern Ireland)

5 For example, see: Kramer, A., Dickson, R. & Poes, A., [Evolving Justice Arrangements Post-Brexit](#), August 2019; Police Service of Northern Ireland ([CBC0004](#)); Colin Murray & Dr Clare Rice ([CBC0010](#))

6 [Q104](#) (Steve Tracey, Assistant Director, Organised Crime Directorate, HMRC)

7 Colin Murray & Dr Clare Rice ([CBC0010](#))

8 The Joint Agency Task Force was established in 2015 as part of efforts to tackle cross-jurisdictional organised crime on the island of Ireland. The Joint Agency Task Force is led by senior officers from the Police Service of Northern Ireland, An Garda Síochána, HMRC and the Irish Revenue Commissioners. A number of other organisations including the National Crime Agency and the Irish Criminal Assets Bureau are also involved in operational activity.

9 For example, see: UK- Irish Criminal Justice Co-operation Network ([CBC0005](#)); Kramer, A., Dickson, R. & Poes, A., [Evolving Justice Arrangements Post-Brexit](#), August 2019; Colin Murray & Dr Clare Rice ([CBC0010](#))

10 Devolution in Northern Ireland, 1998–2020, Briefing Paper [CBP9439](#), February 2020

11 [Q121](#) (Naomi Long MLA, Minister of Justice, Northern Ireland Executive)

4. The UK and EU negotiated a new security partnership as part of talks on their future relationship, and on 24 December 2020, the Trade and Co-operation Agreement (TCA) between the UK and EU was announced.¹² Part Three of the agreement covers Law Enforcement and Judicial Co-operation in Criminal Matters. On publication of the deal, the Government stated that the agreement “provides a comprehensive package of operational capabilities that will help protect the public and bring criminals to justice”.¹³ For its part, the European Commission claimed that the draft treaty allowed “for strong co-operation between national police and judicial authorities, including ambitious extradition arrangements, and the swift exchange of vital data”.¹⁴

5. Both parties have taken steps to ratify the TCA. The European Union (Future Relationship) Act 2020, transposing the TCA into UK law, received Royal Assent on 30 December 2020.¹⁵ Whilst on 29 December 2020, the Council of the EU approved provisional application of the TCA from 1 January 2021.¹⁶ The European Union’s full ratification of the agreement is due, pending consent from the European Parliament and, following this, an adoption of a decision on the conclusion of the TCA by the Council of the EU.¹⁷ At the time of writing, the European Union is expected to complete ratification of the TCA by the end of April 2021.¹⁸

Our inquiry

6. Noting the potential for disruption in policing, security and criminal justice co-operation as a result of the UK’s loss of access to EU Justice and Home Affairs mechanisms, the Committee decided in September 2020 to launch an inquiry into how the Government planned to ensure the continuation of effective cross-border co-operation on the island of Ireland after Brexit. The purpose of the inquiry was to identify the specific challenges posed by the loss of access to policing and criminal justice tools and to assess how to maintain effective cross-border co-operation across the Common Travel Area.¹⁹

7. The Committee received and published written submissions from a range of sources including Government, law enforcement agencies, non-departmental public bodies, and academics. From October to November 2020, we took oral evidence in public on a virtual platform. We held four oral evidence sessions, which were webcast. First, we heard from academics specialising in EU Justice and Home Affairs law and UK-Irish criminal justice co-operation. Secondly, we took evidence from the PSNI, the National Crime Agency (NCA) and HM Revenue & Customs (HMRC) on the operational effects of the loss of access to EU Justice and Home Affairs tools and potential replacement mechanisms for cross-border co-operation. Thirdly, we took evidence from Naomi Long MLA, the

12 HM Government, [Trade and cooperation agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part](#), 24 December 2020

13 HM Government, [UK-EU TRADE AND COOPERATION AGREEMENT Summary Explainer](#), Part Three: Law Enforcement and Judicial Cooperation in Criminal Matters, December 2020, p.25

14 European Commission, [Questions & Answers: EU-UK Trade and Cooperation Agreement](#), 24 December 2020

15 [The European Union \(Future Relationship\) Act 2020](#)

16 Council of EU, [Decision on the signing of the Trade and Cooperation Agreement](#), 29 December 2020

17 Council of the EU, Press Release, [EU-UK Trade and Cooperation Agreement: Council adopts decision on the signing](#), 29 December 2020

18 [Written Ministerial Statement HCWS791](#), Session 2019–21 by Rt Hon Michael Gove, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office, 23 February 2021

19 For the inquiry’s terms of Reference see: Northern Ireland Affairs Committee, [MPs to examine policing cross-border crime post-Brexit](#), 7 September 2020

Northern Ireland Justice Minister, who expressed her concern at the time about the potential effect on justice agencies of the “huge uncertainty” about arrangements after the end of the transition period.²⁰ Finally, we heard oral evidence from Robin Walker MP, Minister of State, Northern Ireland Office who explained how the Government planned to facilitate cross-border co-operation after 1 January 2021.

8. Following the announcement of the TCA on 24 December 2020, the Committee decided to hold three further evidence sessions to scrutinise the effects of the TCA on policing, security and criminal justice co-operation between the UK and Ireland. We took evidence from academics specialising in EU Justice and Home Affairs law and UK-Irish criminal justice co-operation and heard their assessments of the new framework for law enforcement and criminal justice co-operation agreed as part of the TCA. We then took evidence from the PSNI, the NCA, and Border Force about the operational impact of the new mechanisms. Finally, we questioned Government on the new security partnership and asked how it intended to deepen the UK’s bilateral relationship with Ireland in the fields of policing, security and criminal justice co-operation. The conclusions and recommendations in this Report are founded on the submissions that we received. We would like to thank everyone who took the time to provide our inquiry with oral and written evidence. Our thinking on these issues has also been informed by informal discussions with Irish law enforcement agencies as part of the Committee’s virtual visit to Dublin in March 2021. We would like to thank officers north and south of the border for their approach to cross-border policing and security and, above all, for keeping people safe.

20 [Q121](#) (Naomi Long MLA, Minister of Justice, Northern Ireland Executive)

2 Cross-border security

The Trade and Co-operation Agreement

9. For as long as a border has existed on the island of Ireland, criminals have exploited its “porous” nature and the police have had to deal with various forms of cross-border crime.²¹ Cross-border criminality includes the intentional use of the border to evade detection and capture and a disregard for its existence when committing criminal acts. It takes many forms, from serious and organised criminals engaging in drug trafficking, human trafficking, and smuggling across the border, to offenders traversing the border in the course of committing crimes, such as burglary.²² Policing co-operation has therefore “long been a necessary tool” to combat cross-border crime.²³

10. The Committee heard that, in recent years, EU-level mechanisms had provided a basis, and complemented existing platforms, for co-operation between UK and Irish law enforcement agencies.²⁴ Before the end of the transition period, the UK participated in more than 40 EU measures aimed at supporting and increasing security and criminal judicial co-operation within the EU.²⁵ Of those measures, we heard that the European Arrest Warrant, the European Criminal Records Information Exchange System (ECRIS), the Second-Generation Schengen Information System (SIS II) and Europol were particularly important in enabling effective cross-border policing and criminal justice co-operation between UK and EU law enforcement agencies.²⁶

11. Owing to its departure from the EU, the UK was scheduled to lose full access to many of those mechanisms when the transition period ended on 31 December 2020. The UK and EU therefore needed “to agree a new basis on which to extradite people between the UK and the EU; to exchange law enforcement data; and to facilitate co-operation between law enforcement and criminal justice agencies”.²⁷ Effective co-operation between UK and Irish law enforcement agencies depended on agreement on these matters, because, as the Committee heard, a failure to agree a future relationship deal would have led to a reliance on outdated and cumbersome extradition and intelligence sharing processes (see Chapters 3 and 4).

12. In evidence to the Committee in November 2020, before an agreement was reached with the EU, the Government explained that law enforcement agencies would have to use Council of Europe Conventions, such as the 1957 European Convention on Extradition and the 1959 Convention on Mutual Assistance in Criminal Matters.²⁸ Also giving evidence before the agreement of the TCA, Naomi Long, Minister for Justice in the Northern Ireland Executive, argued that law enforcement agencies in the UK should not have to rely

21 See: [Q55](#); [Q56](#) (Simon Byrne, Chief Constable, Police Service of Northern Ireland); and Kramer, A., Dickson, R. & Pues, A., [Evolving Justice Arrangements Post-Brexit](#), August 2019, p. 5

22 See: Kramer, A., Dickson, R. & Pues, A., [Evolving Justice Arrangements Post-Brexit](#), August 2019, p. 50; Police Service of Northern Ireland ([CBC0004](#)); [Q74](#) (Simon Byrne, Chief Constable, Police Service of Northern Ireland)

23 Kramer, A., Dickson, R. & Pues, A., [Evolving Justice Arrangements Post-Brexit](#), August 2019, p. 50

24 For example, see: Dr Amanda Kramer and Dr Rachael Dickson ([CBC0009](#)); UK- Irish Criminal Justice Co-operation Network ([CBC0005](#)); [Q121](#) (Naomi Long MLA, Minister of Justice, Northern Ireland Executive); Colin Murray & Dr Clare Rice ([CBC0010](#)).

25 [The UK-EU future relationship negotiations: process and issues](#), House of Commons Library, March 2020, p. 83

26 Police Service of Northern Ireland ([CBC0004](#))

27 [The UK-EU future relationship negotiations: process and issues](#), House of Commons Library, March 2020, p. 83

28 See: Northern Ireland Office ([CBC0011](#)); [Q204](#) (Robin Walker MP, Minister of State, Northern Ireland Office).

on “old systems and processes that have been superseded by better arrangements using modern IT processes”.²⁹ She discussed the sophistication of serious and organised crime, pointed out that many of the Council of Europe Conventions were outdated having been developed in the 1950s, and concluded that “we cannot combat 2020 crime and security threats using 1950s tools”.³⁰

13. Naomi Long highlighted the value of the UK and EU agreeing a future security partnership. She observed that co-operation between operational partners north and south of the border was often facilitated by EU measures and had “helped significantly in the fight against crime and organised crime on the island of Ireland and further afield”.³¹ She told us effective north-south co-operation on the island of Ireland protects both the UK and EU:

It is important that we have seamless justice across the island. That is important for the security of the UK as a whole, as well as for Ireland as a whole. It also aids security in Europe, because none of us should be blind to the fact that, while Northern Ireland may be an island off an island off the coast of the EU, it is nevertheless a very attractive place for people who are involved in crime and criminality to try to either bury their profits or, indeed, make new connections.³²

14. The UK and EU agreed a new security partnership as part of the TCA announced on 24 December 2020. Part Three of the TCA sets out new arrangements for UK and EU law enforcement, crime agencies, and judicial authorities to co-operate on the surrender of suspects, share intelligence and participate in joint operations. Academics giving evidence to the Committee concurred that the new Justice and Home Affairs measures in the TCA represented a good compromise by the two parties to continue policing, security, and criminal justice co-operation.³³ We heard how the agreement provided a better foundation on which to continue security co-operation within the Common Travel Area compared with a non-negotiated outcome.³⁴

15. Colin Murray, Reader in Public Law, Newcastle Law School remarked that the arrangements in the TCA represented “what you might call a ‘keeps the lights on’ deal in terms of justice and security”.³⁵ Gemma Davies, Associate Professor, Northumbria Law School agreed that “a no deal would have been very significant in this area”.³⁶ She commented that the UK and the EU had “secured co-operation that, not in all fields but in some fields, is as close as is conceivable”, when considering the UK’s red line in relation to the role of the Court of Justice of the European Union and the EU’s red line of not undermining its internal legal order.³⁷ She added that the agreement “represents a working compromise, but there are some real issues, particularly in relation to loss of real-time data”.³⁸

29 [Q121](#) (Naomi Long MLA, Minister of Justice, Northern Ireland Executive)

30 [Q121](#) (Naomi Long MLA, Minister of Justice, Northern Ireland Executive)

31 [Q121](#) (Naomi Long MLA, Minister of Justice, Northern Ireland Executive)

32 [Q135](#) (Naomi Long MLA, Minister of Justice, Northern Ireland Executive)

33 See [Q215](#); [Q216](#)

34 See [Q215](#); [Q216](#)

35 [Q215](#) (Colin Murray, Reader in Public Law, Newcastle Law School, Newcastle University)

36 [Q215](#) (Gemma Davies, Associate Professor, Northumbria Law School, Northumbria University)

37 [Q215](#) (Gemma Davies, Associate Professor, Northumbria Law School, Northumbria University)

38 [Q215](#) (Gemma Davies, Associate Professor, Northumbria Law School, Northumbria University)

16. When questioned on the effects of the new arrangements on operational capabilities in late January 2021, law enforcement and crime agencies informed us that the arrangements in the TCA were at that point working well. PSNI Assistant Chief Constable, Mark McEwan told the Committee that the arrangements in the TCA were having no discernible operational impact for the PSNI, including on policing co-operation with An Garda Síochána.³⁹ Steve Rodhouse, Director General of Operations, National Crime Agency agreed that “the mechanics look positive”, although he said that it was “early days”.⁴⁰

17. Robin Walker MP, Minister of State, Northern Ireland Office informed us that the TCA addressed concerns heard by the Committee that criminals operating on the island of Ireland could have benefitted from cumbersome extradition processes and delays in intelligence sharing, if no deal had been reached:

Clearly it is early days, and we want to make sure that the new arrangements can bed in long term and work effectively, but the TCA did cover many of the areas about which I know your Committee was concerned and that we discussed earlier. Our assessment so far is that it has had no impact on bilateral operational co-operation for law enforcement. Indeed, it has provided an opportunity, potentially, for further co-operation in due course.⁴¹

18. We welcome the fact that the UK and EU have agreed a new security partnership as part of the agreement of the Trade and Co-operation Agreement. At the time of the inquiry hearings, Brexit had had no discernible operational impact on cross-border policing and the ability to co-operate with partners in the EU has been maintained. Before the announcement of the agreement, we had heard concerns that a failure to secure a deal on security could have led to a reliance on cumbersome extradition and intelligence sharing processes. The agreement mitigates these concerns and, importantly, provides a foundation for the continuation of UK and Irish law enforcement agencies’ well developed means of co-operating to maintain the security of the Common Travel Area.

Cross-border criminality

19. Arrangements providing for effective and efficient co-operation between UK and Irish law enforcement agencies are critical because the cross-border threat from organised crime gangs on the island of Ireland is constantly shifting. Steve Rodhouse, Director General of Operations, NCA told us that “organised criminals are inherently agile and innovative and will look to exploit weaknesses wherever they occur”.⁴² Co-operation and communication are key to bringing such criminals to justice. The PSNI is currently investigating more than 80 organised crime gangs operating in Northern Ireland, 16 of which they assess are operating with a particular focus on the exploitation of border areas.⁴³ The PSNI also stated that mobile organised crime gangs based in Ireland continue “to have a substantial impact on acquisitive crime offence levels in Northern Ireland”.⁴⁴

39 [Q257](#) (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland)

40 [Q346](#) (Steve Rodhouse, Director General of Operations, National Crime Agency)

41 [Q350](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

42 [Q94](#) (Steve Rodhouse, Director General of Operations, National Crime Agency)

43 [Q74](#) (Simon Byrne, Chief Constable, Police Service of Northern Ireland)

44 [Police Service of Northern Ireland \(CBC0004\)](#)

20. The effects of Brexit on cross-border criminality on the island of Ireland, as well as between Northern Ireland and Great Britain, are uncertain. Crime agencies believe that cross-border criminality is unlikely to increase significantly in the short term following the end of the transition period, but the longer-term effects of changes to statuses of borders within the Common Travel Area are unclear. Simon Byrne, PSNI Chief Constable, told us in November 2020 that in the short term “not a lot will change in terms of patterns of criminal behaviour”.⁴⁵ Steve Rodhouse agreed, stating that intelligence gathered by the NCA indicated “a wait-and-see principle within organised criminality” on how they might adapt their illicit activities following the end of the transition period.⁴⁶

21. Following the announcement of the TCA, PSNI Assistant Chief Constable, Mark McEwan said that the lack of tariff differentials as a result of the agreement was welcome and that “it is less obvious now, perhaps, as to where those opportunities for organised criminality may come”.⁴⁷ The Assistant Chief Constable told us that it was “a bit early to tell” how organised crime gangs might respond to changes as a result of Brexit but that law enforcement agencies were working together to closely monitor any changes in attempts to exploit the Common Travel Area.⁴⁸

We have a significant focus on... exploitation of the Common Travel Area and the movement of people, whether it is illegal immigration, clandestine movement or human trafficking. We have considerable focus on that with partner agencies and, in all these things, we are well linked into the UK-wide mechanisms for dealing with them.⁴⁹

22. Steve Rodhouse agreed with the Assistant Chief Constable and also noted that covid restrictions were reducing movements of people, which a lot of organised crime revolves around.⁵⁰ He added that the NCA had not noticed a significant change in organised crime activity since the introduction of the TCA and end of the transition period, but stated “I need to be realistic here. We know that organised criminals are agile and inventive, and will find ways to exploit a situation for their benefit. It would be wrong to ignore that possibility”.⁵¹

23. Organised crime gangs smuggle people into Great Britain by various routes using small boats, lorries, ferries and other modes of transport.⁵² Steve Rodhouse told us that relatively small numbers of people are currently trafficked into Great Britain via the island of Ireland. However, he warned that traffickers could exploit that route if their perceptions of relative levels of the security at different borders change.⁵³ The PSNI and Border Force also identified the risk that vulnerable persons might be trafficked through Northern Ireland, if perceptions of the effectiveness of borders shift.⁵⁴

24. In January 2021, PSNI Assistant Chief Constable, Mark McEwan told the Committee

45 [Q81](#) (Simon Byrne, Chief Constable, Police Service of Northern Ireland)

46 [Q94](#) (Steve Rodhouse, Director General of Operations, National Crime Agency)

47 [Q254](#) (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland)

48 [Q254](#) (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland)

49 [Q254](#) (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland)

50 [Q315](#) (Steve Rodhouse, Director General of Operations, National Crime Agency)

51 [Q315](#) (Steve Rodhouse, Director General of Operations, National Crime Agency)

52 [Q98](#) (Steve Rodhouse, Director General of Operations, National Crime Agency)

53 [Q98](#) (Steve Rodhouse, Director General of Operations, National Crime Agency)

54 See: Police Service of Northern Ireland ([CBC0004](#)); [Q315](#) (Paul Morgan CBE, Senior Director, Border Readiness Directorate, Border Force)

that there was some early evidence of organised crime gangs adapting their criminal routes following changes in the status of borders within the Common Travel Area:

We have seen some activity around the new transport routes, particularly from Dunkirk to Rosslare. That was intercepted by An Garda Síochána in terms of people moving from, I believe, Syria. There was also a cash seizure... we are starting to see organised criminality adapt to the new routes and new opportunities, as we would expect.⁵⁵

Paul Morgan CBE, Senior Director, Border Readiness Directorate, Border Force informed us that Border Force would be monitoring closely “ferry routes coming in directly from the continent to Ireland, and the situation there in terms of onward movement to Northern Ireland across the land border”.⁵⁶ He said the Agency had seen no evidence yet of increased criminality across these routes but cautioned that it was too early to say whether there will be any significant change.⁵⁷

25. Law enforcement and crime agencies told us that, so far, they were satisfied that their ability to co-operate with partner agencies in the EU to tackle the agile activities of serious and organised crime gangs had been maintained through replacement mechanisms for co-operation agreed as part of the TCA (discussed further in Chapter 3 and 4).⁵⁸ Assistant Chief Constable, Mark McEwan said that the PSNI had experienced no operational impact on cross-border policing co-operation with An Garda Síochána since the introduction of the TCA.⁵⁹

26. When questioned in November 2020 on the Government’s efforts to disrupt human trafficking into and within the Common Travel Area, Robin Walker highlighted “excellent cross-agency collaboration to tackle the trafficking of vulnerable people”.⁶⁰ He pointed out that that included co-operation with Irish law enforcement agencies, which entailed “close working, through the auspices of the CTA [Common Travel Area] Forum on sharing information”.⁶¹ In March 2021, he expanded on how the CTA Forum helped to tackle human trafficking:

The Common Travel Area Forum is a bilateral meeting held regularly between senior UK and Irish Government officials to provide oversight of the CTA and its associated reciprocal rights and privileges. The forum is jointly chaired by a Home Office director-general and their Irish counterpart, and is only attended by officials. It operates in co-ordination with other intergovernmental arrangements. Forum members work closely together on border security, identifying and preventing those who seek to abuse arrangements from entering the CTA. Our joint programme of work includes increased data sharing and operational co-operation.⁶²

55 [Q266](#) (Assistant Chief Constable, Mark McEwan, Police Service of Northern Ireland)

56 [Q315](#) (Paul Morgan CBE, Senior Director, Border Readiness Directorate, Border Force)

57 [Q315](#) (Paul Morgan CBE, Senior Director, Border Readiness Directorate, Border Force)

58 See: [Q246](#) (Assistant Chief Constable, Mark McEwan, Police Service of Northern Ireland); [Q268](#) (Assistant Chief Constable, Mark McEwan, Police Service of Northern Ireland); [Q343](#) (Steve Rodhouse, Director General of Operations, National Crime Agency); [Q346](#) (Steve Rodhouse, Director General of Operations, National Crime Agency)

59 [Q257](#) (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland)

60 [Q170](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

61 [Q170](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

62 [Q359](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

27. In the course of giving evidence to our inquiry, Minister Walker pointed to other bodies and fora that exist to tackle cross-border criminality across the Common Travel Area. This includes well-established north-south co-operation on island of Ireland through forums such as the Joint Agency Task Force and the Annual Cross Border Organised Crime Conference.⁶³ Mark Larmour, Director, Northern Ireland Office, told us that it was important to recognise that “there is a very good, strong framework for north-south co-operation, particularly between law enforcement agencies”.⁶⁴ These structures, supported by, though not dependent upon, the British-Irish Intergovernmental Conference framework, are not subject to direct change as a result of Brexit.⁶⁵ The British-Irish Intergovernmental Conference met in May 2019, when security co-operation was on the Conference’s agenda, but it has not met since.⁶⁶ In March 2021, Minister Walker told us that the Government was keen to focus on its “deep and broad shared bilateral interests” with the Irish Government “now that the TCA had been secured”.⁶⁷

28. Patterns of behaviour by smugglers and organised crime gangs on the island of Ireland have not changed significantly following the end of the transition period, but there is no room for complacency. We therefore welcome law enforcement and crime agencies’ assurance that the high level of cross-border operational capability has been retained through replacement co-operation mechanisms agreed in the Trade and Co-operation Agreement.

29. Cross-border arrangements providing for effective security co-operation across the Common Travel Area are to the mutual benefit of all on these islands. The importance of bodies and fora such as the Joint Agency Task Force, the Annual Cross-Border Conference on Organised Crime, the Common Travel Area Forum and where appropriate the British-Irish Intergovernmental Conference cannot be overestimated in their use in supporting and developing co-operation between law enforcement on both sides of the border countering cross-border criminality and for security co-operation (and other issues) between the UK and Ireland more widely. *The Government and the Irish Government must agree to convene the British-Irish Intergovernmental Conference (either virtually or physically) as soon as possible, and no later than the end of June 2021, to discuss security co-operation, as part of wider ongoing efforts to minimise the opportunities for organised crime gangs to exploit the Common Travel Area. The Government and the Irish Government should build on established practice for supporting cross-border co-operation to minimise the opportunities for organised crime gangs. Steps must be intelligence-led and have a clear operational purpose. The Government should also work proactively with the Executive to ensure that the PSNI and the National Crime Agency are fully equipped to identify and address specific organised crime threats.*

Specialised Committee on Law Enforcement and Criminal Justice Co-operation

30. The TCA establishes a UK-EU Specialised Committee on Law Enforcement and Judicial Co-operation to address matters covered by Part Three of the agreement (Law

63 [Q172](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

64 [Q210](#) (Mark Larmour, Director, Northern Ireland Office)

65 Colin Murray & Dr Clare Rice ([CBC0010](#))

66 Cabinet Office, [Joint Communiqué of the British-Irish Intergovernmental Conference](#), 8 May 2019

67 [Q387](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

enforcement and judicial co-operation in criminal matters).⁶⁸ The Institute for Government has explained that the Specialised Committee will “oversee the functioning of this part of the agreement and the provisions can be reviewed if both sides agree. It will also oversee any disputes”.⁶⁹

31. Professor Valsamis Mitsilegas, from the School of Law at Queen Mary University of London, told our Committee that any complex questions on the “functioning, monitoring and implementation” of the new arrangements for law enforcement and judicial co-operation would be sent to the Specialised Committee for examination.⁷⁰ He added that there is much work to be done on the Specialised Committee and urged “the UK to be fully committed, to send its experts and to try to get some concrete solutions to the most pressing problems as soon as possible”.⁷¹ Gemma Davies, Associate Professor, Northumbria Law School argued that the Specialised Committee should have devolved representation as

the committee will likely be integral to developing Part III and looking at where cooperation needs to be enhanced. The needs of the devolved nations will be best served if they have representation.⁷²

32. Gemma Davies outlined that there were areas in the agreement that provide scope for enhancing co-operation in future, “particularly between the UK and Ireland, through the possibilities of bilateral agreements”.⁷³ Professor Mitsilegas agreed that the arrangements in the TCA evidenced “a dynamic situation” with regard to security co-operation between the UK and EU.⁷⁴ He added that closer co-operation in the future will be contingent on “some sort of common understanding as to the extent to which the UK will be seen to be compliant with the development of future EU legislation in the field”.⁷⁵

33. Minister Walker stated that the Government would “work closely with the devolved Administrations to determine an appropriate role for them in TCA governance structures”.⁷⁶ He added that no decisions had yet been taken on the membership of the Specialised Committee but outlined the Government’s view that Specialised Committees established by the TCA should not formally begin their work until the EU has completed its ratification of the agreement.⁷⁷

34. The Specialised Committee on Law Enforcement and Criminal Justice Co-operation will have a crucial role in developing and monitoring the law enforcement, security and criminal justice arrangements in the Trade and Co-operation Agreement. This important work would benefit from the formal input of devolved representatives. When the Specialised Committee is established, the Government must invite representatives from the Northern Ireland Executive to participate in the Committee (on the same basis as they do within the Executive) to allow them to articulate their perspective on security co-operation on the island of Ireland.

68 Article INST.2: Committees, HM Government, [Trade and cooperation agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part](#)

69 Institute for Government, UK-EU Future Relationship: the deal; [Law and Justice](#); 29 December 2020

70 [Q222](#) (Professor Valsamis Mitsilegas, School of Law, Queen Mary University of London)

71 [Q247](#) (Professor Valsamis Mitsilegas, School of Law, Queen Mary University of London)

72 Gemma Davies ([CBC0015](#))

73 [Q215](#) (Gemma Davies, Associate Professor, Northumbria Law School, Northumbria University)

74 [Q216](#) (Professor Valsamis Mitsilegas, School of Law, Queen Mary University of London)

75 [Q216](#) (Professor Valsamis Mitsilegas, School of Law, Queen Mary University of London)

76 [Q390](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

77 [Q390](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

3 Extradition

35. Following the UK's vote to leave the EU in June 2016, law enforcement agencies on both sides of the border highlighted the importance of maintaining a functional extradition system after Brexit.⁷⁸ Effective extradition processes between the UK and Ireland are key to preventing criminals from exploiting the border to evade prosecution.

36. Co-operation on the extradition of persons between the UK and Ireland previously took place under the European Arrest Warrant (EAW). When the transition period ended, the UK lost its access to the EAW. As part of the Trade and Co-operation Agreement (TCA), the UK and EU agreed replacement surrender arrangements. The new suspect surrender arrangements agreed between the UK and EU are similar to the EU's Surrender Agreement with Norway and Iceland.

European Arrest Warrant

37. The EAW is a fast-track extradition process between EU Member States which came into force in 2004.⁷⁹ The EAW allows an EU Member State to request an arrest in another EU Member State when seeking to prosecute or imprison a person.⁸⁰ The principle of 'mutual recognition' of judgments means that judicial authorities in an EU Member State can facilitate the arrest and surrender of a suspect or criminal to another Member State.⁸¹ The EAW provides for expedited extradition processes by imposing strict time limits on the surrender of individuals.⁸² Colin Murray and Dr Clare Rice noted that the EAW provides for a more efficient extradition process than past extradition arrangements, because it "operates on a presumption that EU Member States maintain equivalent protections for defendants in their criminal justice systems".⁸³ They argued that that presumption removes "a number of practical, as well as political, obstacles to the effective extradition of criminals and suspects".⁸⁴

38. The introduction of the EAW addressed historical political tension between the UK and Ireland caused by extradition.⁸⁵ Before the introduction of the EAW, extradition between the two countries had been "notoriously difficult".⁸⁶ Colin Murray and Dr Clare Rice stated that throughout the Troubles "extradition processes were laborious and frequently subject to legal objections".⁸⁷ We heard how political tensions on extradition between the two countries had largely ceased, in part due to the use of the EAW. The shift from extradition through diplomatic channels to arrangements based on mutual recognition of judicial processes was cited as a major reason for the strengthening of trust on extradition between the UK and Ireland.⁸⁸ The Government's Independent Reviewer

78 For example, see: Irish Department of Justice and Equality, [2017 Annual Report on the operation of the European Arrest Warrant](#), 10 December 2018; [Brexit: Northern Ireland security at risk if UK kicked out of EU extradition system, warns police chief](#), The Belfast Telegraph, 20 June 2018

79 House of Commons Library, [Brexit next steps: The European Arrest Warrant](#), 20 February 2020

80 House of Commons Library, [Brexit next steps: The European Arrest Warrant](#), 20 February 2020

81 House of Commons Library, [Brexit next steps: The European Arrest Warrant](#), 20 February 2020

82 House of Commons Library, [Brexit next steps: The European Arrest Warrant](#), 20 February 2020

83 Colin Murray & Dr Clare Rice ([CBC0010](#))

84 Colin Murray & Dr Clare Rice ([CBC0010](#))

85 For example, see: Northern Ireland Human Rights Commission ([CBC0002](#)); UK-Irish Criminal Justice Co-operation Network ([CBC0005](#)); Colin Murray & Dr Clare Rice ([CBC0010](#)).

86 Dr Amanda Kramer and Dr Rachael Dickson ([CBC0009](#))

87 Colin Murray & Dr Clare Rice ([CBC0010](#))

88 For example, see: Dr Amanda Kramer and Dr Rachael Dickson ([CBC0009](#)); Colin Murray & Dr Clare Rice ([CBC0010](#)).

of Terrorism Legislation, Jonathan Hall QC, concluded that the EAW had taken “the political dimension out of extradition”.⁸⁹

39. Effective co-operation on extradition between judicial authorities in the UK and Ireland allows Northern Ireland law enforcement agencies to tackle cross-border criminality. We heard that over two-thirds of EAWs sought by the PSNI between 2007 and 2017 related to Ireland.⁹⁰ From September 2018 to August 2019, the PSNI issued 38 EAWs, 26 of which related to Ireland.⁹¹ In 2018, then PSNI Chief Constable, Sir George Hamilton stated that the EAW underpinned the PSNI’s ongoing collaboration with the Gardaí in “ensuring that the border cannot be used by criminals to evade prosecution”.⁹² Robin Walker MP, Minister of State, Northern Ireland Office told us in November 2020 that the Government was seeking in the future relationship negotiations to “replicate the capability that is currently available in extradition co-operation between the UK and Ireland”.⁹³

The 1957 European Convention on Extradition

40. If the UK and EU had not been able to agree future extradition arrangements, co-operation between the UK and Ireland would have reverted to the terms of the 1957 Council of Europe Convention on Extradition.⁹⁴ Under the 1957 Convention, requests for the extradition of persons are made through diplomatic rather than judicial channels. Unlike the EAW, no time limits are put on the surrender of wanted persons.⁹⁵ An Institute for Government report found that the time taken to process an extradition request could have increased from an average of 48 days under the EAW to a year under the Convention.⁹⁶

41. Before the announcement of the TCA, Naomi Long MLA, Minister for Justice, Northern Ireland Executive argued that extradition would take longer if the Convention had had to be used:

One of the biggest challenges about extradition is simply the length of time it would take under those older arrangements in comparison to the speed with which we can operate at the moment under the European arrest warrant.⁹⁷

She argued that extended timescales for extradition would have provided criminals and suspects with opportunities to evade justice.⁹⁸ The PSNI concurred that the use of the 1957 European Convention on Extradition would delay extradition.⁹⁹

42. Before the agreement of replacement extradition arrangements, we heard that the Convention could have created political tension between the UK and Irish Governments. Jonathan Hall QC told us “however unlikely it may now seem, those relations may be put

89 Jonathan Hall QC, Independent Reviewer of Terrorism Legislation ([CBC0001](#))

90 Colin Murray & Dr Clare Rice ([CBC0010](#))

91 UK-Irish Criminal Justice Co-operation Network ([CBC0005](#))

92 [Brexit: Northern Ireland security at risk if UK kicked out of EU extradition system, warns police chief](#), The Belfast Telegraph, 20 June 2018

93 [Q175](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

94 House of Commons Library, [Brexit next steps: The European Arrest Warrant](#), 20 February 2020

95 House of Commons Library, [Brexit next steps: The European Arrest Warrant](#), 20 February 2020

96 Institute for Government, [Negotiating Brexit: policing and criminal justice](#), September 2018, p. 10

97 [Q125](#) (Naomi Long MLA, Minister of Justice, Northern Ireland Executive)

98 [Q126](#) (Naomi Long MLA, Minister of Justice, Northern Ireland Executive)

99 Police Service of Northern Ireland ([CBC0004](#))

under pressure”.¹⁰⁰ Dr Kramer agreed that the Convention “brings in the possibility that decisions can become more political, whereas before it was judges making decisions based on the rules”.¹⁰¹ Naomi Long told us that while the political sensitivities of extradition “are nothing like they were in the 1970s and 1980s”, they “remain issues that could be exploited”.¹⁰²

43. Owing to the inefficiencies and difficulties associated with use of the 1957 European Convention on Extradition, before the agreement of new extradition arrangements in the TCA, Colin Murray and Dr Clare Rice concluded that “it is imperative for cross-border co-operation on the island of Ireland that an arrangement is reached in relation to suspect surrender” that does not rely on the Convention.¹⁰³ Naomi Long told us that the Northern Ireland Department for Justice did not want co-operation with its Irish counterparts to rely on Council of Europe Conventions.¹⁰⁴

44. We welcome the Surrender agreement agreed as part of the Trade and Co-operation Agreement. Its introduction will avoid the significant delays that might have occurred if the UK and Ireland had been forced to rely on the cumbersome 1957 European Convention on Extradition.

New Suspect Surrender Arrangements

45. Part Three of the TCA includes the provision of new surrender arrangements between the UK and EU to replace use of the EAW.¹⁰⁵ Witnesses told us that the arrangements are very similar to the EU’s Surrender Agreement with Norway and Iceland, and replicate the provisions of the EAW as closely as possible in line with third country precedents.¹⁰⁶

46. Professor Valsamis Mitsilegas said the arrangements demonstrate a high level of ambition between the UK and EU to continue to co-operate closely on extradition, following the UK’s exit from the EU.¹⁰⁷ Gemma Davies agreed and commented that “much of the new arrangements are very similar to arrangements under the EAW”.¹⁰⁸ She pointed out that “Norway and Iceland are full members of Schengen, so this is an unprecedented agreement for a non-EU, non-Schengen country”.¹⁰⁹

47. Under the TCA, suspect surrender continues to take place through judicial channels rather than political ones.¹¹⁰ Contributors to our inquiry told us that this was important in allaying concerns that extradition processes between the UK and Ireland could become political again.¹¹¹ The agreement also establishes time limits for the surrender of persons as part of the new UK/EU surrender arrangements.¹¹² The time limits included are

100 Jonathan Hall QC, Independent Reviewer of Terrorism Legislation (CBC0001)

101 Q43 (Dr Amanda Kramer, School of Law, The Queen’s University of Belfast)

102 Q155 (Naomi Long MLA, Minister of Justice, Northern Ireland Executive)

103 Colin Murray & Dr Clare Rice (CBC0010)

104 Q128 (Naomi Long MLA, Minister of Justice, Northern Ireland Executive)

105 HM Government, [Trade and cooperation agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part](#), 24 December 2020, p. 312–329

106 See: Q215; Dr Rachael Dickson and Dr Amanda Kramer (CBC0014); Gemma Davies (CBC0015).

107 Q215 (Professor Valsamis Mitsilegas, School of Law, Queen Mary University of London)

108 Gemma Davies (CBC0015)

109 Gemma Davies (CBC0015)

110 Dr Rachael Dickson and Dr Amanda Kramer (CBC0014); Gemma Davies (CBC0015)

111 Dr Rachael Dickson and Dr Amanda Kramer (CBC0014); Gemma Davies (CBC0015)

112 See: Article LAW.SURR.95: Time limits and procedures for the decision to execute the arrest warrant and Article LAW.SURR.101: Time limits for surrender of the person, HM Government, [Trade and cooperation agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part](#), 24 December 2020

the same as those under the EAW.¹¹³ As well as helping to ensure efficient extradition processes between judicial authorities, Dr Dickson and Dr Kramer noted that these time limits “help to protect the due process rights of suspected and convicted persons as well as safeguarding those of victims and witnesses”.¹¹⁴

48. The new suspect surrender arrangements emphasise the principle of proportionality in extradition processes between the UK and EU. The TCA states:

Co-operation through the arrest warrant shall be necessary and proportionate, taking into account the rights of the requested person and the interests of the victims, and having regard to the seriousness of the act, the likely penalty that would be imposed and the possibility of a State taking measures less coercive than the surrender of the requested person particularly with a view to avoiding unnecessarily long periods of pre-trial detention.¹¹⁵

Professor Valsamis Mitsilegas commented that the new suspect surrender arrangements differ from the EAW in that proportionality features “much more strongly in the [Trade and Co-operation] agreement, as an element that underpins the very operation of extradition”.¹¹⁶ He added that the UK had “raised proportionality concerns during the operation of the European arrest warrant system, where proportionality was not a ground to refuse the execution of the warrant under EU law”.¹¹⁷

49. Gemma Davies noted that the concept of proportionality in the new suspect surrender arrangements “is similar to” the proportionality bar prescribed in UK law by section 21A of the Extradition Act 2003.¹¹⁸ Colin Murray argued that while the explicit inclusion of the principle of proportionality was welcome, its inclusion reflected developments in “the [European] Commission guidance on how the European arrest warrant operates” and therefore he did not think it would “necessarily make that much of a difference to how suspect surrender operates”.¹¹⁹ Dr Dickson and Dr Kramer concluded that the inclusion of the principle of proportionality “mitigates concerns over countries requesting persons for very minor offences”.¹²⁰

50. The new suspect surrender arrangements agreed between the UK and EU are similar to the EU Surrender Agreement with Norway and Iceland and include many of the features of the European Arrest Warrant. Importantly for co-operation between the UK and Ireland, the new arrangements mean that extradition will continue to be subject to judicial control rather than operating through political channels. The emphasis on the principle of proportionality is welcome and represents an improvement on the European Arrest Warrant.

113 [Q224](#) (Professor Valsamis Mitsilegas, School of Law, Queen Mary University of London); Gemma Davies ([CBC0015](#))

114 Dr Rachael Dickson and Dr Amanda Kramer ([CBC0014](#))

115 Article LAW.SURR.77: Principle of proportionality, HM Government, [Trade and cooperation agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part](#), 24 December 2020

116 [Q226](#) (Professor Valsamis Mitsilegas, School of Law, Queen Mary University of London)

117 [Q226](#) (Professor Valsamis Mitsilegas, School of Law, Queen Mary University of London)

118 Gemma Davies ([CBC0015](#))

119 [Q226](#) (Colin Murray, Reader in Public Law, Newcastle Law School, Newcastle University)

120 Dr Rachael Dickson and Dr Amanda Kramer ([CBC0014](#))

51. Despite the similarities between the new UK-EU suspect surrender arrangements and the EAW, there are some notable differences between the two agreements. These include:

- the introduction of a political offence exception;
- a derogation to allow states to refuse to extradite its own nationals, or only do so in certain conditions; and
- a requirement for double criminality, where an offence must exist in both jurisdictions, for the extradition of persons.¹²¹

52. Contributors to our inquiry agreed that the political offence exception clause included in the new suspect surrender arrangements was unlikely to create problems for extradition processes between the UK and Ireland. Gemma Davies told us that the allowance for states to refuse to execute a warrant for a political offence was “quite narrowly defined”.¹²² She also added that she would not expect Ireland to exercise the political offence exception.¹²³ Colin Murray told us “that jurisprudence developed from the late 1980s onwards” in Ireland meant that “the ecosystem exists where that [the political offence exception] should not be a particular problem with the new suspect surrender arrangements” between the UK and Ireland.¹²⁴ Dr Dickson and Dr Kramer noted that “the explicit exclusion of terrorism from the political offences exception mitigates concerns that this exception could be used to prevent the surrender of people involved in terrorist activities in Northern Ireland”.¹²⁵

53. We also heard that the ability of states to exercise a nationality exemption and thereby prevent or limit the extradition of its own nationals was unlikely to create issues for extradition between the UK and Ireland. Colin Murray told us that “there is not a nationality bar on extradition within the Irish constitution”,¹²⁶ while Gemma Davies commented that Ireland was not expected to invoke the nationality exemption.¹²⁷ PSNI Assistant Chief Constable, Mark McEwan informed us that the PSNI did not believe the nationality exemption in the agreement would impact on UK-Irish relationships on extradition.¹²⁸

54. The new suspect surrender arrangements contain the condition of double criminality for extradition processes between the UK and EU Member States. This means an offence that a warrant is based on must exist in both jurisdictions.¹²⁹ However, the UK or an EU Member State can choose to notify the Specialised Committee on Law Enforcement and Judicial Co-operation that it will waive the condition of double criminality in regard to certain offences listed in the agreement.¹³⁰

121 Gemma Davies (CBC0015)

122 Q227 (Gemma Davies, Associate Professor, Northumbria Law School, Northumbria University)

123 Q227 (Gemma Davies, Associate Professor, Northumbria Law School, Northumbria University)

124 Q224 (Colin Murray, Reader in Public Law, Newcastle Law School, Newcastle University)

125 Dr Rachael Dickson and Dr Amanda Kramer (CBC0014)

126 Q231 (Colin Murray, Reader in Public Law, Newcastle Law School, Newcastle University)

127 Gemma Davies (CBC0015)

128 Q296 (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland)

129 Gemma Davies (CBC0015)

130 Article LAW.SURR.79: Scope, HM Government, [Trade and cooperation agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part](#), 24 December 2020

55. Contributors to our inquiry told us that the requirement to establish double criminality could slow extradition processes between the UK and Ireland down.¹³¹ In written evidence to the Committee, Gemma Davies commented that

The UK has chosen to require dual criminality in all cases at present. It is open to the UK to notify the Specialised Committee that it will apply the ‘list-system’ of offences which do not require dual criminality in the future. The UK and Ireland – both as common law countries probably have greater alignment in relation to criminal offences than the UK has with civil law countries. However, dual criminality is likely to result in legal challenge and could be a factor in slowing down cases. More research is needed on areas that are likely to be problematic for dual criminality.¹³²

56. PSNI Assistant Chief Constable, Mark McEwan informed us that as the UK and Ireland are aligned “at such a serious level of criminality that we would be seeking to extradite somebody, we do not anticipate it having an impact in that way”.¹³³ Mr Walker concurred that there were currently no instances the Government was “aware of where this would cause a problem between Ireland and the UK”, but added that the Government would monitor this closely.¹³⁴ Minister Walker said that the principle of double criminality is “sufficiently important that it bears being established in every case in order to avoid individuals being extradited from the UK for things that are not offences under our laws” and that therefore the Government was not intending to seek a waiver.¹³⁵

57. The new extradition arrangements agreed between the UK and EU include some important differences from the European Arrest Warrant. The Trade and Co-operation Agreement introduces a political offence exception and allows states to refuse to extradite their own nationals. There is a requirement to establish double criminality, which can be waived in defined circumstances, although the Government has no plans to do so. Those differences should not significantly affect extradition processes between the UK and Ireland. However, the speed of extradition between the UK and Ireland may be slowed in some cases, if there is a requirement to establish double criminality as part of the process of suspect surrender. *The Government must commission a review of the effect of the new extradition arrangements after they have been in force for two years. Research on the effect of the need to establish double criminality on the speed of extradition processes between the UK and Ireland should form part of this review.*

58. The TCA establishes methods of transmitting arrest warrants between the UK and EU Member States.¹³⁶ Stefan Hyman & Jonathan Swain have noted that the preferred mechanism is the secure transfer of arrest warrants between judicial authorities.¹³⁷ However, Dr Dickson and Dr Kramer argued that where the location of a suspect is not

131 See: [Q224](#) (Gemma Davies, Associate Professor, Northumbria Law School, Northumbria University); [Q223](#) (Professor Steve Peers, School of Law, University of Essex)

132 Gemma Davies ([CBC0015](#))

133 [Q296](#) (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland)

134 [Q352](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

135 [Q352](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

136 See Article LAW.SURR.87: Transmission of an arrest warrant and Article LAW.SURR.88: Detailed procedures for transmitting an arrest warrant, HM Government, [Trade and cooperation agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part](#), 24 December 2020

137 Stefan Hyman & Jonathan Swain, CrimLine, [Extradition to the EU-27 under the UK/EU Trade & Cooperation Agreement: similarities and ten key differences](#), 31 December 2020

known “the procedure for transmitting warrants is less clear”.¹³⁸ Previously, the UK would have been alerted to these types of arrest warrants through SIS II, but that is no longer possible as the UK has lost access to SIS II following the end of the transition period.¹³⁹ Importantly, this loss of access has occurred just as Ireland begins to use the system: Dublin started to avail itself of SIS II on 15 March 2021.¹⁴⁰ Dr Dickson and Dr Kramer noted that the new surrender arrangements set out three possibilities for transmitting arrest warrants where the location of a suspect is not known. These are:

- that the issuing state may make enquiries in order to determine which state would be the executing state;
- that the issuing state may request for Interpol to transmit an arrest warrant; or
- that arrest warrants may be transmitted by any secure means capable.¹⁴¹

Dr Dickson and Dr Kramer argued that “these options make it much more likely that a person whose location is unknown can evade detection for longer periods of time”.¹⁴² They raised additional concerns with regard to this for security in Northern Ireland due to the openness of the border on the island of Ireland.¹⁴³

59. Steve Rodhouse, Director General of Operations, National Crime Agency told us that the Agency was clear that it would have preferred to maintain access to SIS II.¹⁴⁴ The Government has sought to mitigate this issue by using the Interpol I-24/7 system. Mr Rodhouse told us that there was “a very similar degree of functionality” between the Interpol system and SIS II, and that “the data that the I-24/7 system carries, including alerts for wanted people, is very similar to the data on the Schengen Information System”.¹⁴⁵ He added:

The caveat I have always put on this is that, going forward, we are reliant on EU member states making use of the I-24/7 system. To some extent, that relies on them doing additional work and potentially dual entering. If they have somebody who they feel is wanted in Europe, they would typically use the Schengen Information System to circulate them across Europe. Going forward, we are asking those EU member states to no doubt do that but, if they believe there is a possibility that person might be within the UK, they would also need to take out an Interpol red notice or diffusion, and circulate it via the I-24/7 system.¹⁴⁶

60. Steve Rodhouse informed us that the NCA was confident that crime agencies in EU Member States understood the UK’s need for them to input warrant notices into Interpol as well as SIS II.¹⁴⁷ He said that it was “early days” but there was no reason using the I-24/7 system “should be suboptimal, but we need to ensure that the system is well used.”¹⁴⁸

138 Dr Rachael Dickson and Dr Amanda Kramer (CBC0014)

139 Dr Rachael Dickson and Dr Amanda Kramer (CBC0014)

140 European Commission, Press Corner, [Daily News](#), 15 March 2021

141 Dr Rachael Dickson and Dr Amanda Kramer (CBC0014)

142 Dr Rachael Dickson and Dr Amanda Kramer (CBC0014)

143 Dr Rachael Dickson and Dr Amanda Kramer (CBC0014)

144 [Q333](#) (Steve Rodhouse, Director General of Operations, National Crime Agency)

145 [Q333](#) (Steve Rodhouse, Director General of Operations, National Crime Agency)

146 [Q333](#) (Steve Rodhouse, Director General of Operations, National Crime Agency)

147 [Q333](#) (Steve Rodhouse, Director General of Operations, National Crime Agency)

148 [Q333](#) (Steve Rodhouse, Director General of Operations, National Crime Agency)

PSNI Assistant Chief Constable, Mark McEwan also cautioned that it was premature to say definitively how the new system would work but said that the PSNI foresaw “it should work smoothly”.¹⁴⁹ He added that although UK law enforcement and crime agencies were reliant on partner agencies in EU Member States to enter their data into both SIS II and Interpol, it was in their interests to do so.¹⁵⁰

61. Professor Steve Peers told us that “it is well known that, reportedly, simply signing up to the Schengen Information System enables more effective transition of requests than any alternative measure”.¹⁵¹ He added that whether the transmission of arrest warrants through Interpol, where the suspect is not known, could fully replace using SIS II “remains to be seen”.¹⁵² Colin Murray, Reader in Public Law, Newcastle Law School agreed, stating that, with regard to the new processes, “the fly in the ointment” was how this would be picked up by partner law enforcement agencies in other countries”.¹⁵³

62. In March 2021, Minister Walker informed us that the transition to co-operation with EU Member States via Interpol channels, in the absence of SIS II, was working well so far.¹⁵⁴ The Minister argued that the UK’s engagement with EU countries prior to the end of the transition period had smoothed this transition:

Before the end of the transition period, when we did not know what arrangements would be in place in this regard, we had extensive engagement with member states, which generally expressed their willingness to continue to share critical law enforcement data with the UK using Interpol channels. We have made sure that UK information previously shared via SIS II has been circulated via Interpol, where appropriate, and that includes sharing information on wanted persons.¹⁵⁵

63. **The UK’s loss of access to SIS II has the potential to create delays in UK law enforcement agencies receiving arrest warrant notices when the location of the suspect is not known, if partner agencies in EU Member States do not routinely enter arrest warrant notices into the Interpol I-24/7 database. We would hope that, given the UK’s historical role in Interpol and the demonstrable benefits for pan-European safety and security, this would be something that EU Member States would support and encourage. The Government must set out how it plans to mitigate, limit or eliminate delays in receiving arrest warrants and operational information from EU partners following the loss of access to SIS II. The Government and relevant UK law enforcement agencies must also set out how it plans to encourage partner agencies in EU Member States to enter arrest warrants into the Interpol I-24/7 database to mitigate the operational loss of SIS II.**

149 [Q254](#) (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland)

150 [Q254](#) (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland)

151 [Q225](#) (Professor Steve Peers, School of Law, University of Essex)

152 [Q225](#) (Professor Steve Peers, School of Law, University of Essex)

153 [Q225](#) (Colin Murray, Reader in Public Law, Newcastle Law School, Newcastle University)

154 [Q354](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

155 [Q354](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

4 Cross-border information sharing

Information sharing north-south

64. Cross-border policing co-operation is based on a close and productive working relationship between the PSNI and the Gardaí. However, we also heard that information sharing between UK and Irish law enforcement agencies had been supported by EU-level arrangements.¹⁵⁶ The bilateral co-operation structures developed between UK and Irish crime agencies are therefore likely to become increasingly important following the UK's loss of access to some EU level mechanisms for information sharing.

65. Policing and criminal justice co-operation has developed significantly since the signing of the Belfast/Good Friday Agreement in 1998.¹⁵⁷ Before the Belfast/Good Friday Agreement, co-operation between the then Royal Ulster Constabulary (RUC) and An Garda Síochána was predicated on informal communication and personal contacts.¹⁵⁸ In 1999, the Independent Commission on Policing, established by the Belfast/Good Friday Agreement, found policing co-operation on the island of Ireland was “more ad hoc and dependent on personal relationships” than other examples of transnational policing co-operation at the time, such as that between the Kent County Constabulary and neighbouring police services in France and Belgium.¹⁵⁹ The Patten Report proposed the creation of more structured channels of co-operation between the PSNI and the Gardaí, many of which were implemented in the 2002 Agreement on Police Co-operation between the UK and Irish Governments.¹⁶⁰ In more recent years, co-operation between the forces has evolved through the establishment of forums targeting cross-border criminality such as the Joint Agency Task Force, the Organised Crime Task Force, the Cross Border Policing Strategy, and the Annual Cross-Border Organised Crime Conference (see Chapter 6).¹⁶¹

66. Alongside the formalising of co-operation networks between UK and Irish law enforcement agencies, EU Justice and Home Affairs databases have been developed in the past 20 years to aid transnational co-operation. We heard that although cross-border policing on the island of Ireland hinges on well developed connections between the PSNI and Gardaí, the EU's data protection framework has provided a basis for enabling efficient cross border co-operation on intelligence sharing.¹⁶² We also heard that UK law enforcement agencies' previous access to EU information sharing mechanisms such as Passenger Name Records (PNR) data, the Prüm Decisions, ECRIS, SIS II, and Europol databases had been important in assisting cross-border policing co-operation on the island of Ireland (discussed further in this Chapter).¹⁶³ Prior to the end of the transition period,

156 See: Dr Amanda Kramer and Dr Rachael Dickson ([CBC0009](#)); Colin Murray & Dr Clare Rice ([CBC0010](#)); Gemma Davies ([CBC0012](#)).

157 Kramer, A., Dickson, R. & Poes, A., *Evolving Justice Arrangements Post-Brexit*, August 2019, p. 49–57

158 Kramer, A., Dickson, R. & Poes, A., *Evolving Justice Arrangements Post-Brexit*, August 2019, p. 49–57

159 *A New Beginning: Policing in Northern Ireland – The Report of the Independent Commission on Policing for Northern Ireland*, September 1999, p. 101

160 Kramer, A., Dickson, R. & Poes, A., *Evolving Justice Arrangements Post-Brexit*, August 2019, p. 52; see also: *Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland on Police Co-operation*, 29 April 2002

161 See: Police Service of Northern Ireland ([CBC0004](#)); UK-Irish Criminal Justice Co-operation Network ([CBC0005](#)); Kramer, A., Dickson, R. & Poes, A., *Evolving Justice Arrangements Post-Brexit*, August 2019; Colin Murray & Dr Clare Rice ([CBC0010](#)).

162 Colin Murray & Dr Clare Rice ([CBC0010](#)).

163 See: Police Service of Northern Ireland ([CBC0004](#)); UK-Irish Criminal Justice Co-operation Network ([CBC0005](#)); Colin Murray & Dr Clare Rice ([CBC0010](#)).

Ireland was not connected to SIS II nor exchanging DNA profiles via Prüm with all States participating in the system.¹⁶⁴ However, these information systems were utilised by the PSNI and other UK agencies operating in Northern Ireland to co-operate with partner agencies in other EU Member States. Dr Kramer and Dr Dickson told us that “there exist a number of bilateral co-operation measures and agreements that facilitate not only co-operation between the PSNI and AGS, but also more broadly between crime agencies in Ireland and the UK”.¹⁶⁵ However, they added that “it should be emphasised though that these measures benefit from a common EU environment and in some circumstances, specific EU instruments”.¹⁶⁶ Gemma Davies, Associate Professor, Northumbria University argued:

Whilst AGS [An Garda Síochána] and the PSNI have a close working relationship and have historically relied on informal co-operation it is easy to overlook the extent to which informal exchange of information has been superseded by access to EU databases.¹⁶⁷

67. In January 2021, PSNI Assistant Chief Constable, Mark McEwan told us that the live sharing of information between the PSNI and the Gardaí had not been affected by the end of the transition period and the UK’s loss of access to certain EU security and justice databases.¹⁶⁸ However, he caveated that it was still quite early to tell and that it would take time for any unintended consequences of the TCA to come to light.¹⁶⁹ On the impact of the loss of SIS II on policing co-operation north-south, he explained:

Our partners in Ireland, which are, it is fair to say, our largest partners in that, did not avail of it [SIS II] previously, so we have arrangements on a north-south basis that are still flowing well, and we are content with that.¹⁷⁰

68. The Assistant Chief Constable also informed us that the PSNI and the Gardaí were intensifying their existing co-operation to combat cross-border organised criminality and were “seeking to find ways to further solidify those arrangements and to become more effective”.¹⁷¹ He added that the two police services were conducting “constant monitoring and scanning to see what the opportunities are” for organised crime gangs, following the UK’s exit from the EU and changes in the statuses of borders within the Common Travel Area.¹⁷² Mark McEwan said that UK and Irish law enforcement agencies were undertaking these exercises to complement “our intelligence capacity and the ability to share information and intelligence with colleagues in the south”.¹⁷³

69. Following the agreement of new mechanisms in the TCA to continue information sharing between UK and EU law enforcement agencies, UK and Irish law enforcement agencies are currently closely aligned in terms of the technological systems that they have

164 See: Oral evidence taken before the House of Lords EU Security and Justice Sub-Committee on 17 November 2020, [Q45](#) [Dr Vicky Conway]; Kramer, A., Dickson, R. & Pues, A., [Evolving Justice Arrangements Post-Brexit](#), August 2019, p. 62.

165 Dr Amanda Kramer and Dr Rachael Dickson ([CBC0009](#))

166 Dr Amanda Kramer and Dr Rachael Dickson ([CBC0009](#))

167 Gemma Davies ([CBC0012](#))

168 [Q269](#) (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland)

169 [Q269](#) (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland)

170 [Q268](#) (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland)

171 [Q270](#) (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland)

172 [Q270](#) (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland)

173 [Q270](#) (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland)

access to in order to facilitate and underpin their intelligence sharing. However, there is a risk of divergence in this area if the UK does not keep pace with future developments of EU systems to improve the efficiency and breadth of information sharing. This is evident in Ireland's recent connection to SIS II, at the same time as the UK lost access to the system following the end of the transition period. Dr Dickson and Dr Kramer have suggested that Ireland's recent connection to SIS II indicates that UK and Irish law enforcement agencies are "moving in different directions" in terms of being plugged into real-time information sharing databases and that this needs consideration by Governments on both sides of the Irish Sea.¹⁷⁴ They added:

There is no denying that both the UK and Ireland have a significant interest in quality cooperation with their respective counterparts. However, using this position as an indication that 'it'll all be alright on the night' is short-sighted. A key focus going forward should be how the relationship between UK and Irish law enforcement agencies can be supported and underpinned by technological systems.¹⁷⁵

70. Mark Larmour, Director, NIO informed the Committee that there were already a large number of cross-border mechanisms on the island of Ireland to facilitate the sharing of security and criminal justice-related information and said these were still working well following the end of the transition period.¹⁷⁶ Mr Larmour commented that the timeliness of information sharing was being kept under review, "recognising that the context and the environment will change".¹⁷⁷ In March 2021, prior to Ireland's joining SIS II, Minister Walker added that

With regards to SIS II, the EU took the position through negotiations that it was legally not possible for it to offer it to any country outside the Schengen area. The point about the arrangements we have in place is that they allow for exchange of information, and indeed that is the basis on which we have exchanged information with Ireland consistently, because it has not yet joined up to SIS II. That flow of information is continuing, and the key challenge going forward is to make sure that, as and when they do join SIS II, we continue to share information with them as effectively as possible. The goodwill is there to make sure that that information flows in both directions.¹⁷⁸

71. We heard how security co-operation between the UK and EU has the potential to be dynamic following the agreement of the TCA.¹⁷⁹ The Specialised Committee on Law Enforcement and Criminal Justice Co-operation provides a forum through which the UK could seek to develop existing co-operation with the EU in this area, as EU information sharing systems evolve. However, Professor Mitsilegas told the Committee that closer UK-EU co-operation on Justice and Home Affairs would require the UK to be cognisant of future development of the EU *acquis*.¹⁸⁰ He added that the development of co-operation will be "contingent on some sort of common understanding as to the extent to which

174 Dr Rachael Dickson and Dr Amanda Kramer (CBC0014)

175 Dr Rachael Dickson and Dr Amanda Kramer (CBC0014)

176 Q356 (Mark Larmour, Director, Northern Ireland Office)

177 Q356 (Mark Larmour, Director, Northern Ireland Office)

178 Q357 (Robin Walker MP, Minister of State, Northern Ireland Office)

179 Q216 (Professor Valsamis Mitsilegas, School of Law, Queen Mary University of London)

180 Q216 (Professor Valsamis Mitsilegas, School of Law, Queen Mary University of London)

the UK will be seen to be compliant with the development of future EU legislation in the field”.¹⁸¹

72. **Over the past two decades, the PSNI and the Gardaí have made great progress in developing co-operation mechanisms to tackle cross-border criminality on the island of Ireland. We are assured that this will continue after Brexit. The structures that have been built up to aid UK and Irish law enforcement agencies in their mutual aim of frustrating cross-border crime will become increasingly important now that the UK has left the EU and lost access to some EU security and justice databases. There is, though, a risk that the tools and systems used by UK law enforcement agencies for cross-border information sharing will fall behind those that Irish and other EU authorities have access to. We have heard that this is in part due to the European Union’s approach to granting third countries full access to such measures. There is also the risk in the future that any unilateral divergence may have an impact on information sharing. This could lead to an imbalance in capabilities between UK and Irish authorities and inadvertently hand criminals an opportunity to exploit these discrepancies. In doing so, the impact would be felt on the streets of Great Britain, as much as on the island of Ireland. *The Government must use the Specialised Committee on Law Enforcement and Criminal Justice Co-operation to, where possible and cognisant of third country limitations, make the case for ongoing and organic alignment between the UK and EU in the development of information sharing systems.***

Passenger Name Records

73. There are provisions in the TCA which facilitate the efficient exchange of Passenger Name Records (PNR) between UK and EU law enforcement agencies.¹⁸² The transfer of PNR assists law enforcement and crime agencies in the tracking of serious criminals.¹⁸³

74. Professor Mitsilegas told us that the arrangements on the exchange of PNR data in the TCA were detailed and demonstrated a high level of ambition to continue close co-operation in this area between the UK and EU.¹⁸⁴ Gemma Davies agreed that the provisions seemed adequate and that the agreement set out arrangements for the “timely and efficient exchange of passenger name records”.¹⁸⁵

75. Paul Morgan CBE, Senior Director, Border Readiness Directorate, Border Force informed us that Border Force used PNR data when co-operating with Irish crime agencies to maintain the security of the Common Travel Area and to monitor movement of people who may pose a threat to it.¹⁸⁶ He said that the exchange of PNR data was very useful in tracking cross-border criminality, adding that “it is a fundamental part of our analysis” in monitoring such activity.¹⁸⁷

76. **We are heartened to see an agreement providing for reciprocal transfers of Passenger Name Record (PNR) data. That agreement will help to protect people in**

181 [Q216](#) (Professor Valsamis Mitsilegas, School of Law, Queen Mary University of London)

182 See: TITLE III: TRANSFER AND PROCESSING OF PASSENGER NAME RECORD DATA, HM Government, [Trade and cooperation agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part](#), 24 December 2020

183 [Q334](#) (Paul Morgan CBE, Senior Director, Border Readiness Directorate, Border Force)

184 [Q215](#) (Professor Valsamis Mitsilegas, School of Law, Queen Mary University of London)

185 [Q232](#) (Gemma Davies, Associate Professor, Northumbria Law School, Northumbria University)

186 [Q334](#) (Paul Morgan CBE, Senior Director, Border Readiness Directorate, Border Force)

187 [Q334](#) (Paul Morgan CBE, Senior Director, Border Readiness Directorate, Border Force)

Northern Ireland against serious crime and terrorism by allowing UK law enforcement agencies to exchange data on serious criminals with their counterparts in EU Member States as well as enabling UK and Irish law enforcement agencies to share relevant information.

Exchange of biometric data

77. Before the end of the transition period, UK law enforcement agencies exchanged biometric data through the Prüm Decisions, with Member States also participating in the Prüm system. Importantly, data were exchanged through an automated system providing for the efficient sharing of such information. Before the reaching of the TCA, PSNI Chief Constable Simon Byrne cautioned that “any interruption to that would have a consequence”.¹⁸⁸

78. The Government and the EU subsequently negotiated new arrangements to continue the exchange of biometric data after the UK’s departure from the EU. The Law Enforcement and Judicial Co-operation in Criminal Matters chapter in the TCA sets out the objective to establish “reciprocal cooperation between the competent law enforcement authorities of the United Kingdom, on the one side, and the Member States, on the other side, on the automated transfer of DNA profiles, dactyloscopic data and certain domestic vehicle registration data”.¹⁸⁹

79. Professor Mitsilegas suggested that the arrangements for the sharing of biometric data showed a high level of ambition between the UK and EU to continue the close co-operation that has developed in this area.¹⁹⁰ Whilst, Gemma Davies noted that the provisions for the sharing of DNA and fingerprints in the TCA were very similar to arrangements in the Prüm decisions.¹⁹¹ However, Dr Dickson and Dr Kramer warned that it was “a matter of urgency” that the procedures for sharing biometric data between UK and EU law enforcement agencies are developed and trialled as the agreement contains “a requirement for a pilot be run, an evaluation carried out, and for the UK to meet certain conditions” within a time limit of nine months.¹⁹²

80. The Government has outlined its view that the TCA provides “for the fast and effective exchange of national DNA, fingerprint and vehicle registration data between the UK and individual EU Member States to aid law enforcement agencies in investigating crime and terrorism”.¹⁹³ It added “DNA and fingerprint data will continue to be exchanged through the Prüm system and the Agreement enables the exchange of vehicle registration data in the future”.¹⁹⁴

81. It is positive that the Government has negotiated successfully an agreement with the EU to provide for reciprocal access to biometric data (and in the future vehicle

188 [Q65](#) (Simon Byrne, Chief Constable, Police Service of Northern Ireland)

189 Article LAW.PRUM.5: Objective, HM Government, [Trade and cooperation agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part](#), 24 December 2020

190 [Q215](#) (Professor Valsamis Mitsilegas, School of Law, Queen Mary University of London)

191 [Q232](#) (Gemma Davies, Associate Professor, Northumbria Law School, Northumbria University)

192 Dr Rachael Dickson and Dr Amanda Kramer ([CBC0014](#))

193 HM Government, [UK-EU TRADE AND COOPERATION AGREEMENT Summary Explainer](#), Part Three: Law Enforcement and Judicial Cooperation in Criminal Matters, December 2020, p.26

194 HM Government, [UK-EU TRADE AND COOPERATION AGREEMENT Summary Explainer](#), Part Three: Law Enforcement and Judicial Cooperation in Criminal Matters, December 2020, p.26

registration data) of suspected criminals. That will help UK law enforcement agencies and law enforcement agencies in connected EU Member States to identify terrorists and organised criminals. *The Government should set out if, and how, it plans to use these arrangements to co-operate on sharing biometric data with Ireland in particular.*

Operational information exchange

82. The TCA establishes that operational information can continue to be exchanged between UK and EU law enforcement agencies.¹⁹⁵ The agreement allows the UK to request information from EU Member States and also enables EU Member States to send information to the UK spontaneously.¹⁹⁶ Furthermore, UK and EU Member States can enter into bilateral agreements covering the exchange of operational information, providing such agreements are compliant with European Union law.¹⁹⁷

83. Before the end of the transition period, UK law enforcement agencies utilised databases such as SIS II and the Europol Information System to share operational information in real-time with partner agencies in EU countries.¹⁹⁸ Contributors to our inquiry suggested that while the agreement allows for the continuation of operational information exchange, it does not address how such intelligence sharing can continue as efficiently as when the UK had access to SIS II.¹⁹⁹ We heard how relying on Interpol channels as a replacement for loss of access to SIS II could run the risk of delay in the UK receiving operational information as these channels are slower.²⁰⁰

84. Despite a lack of clarity as to how operational information exchange can continue at speed on a Europe-wide basis, we heard that the agreement reached does not impede on UK and Irish law enforcement agencies continuing to exchange operational information through bilateral mechanisms that they have developed. As outlined in the previous Chapter, before 15 March 2021 Ireland was not connected to the SIS II database, so bilateral co-operation in this area on the island of Ireland has to a large extent developed outside of EU fora.²⁰¹ PSNI Assistant Chief Constable, Mark McEwan informed us that because of this, “we [the PSNI and the Gardaí] had our mechanisms to exchange information and we still exchange information daily at an operational level. We have really good contact and radio communications north and south”.²⁰²

85. Dr Dickson and Dr Kramer have suggested that a key focus following the UK’s exit from the EU should be on “how the relationship between UK and Irish law enforcement

195 See: TITLE IV: COOPERATION ON OPERATIONAL INFORMATION, HM Government, [Trade and cooperation agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part](#), 24 December 2020

196 Dr Rachael Dickson and Dr Amanda Kramer (CBC0014), see also: Article LAW.OPCO.1: Cooperation on Operational Information, HM Government, [Trade and cooperation agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part](#), 24 December 2020

197 TITLE IV: COOPERATION ON OPERATIONAL INFORMATION, HM Government, [Trade and cooperation agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part](#), 24 December 2020, see also: Gemma Davies (CBC0015)

198 See: Gemma Davies (CBC0015); Oral evidence taken before the House of Lords EU Security and Justice Subcommittee on 3 November 2020, Q1–3 [Sir Rob Wainwright]

199 See: Dr Rachael Dickson and Dr Amanda Kramer (CBC0014); Gemma Davies (CBC0015)

200 Dr Rachael Dickson and Dr Amanda Kramer (CBC0014)

201 Q257 (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland)

202 Q257 (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland)

agencies can be supported and underpinned by technological systems”.²⁰³ They argued:

The use and reliance on data systems in law enforcement is increasing and working with Ireland as a close strategic partner to ensure cooperation is keeping pace with technological advances and opportunities should be explored.²⁰⁴

The UK-Irish Criminal Justice Co-operation Network and Gemma Davies proposed that the efficiency of co-operation on operational information would be enhanced if there were a co-located centre for cross-border investigation.²⁰⁵ The PSNI also suggested the establishment of a bespoke centre of excellence could enhance operational capability (see Chapter 6).²⁰⁶

86. Robin Walker told us that bilateral arrangements covering the exchange of information north-south were working well. He said that the Government, recognising the role of the NI Department of Justice in this area, would continue to have discussions with the Irish Government about how to develop information sharing mechanisms.²⁰⁷ Minister Walker outlined that the Government intended to make use of the provision in the TCA to enter into bilateral agreements covering the exchange of operational information with Ireland:

We intend to use the bilateral opportunity as set out in the TCA itself to go further still and work to enhance the excellent agreements we have in place, but we have not yet seen any problems that require early intervention in that respect. It is more about looking at what the long-term opportunities are to go even further.²⁰⁸

87. The PSNI and the Gardaí have developed bilateral mechanisms for sharing operational policing information. The Trade and Co-operation Agreement does not appear to impede the continuing exchange of operational information between UK and Irish law enforcement agencies, but both countries should be ambitious and build on the arrangements already in place. *The Government must set out how it plans to support the development of existing bilateral mechanisms for the exchange of operational policing information between UK and Irish law enforcement agencies in line with technological advances to ensure that operational information exchange is as efficient as possible.*

European Criminal Records Information System (ECRIS)

88. Co-operation between UK, Irish and other EU law enforcement agencies on the exchange of criminal records previously took place through the European Criminal Records Information System (ECRIS). The UK was one of the most active users of ECRIS, the pan-EU database that facilitates the standardised electronic exchange of criminal records between EU Member States.²⁰⁹ Before the end of the transition period, both the PSNI and the Northern Ireland Justice Minister discussed the effect a loss of access to

203 Dr Rachael Dickson and Dr Amanda Kramer (CBC0014)

204 Dr Rachael Dickson and Dr Amanda Kramer (CBC0014)

205 UK-Irish Criminal Justice Co-operation Network (CBC0005); Gemma Davies (CBC0015)

206 Police Service of Northern Ireland (CBC0004)

207 Q351 (Robin Walker MP, Minister of State, Northern Ireland Office)

208 Q364 (Robin Walker MP, Minister of State, Northern Ireland Office)

209 Home Affairs Committee, [Letter from Director General to the Chair dated 5 November 2020](#), p.5

ECRIS could have had for policing, security and criminal justice co-operation with partner agencies in the EU.²¹⁰ During our inquiry, we heard that a “quick and reliable method of assessing criminal records is needed” to police the open border between Northern Ireland and Ireland.²¹¹

89. On 1 January 2021, the UK lost access to ECRIS but the TCA outlines that EU Member States can still use ECRIS technical infrastructure to co-operate with the UK on the exchange of criminal record data.²¹² The UK is now using the United Kingdom’s Criminal Records Information System (UK-CRIS) to connect with Member States’ software and exchange criminal record data.²¹³ Gemma Davies told us that as a result “the disruption to criminal record exchange should be minimal”.²¹⁴ PSNI Assistant Chief Constable, Mark McEwan informed us that:

The move from ECRIS to UK-CRIS has been very important for us in terms of accessing records, particularly around vetting and child safeguarding, for example. Those things are of real import for us, as they are for the UK as a whole, but particularly in terms of the north-south ambit, where people in Northern Ireland and Ireland live their lives in a cohesive manner on both sides of the border, for example. That has been useful for us and we have not experienced any issues with that at this point.²¹⁵

90. Gemma Davies also told us that there are “some minor changes” between ECRIS and the replacement measures agreed for the sharing of criminal record data.²¹⁶ The new provisions do not include the exchange of information on convictions of third-country nationals.²¹⁷ Communication of a conviction handed down in a state is communicated to the state of the convicted person’s nationality once per month rather than ‘as soon as possible’ under ECRIS provisions.²¹⁸ The new arrangements also set a time limit of 20 working days for responses to a request for information, if for the purpose of criminal proceedings.²¹⁹ Under ECRIS, the time limit was 10 days.²²⁰ The PSNI informed us that the average timeframe for criminal record requests received through ECRIS was between 8 and 10 days.²²¹

91. The provision of time limits in the Trade and Co-operation Agreement is welcome. If a deal had not been agreed on future UK-EU security partnership working, UK law enforcement agencies would have had to rely on the 1959 European Convention on Mutual Assistance in Criminal Matters to exchange criminal records with their counterparts in

210 See: Police Service of Northern Ireland ([CBC0004](#)); Northern Ireland Assembly, [Official Report](#), 22 September 2020, p. 30

211 UK-Irish Criminal Justice Co-operation Network ([CBC0005](#))

212 See: ANNEX LAW-6: EXCHANGE OF CRIMINAL RECORD INFORMATION – TECHNICAL AND PROCEDURAL SPECIFICATION, HM Government, [Trade and cooperation agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part](#), 24 December 2020; Gemma Davies ([CBC0015](#))

213 Gemma Davies ([CBC0015](#)); [Q268](#) (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland)

214 Gemma Davies ([CBC0015](#))

215 [Q268](#) (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland)

216 Gemma Davies ([CBC0015](#))

217 Gemma Davies ([CBC0015](#))

218 Gemma Davies ([CBC0015](#))

219 Article LAW.EXINF.126: Replies to requests, HM Government, [Trade and cooperation agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part](#), 24 December 2020

220 [Q232](#) (Gemma Davies, Associate Professor, Northumbria Law School, Northumbria University)

221 Police Service of Northern Ireland ([CBC0016](#))

the EU. In a letter to the House of Commons Home Affairs Committee, the NCA stated that while ECRIS “provides standardised, electronic exchange of criminal records with set timeframes for requests”, the 1959 European Convention on Mutual Assistance in Criminal Matters “does not impose timescales”.²²²

92. Gemma Davies raised concerns that the 20-day time limit under the TCA, as opposed to the 10-day limit under ECRIS, could negatively affect co-operation between UK and Irish law enforcement agencies. She cautioned that “20 days might not seem a great difference from 10 days, but in many operational cases it would be. It means that police officers can try to speed up that process in cases that are fast moving or very important.”²²³ Gemma Davies added that the UK and Ireland could agree shorter time limits bilaterally if needed and “would be able to work together to agree closer time limits to ensure that criminal records are shared as quickly as possible, bearing in mind the border”.²²⁴

93. When questioned on this issue, Minister Walker said that the 20-day limit “is an upper limit rather than necessarily a delineation of what has been achieved to date”.²²⁵ He said that the average timeframe for the exchange of criminal record data across EU Member States was “about six days” but that the UK and Ireland had exchanged criminal record data much faster than this timeframe.²²⁶ Minister Walker said that there had been no change to this following the end of the transition period, explaining

The fact that the agreement provides for access to shared technical infrastructure that allows the UK to continue to exchange data through a secure electronic transfer mechanism means that we can continue to use the same forms and processes that we used before the end of the transition period, and that should carry on delivering better outcomes than that 20-day upper limit in all our exchanges.²²⁷

He added that if the Government did encounter a problem with the current efficient exchange of criminal record data with Ireland, “we might be able to look at whether we needed to pursue a bilateral discussion on that, but we have not come across any problems to date”.²²⁸

94. **The establishment of UK-CRIS to replace the UK’s participation in the European Criminal Records Information System (ECRIS) is welcome. Effective policing of the open border on the island of Ireland is assisted by efficient and reliable assessment of criminal records. The 20-day time limit included in the Trade and Co-operation Agreement is an improvement on the 1959 Convention on Mutual Legal Assistance in Criminal Matters which the UK and EU would have had to rely upon if no agreement on security had been reached. However, it is not as strict as the 10-day time limit that is in place under ECRIS. *The Government must work with the Irish Government to ensure that criminal record data requested for the purposes of criminal proceedings continues to be exchanged as quickly as possible between UK and Irish law enforcement agencies, aiming for the shorter time limits as set out when using ECRIS rather than the***

222 Home Affairs Committee, [Letter from Director General to the Chair dated 5 November 2020](#), p.5

223 [Q245](#) (Gemma Davies, Associate Professor, Northumbria Law School, Northumbria University)

224 [Q245](#) (Gemma Davies, Associate Professor, Northumbria Law School, Northumbria University); see also: Gemma Davies ([CBC0015](#))

225 [Q365](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

226 [Q365](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

227 [Q365](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

228 [Q365](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

20-day time limit set out in the Trade and Co-operation Agreement; and reporting on its performance against those limits.

Europol

95. Europol is the EU’s law enforcement agency. The EU-wide agency offers support for law enforcement operations on the ground aimed at preventing and combating organised crime, terrorism and other forms of serious crime affecting two or more Member States.²²⁹ It also provides a hub for information through databases such as the Europol Information System, which contains information on criminal actors across the EU, and the Secure Information Exchange Network Application (SIENA), which facilitates the secure and swift transmission of sensitive and restricted data between law enforcement agencies.²³⁰

96. The UK lost full membership of Europol when the transition period ended on 31 December 2020, because only EU Member States are permitted full access to the Agency.²³¹ The UK has also lost access to the Europol Information System and will not have any role in the governance of the Agency.²³² However, under the new arrangements the UK will continue to have access to the Secure Information Exchange Network Application (SIENA), a communication platform for the exchange of operational and strategic crime-related information.²³³ The UK will also be able to second liaison officers to Europol and they will be able to attend operational meetings.²³⁴

97. Before the reaching of the TCA, Dr Kramer and Dr Dickson commented that Europol was crucial in providing UK law enforcement agencies with a developing picture of serious crime and terrorism threats across Europe.²³⁵ They warned that UK law enforcement authorities might have to rely on Irish law enforcement agencies to engage in longer-term crime analysis, following loss of full membership to the Agency.²³⁶ They told us that a lack of full access to Europol could have “significant operational” effects on UK law enforcement agencies’ ability to co-operate effectively with partner agencies.²³⁷

98. Following the negotiation of the TCA, Steve Rodhouse, Director General of Operations, National Crime Agency told us that “in reality, the EU exit deal that has been struck tactically changes very little in our relationship with Europol”.²³⁸ Mr Rodhouse pointed to the ability of UK law enforcement agencies to have access to “a lot of the messaging systems”, and for the UK liaison bureau to continue to remain in The Hague, as positive aspects of the deal.²³⁹ He said that the loss of access to the Europol Information System should have a minimal impact as

the system effectively signposts where other intelligence is held, and we will be able to have inquiries done on our behalf and then follow up on them, so

229 [Regulation 2016/794](#)

230 See: Northern Ireland Human Rights Commission ([CBC0002](#)); Dr Amanda Kramer and Dr Rachael Dickson ([CBC0009](#)); Europol, [Information Exchange](#).

231 See: Dr Amanda Kramer and Dr Rachael Dickson ([CBC0009](#)); Colin Murray & Dr Clare Rice ([CBC0010](#)).

232 European Commission, [Questions & Answers: EU-UK Trade and Cooperation Agreement](#), 24 December 2020

233 [Q254](#) (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland)

234 Gemma Davies ([CBC0015](#))

235 Dr Amanda Kramer and Dr Rachael Dickson ([CBC0009](#))

236 Dr Amanda Kramer and Dr Rachael Dickson ([CBC0009](#))

237 Dr Amanda Kramer and Dr Rachael Dickson ([CBC0009](#))

238 [Q343](#) (Steve Rodhouse, Director General of Operations, National Crime Agency)

239 [Q343](#) (Steve Rodhouse, Director General of Operations, National Crime Agency)

we are confident that we will not be losing access to signposts on where data and intelligence are held.²⁴⁰

In light of the UK's loss of its seat on Europol's management board, Mr Rodhouse added that crime agencies would have to work hard to ensure that the UK still had the same influence in Europol, so that the agency continues to place its attention "on the crime threats that matter to the UK".²⁴¹

99. Contributors to the inquiry noted that the precise nature of the UK's relationship with Europol remains to be outlined. Dr Dickson and Dr Kramer remarked that "the UK's future relationship with Europol is left open-ended" in the TCA.²⁴² Gemma Davies concurred that "the extent of the relationship is not yet fleshed out", pointing to provisions in the TCA for the UK and Europol to agree "working arrangements" for future UK co-operation with the agency.²⁴³ Professor Valsamis Mitsilegas told us that he read the agreement as trying to achieve as much as possible in terms of the UK's involvement with Europol within the confines of its status as a third country.²⁴⁴ He added:

This will have to be ironed out in the future by bodies such as the specialised committee envisaged by the agreement, where it brings experts from both the EU and the UK to work out the functioning, monitoring and implementation of the agreement. Any complex questions in the future will come to this committee to examine.²⁴⁵

100. Contributors to our inquiry also told us that UK law enforcement agencies' involvement in Joint Investigation Teams (JITs) was an area of co-operation between the UK and EU that required further development.²⁴⁶ JITs are an international co-operation tool based on agreements between agencies in two or more States to carry out criminal investigations in one or more of the involved States.²⁴⁷ Europol and Eurojust can help to facilitate the establishment and work of JITs and since 2009, Eurojust has also provided funding to JITs.²⁴⁸ Under provisions in the TCA, the UK will still be able to participate in JITs with law enforcement agencies in EU Member States but these will be governed by European Union law.²⁴⁹ We heard that the extent to which UK law enforcement agencies could be involved in JITs that are facilitated by Europol and Eurojust was unclear in the agreement.²⁵⁰ Academics also cautioned that there was still a debate over whether UK law enforcement agencies could initiate JITs supported by EU Agencies as a third country.²⁵¹

240 [Q343](#) (Steve Rodhouse, Director General of Operations, National Crime Agency)

241 [Q343](#) (Steve Rodhouse, Director General of Operations, National Crime Agency)

242 Dr Rachael Dickson and Dr Amanda Kramer ([CBC0014](#))

243 Gemma Davies ([CBC0015](#)); see also: Article LAW.EUROPOL.59: Working and administrative arrangements, HM Government, [Trade and cooperation agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part](#), 24 December 2020

244 [Q222](#) (Professor Valsamis Mitsilegas, School of Law, Queen Mary University of London)

245 [Q222](#) (Professor Valsamis Mitsilegas, School of Law, Queen Mary University of London)

246 [Q248](#) (Professor Valsamis Mitsilegas, School of Law, Queen Mary University of London); [Q248](#) (Colin Murray, Reader in Public Law, Newcastle Law School, Newcastle University)

247 Europol, [JOINT INVESTIGATION TEAMS - JITS](#)

248 Eurojust is the EU's Criminal Justice Co-operation Agency. See: Eurojust, [Joint investigation teams](#); Europol, [JOINT INVESTIGATION TEAMS - JITS](#)

249 [Q248](#) (Professor Valsamis Mitsilegas, School of Law, Queen Mary University of London)

250 See: [Q248](#); Gemma Davies ([CBC0015](#))

251 [Q248](#) (Professor Valsamis Mitsilegas, School of Law, Queen Mary University of London); [Q248](#) (Colin Murray, Reader in Public Law, Newcastle Law School, Newcastle University)

101. PSNI Assistant Chief Constable, Mark McEwan told us that the PSNI could still be involved in JITs facilitated by Europol and Eurojust following the agreement of the TCA but that it could not now instigate the establishment of such JITs or request funding for them.²⁵² However, Mr Rodhouse informed us that UK agencies had been “operating in joint investigation teams outside of EU measures for some time” using Council of Europe measures and that UK agencies will still be able to initiate JITs under these measures.²⁵³

102. Minister Walker told us that the UK’s relationship with Europol negotiated in the TCA reflected the “scale of our contribution to the work of the agency in the past”.²⁵⁴ He said that the TCA enabled UK law enforcement agencies effective co-operation with the Agency, noting that the arrangements provided for

the presence of UK liaison officers in Europol headquarters, access to Europol’s secure messaging system, the ability to attend and organise operational and other meetings at Europol, the ability to contribute to Europol’s analysis projects in order to benefit from the agency’s co-ordination and analytical functions, and the fast and effective exchange of data...It enables continued effective co-operation with the agency to protect shared capabilities by providing that the UK can second a liaison prosecutor and up to five assistants to make up the UK presence at Eurojust headquarters, which is three times the third-country precedent and reflects the UK’s substantial contribution and workload.²⁵⁵

103. UK law enforcement agencies will continue to have access to Europol through the third-country arrangement negotiated in the Trade and Co-operation Agreement. Access to Europol is important for law enforcement agencies when co-ordinating Europe-wide investigations, particularly when more than two countries are involved in an operation. However, the loss of full membership of Europol reduces, but does not eliminate, the ability of the UK to shape the future development of the organisation through its management board. *There is clear benefit in the Government advancing proactively the case for the UK’s involvement in Europol through the Specialised Committee on Law Enforcement and Criminal Justice Co-operation.*

252 See: [Q288–291](#) (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland)

253 [Q344](#) (Steve Rodhouse, Director General of Operations, National Crime Agency)

254 [Q385](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

255 [Q385](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

5 Data Adequacy and the ECHR

Data adequacy

104. Before the end of the transition period, Naomi Long MLA, Minister for Justice, Northern Ireland Executive described obtaining data adequacy status from the EU as “the single most important thing” for policing, security and criminal justice co-operation on the island of Ireland.²⁵⁶ On 19 February 2021, the European Commission announced that it was launching the process towards the adoption of data adequacy status for the UK.²⁵⁷

105. The Institute for Government has defined data adequacy:

Data adequacy is a status granted by the European Commission to countries outside the European Economic Area (EEA) who provide a level of personal data protection comparable to that provided in European law. When a country has been awarded the status, information can pass freely between it and the EEA without further safeguards being required.²⁵⁸

106. The decision whether to grant data adequacy is a regulatory decision by the European Commission. It was not part of the negotiations on the future relationship, but many forms of co-operation on information sharing between UK and Irish crime agencies depend on the UK having data adequacy status. For most data transfers involving the exchange of data between UK law enforcement agencies and their counterparts in the EU, the European Commission has to make a data adequacy decision in accordance with Article 36 of the Law Enforcement Directive.²⁵⁹ For the transfer of PNR, counter-terrorism and anti-money laundering data, the European Commission has to make a data adequacy decision in accordance with Article 45 of the General Data Protection Regulation.²⁶⁰ The Government applied to obtain data adequacy arrangements under both the Law Enforcement Directive and the General Data Protection Regulation.²⁶¹

107. The European Commission announced on 19 February 2021 that it had concluded that the UK ensures “an essentially equivalent level of protection” to those guaranteed under the General Data Protection Regulation and the Law Enforcement Directive.²⁶² Before the draft decisions are adopted, the European Data Protection Board must reach an opinion on the decisions, and a committee composed of representatives of the EU Member States must give the draft data adequacy decisions the green light.²⁶³ The decisions will need to be concluded by the end of June at the latest. This is because the TCA included provisions to allow for the transfer of data to continue as they had before the end of the transition period until the end of April 2021. These ‘bridging mechanisms’ can be extended by a

256 [Q133](#) (Naomi Long MLA, Minister for Justice, Northern Ireland Executive)

257 European Commission, [Press Release, Data protection: European Commission launches process on personal data flows to UK](#), 19 February 2021

258 Institute for Government, [UK-EU future relationship: data adequacy](#), 2 July 2020

259 Directive (EU) 2016/680; see also: House of Commons Library Briefing, [The UK-EU future relationship: the March 2020 EU draft treaty and negotiations update](#), 27 May 2020, p. 47

260 House of Commons Library Briefing, [The UK-EU future relationship: the March 2020 EU draft treaty and negotiations update](#), 27 May 2020, p. 46–47

261 [UIN 100972](#)

262 European Commission, [Press Release, Data protection: European Commission launches process on personal data flows to UK](#), 19 February 2021

263 European Commission, [Press Release, Data protection: European Commission launches process on personal data flows to UK](#), 19 February 2021

further two months to the end of June 2021, at the latest.²⁶⁴ On 13 April 2021, the European Data Protection Board (EDPB) adopted opinions on the draft UK adequacy decisions.²⁶⁵ EDPB Chair, Andrea Jelinek said that the Board had concluded that:

The UK has mirrored, for the most part, the GDPR and LED in its data protection framework and when analysing its law and practice, the EDPB identified many aspects to be essentially equivalent. However, whilst laws can evolve, this alignment should be maintained. So we welcome the Commission’s decision to limit the granted adequacy in time and the intention to closely monitor developments in the UK.²⁶⁶

108. The PSNI stated that the UK being granted data adequacy will be key to continuing effective co-operation with An Garda Síochána:

Whilst the PSNI benefits from very positive and effective co-operation with our colleagues in An Garda Síochána, both formally and informally, this is predicated with a lawful and legal basis for the interaction. As such the provision of suitable data adequacy arrangements are critical to provide the basis for continued co-operation.²⁶⁷

In further evidence to our Committee, PSNI Assistant Chief Constable, Mark McEwan stressed that “data adequacy is the foundation of all our co-operation and collaboration arrangements”.²⁶⁸

109. The European Commission’s draft decisions to grant the UK data adequacy under the Law Enforcement Directive and GDPR sets out that these decisions will be valid for four years, after which a decision will be taken as to whether to renew the adequacy findings.²⁶⁹ European Commission Vice-President for Values and Transparency, Věra Jourová outlined that the Commission had included “clear and strict mechanisms in terms of both monitoring and review, *suspension or withdrawal of such decisions, to address any problematic development of the UK system after the adequacy would be granted.*”²⁷⁰ During the course of the inquiry, we also heard how other data adequacy decisions had been stuck down by the Court of Justice of the European Union (CJEU) following court challenges. Colin Murray and Dr Clare Rice told us it was notable that in “*Schrems*, the CJEU focused upon the lack of scrutiny of the United States’ data protection standards in striking down EU/US data sharing arrangements”.²⁷¹

110. Minister Walker told the Committee that Government “stands ready to engage with any future review processes”.²⁷² Mr Walker stated that this was an area where the UK and EU “started from the basis of complete alignment” and that the Government was “committed to maintaining high data protection standards now and in the future”.²⁷³ The

264 European Scrutiny Committee, Fortieth Report of Session 2019–21, [HC 229-xxxv](#), 23 March 2021, p.13

265 European Data Protection Board, [EDPB Opinions on draft UK adequacy decisions](#), 16 April 2021

266 European Data Protection Board, Press Release, [European Data Protection Board - 48th Plenary Session](#), 14 April 2021

267 Police Service of Northern Ireland ([CBC0004](#))

268 [Q285](#) (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland)

269 European Commission, [Press Release, Data protection: European Commission launches process on personal data flows to UK](#), 19 February 2021

270 European Commission, [Press Release, Data protection: European Commission launches process on personal data flows to UK](#), 19 February 2021

271 Colin Murray & Dr Clare Rice ([CBC0010](#)); see also: [C-362/14 Schrems v Data Protection Commissioner](#)

272 [Q374](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

273 [Q374](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

Minister acknowledged that the Government would need to undertake ongoing work to demonstrate the UK's data adequacy, commenting that if the UK lost its data adequacy status it would create "extra paperwork for operational partners, which is in nobody's interests".²⁷⁴

111. It is welcome that the UK has successfully obtained draft data adequacy decisions from the European Commission. The UK maintaining data adequacy status is key for the continuation of efficient data sharing between the PSNI and the Gardaí, as well as other UK and Irish crime agencies, and the finalising of data adequacy decisions is therefore critical. If granted, the UK's data adequacy status will be reviewed periodically, and it may be subject to legal challenge as previous EU data adequacy decisions on third countries statuses have been. *The Government must explain how it plans to ensure that the UK's data protection regime continues to clear the necessary bar to maintain the country's data adequacy status. The Government must proactively engage with the European Commission on this as part of efforts to ensure that data adequacy decisions are reached in good time, ahead of deadlines for their adoption, and to avoid uncertainty about the future of data sharing arrangements.*

European Convention on Human Rights (ECHR)

112. The TCA sets out that law enforcement and criminal justice co-operation is to be underpinned by both the UK and EU's commitments to human rights, including the European Convention on Human Rights.²⁷⁵ The TCA states that co-operation provided for in Part Three of the TCA covering Law Enforcement and Judicial Co-operation on Criminal Matters is based on the UK and EU's

longstanding respect for democracy, the rule of law and the protection of fundamental rights and freedoms of individuals, including as set out in the Universal Declaration of Human Rights and in the European Convention on Human Rights, and on the importance of giving effect to the rights and freedoms in that Convention domestically.²⁷⁶

The Institute for Government notes that Part Three "can be terminated almost immediately if the UK or a member state denounce the European Convention on Human Rights or suspended if either side doesn't sufficiently protect fundamental rights or the rule of law, as well as if a data adequacy decision is reversed".²⁷⁷

113. Throughout the course of our inquiry, witnesses have raised the importance of the UK's adherence to the European Convention on Human Rights (ECHR) in facilitating cross-border data sharing and effective extradition arrangements between the UK and Ireland. The UK will continue to be a Member State of the Council of Europe, and therefore bound by the ECHR. Some witnesses told us that their assessment is that the Human Rights Act is intrinsically linked to the UK's adherence to the ECHR. Professor

274 [Q375](#) (Robin Walker MP, Minister of State, Northern Ireland Office); [Q374](#) (Robin Walker MP, Minister of State, Northern Ireland Office).

275 Article LAW.GEN.3: Protection of human rights and fundamental freedoms, HM Government, [Trade and cooperation agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part](#), 24 December 2020

276 Article LAW.GEN.3: Protection of human rights and fundamental freedoms, HM Government, [Trade and cooperation agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part](#), 24 December 2020

277 Institute for Government, UK-EU Future Relationship: the deal; [Law and Justice](#); 29 December 2020

Mitsilegas told the Committee:

It [EU/UK Trade and Co-operation Agreement] does not mention the Human Rights Act as such, but it is clear that any decision from the UK to repeal the Human Rights Act will affect the functioning of the agreement...I personally find it untenable, in the scenario that the UK withdraws from the European convention on human rights, that you can expect the level of close co-operation in these fields that has been achieved with this agreement.²⁷⁸

Colin Murray concurred, adding that with regard to the new suspect surrender arrangement “there is very specific mention of the European convention and its operation within UK domestic law”.²⁷⁹ He argued that the EU “would not allow this system to continue to function if the UK was not fully implementing the European convention on human rights within domestic law, or at least as fully as it is now”.²⁸⁰ Before the reaching of the TCA, the Northern Ireland Human Rights Commission told us that any new extradition arrangements agreed between the UK and EU should “be based on robust human rights and legal safeguards for accused persons and for victims of crimes”.²⁸¹

114. In November 2020, Minister Walker reiterated the Government’s commitment to the ECHR in evidence to our Committee:

We are absolutely committed to the ECHR, and this has been repeated constantly by Ministers from the Dispatch Box. It is an important part of the framework and I recognise that it forms an important part of the framework of the Good Friday Agreement. It is something in that respect that we absolutely maintain our commitment to.²⁸²

On 7 December 2020, the Government announced an Independent Review of the Human Rights Act led by Sir Peter Gross, former Court of Appeal Judge. The Terms of Reference of the Review state that “the HRA [Human Rights Act] is underpinned by the UK’s international obligations under the Convention [ECHR], and the UK remains committed to upholding those obligations”.²⁸³ Following the agreement of the TCA, Robin Walker said that the deal “ensures that the UK can give effect to its longstanding human rights obligations autonomously, and that reflects the fact of our EU exit”.²⁸⁴ He said that the TCA “does not make an explicit legally binding commitment to the ECHR” as the Government was concerned that the EU was “seeking a mechanism that could lead to unhelpful monitoring of our domestic human rights regime” in initial proposals it put forward.²⁸⁵ However, he acknowledged that

the agreement provides that either party can terminate co-operation with the other for any reason, if it so wishes, and that would include if either party were to denounce the ECHR. It is very clear that we are committed to human rights; we are committed to the implementation of those.²⁸⁶

278 [Q252](#) (Professor Valsamis Mitsilegas, School of Law, Queen Mary University of London)

279 [Q252](#) (Colin Murray, Reader in Public Law, Newcastle Law School, Newcastle University)

280 [Q252](#) (Colin Murray, Reader in Public Law, Newcastle Law School, Newcastle University)

281 Northern Ireland Human Rights Commission ([CBC0002](#))

282 [Q202](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

283 Ministry of Justice, [Independent Human Rights Act Review: Terms of Reference](#), 7 December 2020, p.1

284 [Q378](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

285 [Q378](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

286 [Q379](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

115. **The Committee supports fully the European Convention on Human Rights. We welcome the Government’s assurance, stated at the dispatch box and to this Committee in November 2020 and in March 2021, that it remains “absolutely committed” to the European Convention on Human Rights. The Trade and Co-operation Agreement is based on the UK continuing to apply the ECHR. The Government’s ongoing application of the ECHR is important in facilitating continued data sharing and effective extradition arrangements between the UK and Ireland. Robust human rights and legal safeguards both for accused persons and for victims of crimes are critical to providing a base from which effective and efficient co-operation can be facilitated. There is no room for doubt about the UK’s commitment to the ECHR or to its domestic effect. We welcome the fact that the Government will continue to uphold the European Convention on Human Rights in full, as successive Governments have done since 1950, when the UK was one of its founding signatories.**

6 Future innovations in UK-Irish cross-border security co-operation

116. There are challenges posed by the UK's loss of direct access to EU security and justice databases. But north-south co-operation between law enforcement agencies on the island of Ireland continues to be largely effective and there are opportunities to develop such co-operation further. Mark Larmour, Director, Northern Ireland Office explained that that co-operation rests on "pragmatic and strong working relationships" between law enforcement agencies, as well as on cross-border structures such as the Joint Agency Task Force, the Cross Border Strategy and the Annual Cross-Border Conference on Organised Crime.²⁸⁷ Those bodies are not subject to direct change as a result of the UK's exit from the EU and their existence provides a platform on which to evolve UK-Irish policing, security and criminal justice co-operation. Before the reaching of the TCA and the European Commission's announcement of draft data adequacy decisions, the PSNI told us that "with the provision of a suitable data adequacy position and the opportunity to take forward bilateral arrangements between [the] UK and Ireland we believe there are significant opportunities to develop new approaches".²⁸⁸

Joint Agency Task Force

117. In December 2015, under the provisions of Fresh Start Agreement reached between the UK and Irish Governments and the Northern Ireland Executive, the cross-border Joint Agency Task Force was established as part of "a concerted and enhanced effort to tackle cross-jurisdictional organised crime".²⁸⁹ The Joint Agency Taskforce is led by senior officials from the PSNI, An Garda Síochána, HMRC and the Irish Revenue Commissioners. Several other bodies, including the National Crime Agency and the Irish Criminal Assets Bureau, are sometimes involved in operational activity of the Task Force.²⁹⁰ The Task Force meets biannually at a strategic level and includes a Strategic Oversight Group and an Operations Co-ordination Group.²⁹¹

118. We heard from Mark Larmour, Director, Northern Ireland Office, how the work of the Joint Agency Task Force, along with the Organised Crime Task Force, had improved the agility of the criminal justice response on the island of Ireland.²⁹² He told us that those structures had helped to support and grow day-to-day co-operation between law enforcement agencies north and south of the border.²⁹³ PSNI Chief Constable Simon Byrne agreed that the Task Force had enhanced day-to-day policing co-operation by providing a forum for UK and Irish law enforcement agencies to work on "key themes such as the transportation of drugs, financial crime and rural crime".²⁹⁴

287 [Q210](#) (Mark Larmour, Director, Northern Ireland Office)

288 Police Service of Northern Ireland ([CBC0004](#))

289 See: Northern Ireland Office, [Villiers welcomes establishment of Joint Agency Task Force](#), 21 December 2015; [A Fresh Start: The Stormont Agreement and Implementation Plan](#), 17 November 2015, p. 15

290 Written Questions, [Cross-Border Co-Operation](#), Dáil Éireann Debate, 1 October 2019

291 See: Oral evidence taken before the House of Lords EU Security and Justice Sub-Committee on 17 November 2020, [Q45](#) [Dr Vicky Conway]; Garda, [Cross Border Joint Agency Task Force Summary Report 1 April – 20 September 2020](#), p.1

292 [Q173](#) (Mark Larmour, Director, Northern Ireland Office)

293 [Q173](#) (Mark Larmour, Director, Northern Ireland Office)

294 [Q69](#) (Simon Byrne, Chief Constable, Police Service of Northern Ireland)

119. The UK-Irish Criminal Justice Co-operation Network stated that the Joint Agency Task Force would “become increasingly important after Brexit”.²⁹⁵ Simon Byrne told us that he and the Garda Commissioner, Drew Harris had discussed how to improve the Joint Agency Task Force after Brexit.²⁹⁶

120. PSNI Assistant Chief Constable, Mark McEwan updated the Committee in January 2021 that the PSNI was “in discussions about increasing the tempo of the strategic-level meetings” following the end of the transition period.²⁹⁷ He also informed us that through the Organised Crime Task Force a subgroup has been formed that reports to Joint Agency Task Force “on EU exit and potential criminality, called Operation Fusion. That is up and running, and we had a number of operations running prior to the transition date”.²⁹⁸

121. In November 2020, Minister Walker said the Government “would continue to work bilaterally with the Irish to see how things could be improved through things like the Joint Agency Task Force” from 1 January 2021 onwards.²⁹⁹ He added that it was “important to recognise that this is one of a number of institutions and vehicles enabling co-operation between the PSNI and An Garda Síochána, which will not be affected by the process of EU exit”.³⁰⁰ Speaking in March 2021, Mark Larmour told the Committee that the Joint Agency Task Force was “still very effective”.³⁰¹ He added that “there is a wide range of measures that are well bedded in...to ensure co-operation [between UK and Irish law enforcement agencies]. Those have not been affected in any way by recent developments.”³⁰²

122. The work of the cross-border Joint Agency Task Force to tackle cross-border crime remains important. At a strategic level, the Task Force should meet quarterly rather than biannually, or as operational necessities warrant.

Northern Ireland Centre of Excellence for crime fighting co-operation

123. The PSNI proposed developing “a bespoke centre of excellence relating to crime co-operation and co-ordination” for Northern Ireland.³⁰³ It told us that the “appropriate integration of operational and investigative collaboration across a range of agencies and remits would enhance existing capacity and capability based on the traditional collaborative “taskforce” model”.³⁰⁴

124. Simon Byrne pointed out that a centre of excellence for Northern Ireland could be established by “building on the model that we see in Scotland, where we bring agencies together under one roof to get almost like a force-multiplier effect of our intelligence, our experience and our tactics”.³⁰⁵ In February 2014, the Scottish Crime Campus at Gartcosh became operational.³⁰⁶ The Centre was established to lead Scotland’s approach to combatting serious and organised crime. It houses various law enforcement agencies

295 UK-Irish Criminal Justice Co-operation Network ([CBC0005](#))

296 [Q86](#) (Simon Byrne, Chief Constable, Police Service of Northern Ireland)

297 [Q300](#) (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland)

298 [Q300](#) (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland)

299 [Q202](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

300 [Q172](#) (Robin Walker MP, Minister of State, Northern Ireland Office)

301 [Q387](#) (Mark Larmour, Director, Northern Ireland Office)

302 [Q387](#) (Mark Larmour, Director, Northern Ireland Office)

303 Police Service of Northern Ireland ([CBC0004](#))

304 Police Service of Northern Ireland ([CBC0004](#))

305 [Q55](#) (Simon Byrne, Chief Constable, Police Service of Northern Ireland)

306 [Taskforce meets at new Scottish crime-fighting centre in Gartcosh](#), BBC News, 10 February 2014

including Police Scotland, the NCA, HMRC and forensic services.³⁰⁷

125. Steve Rodhouse, Director General of Operations, National Crime Agency told us that the NCA would “certainly be open to discussions about how that could be replicated within Northern Ireland”.³⁰⁸ He stated that the Centre in Gartcosh brought law enforcement agencies together to combine “different skills and different information to allow us to tackle the most harmful organised criminals”.³⁰⁹ Steve Tracey, Assistant Director, Organised Crime Directorate, HMRC, stated that, subject to consideration of the detail, he supported the establishment of such a centre in Northern Ireland.³¹⁰ Steve Tracey described the proposal as a natural evolution of the work of the Joint Agency Task Force and the Paramilitary Crime Task Force, established in 2017.³¹¹

126. Simon Byrne said that depending on what was agreed, the centre could involve the Gardaí. However, he noted that the PSNI proposal was “initially for Northern Ireland” rather than the whole island of Ireland.³¹² He observed that the establishment of a centre for Northern Ireland could be an “enabling function that would make us safer...because we could get best value out of the different agencies that we currently work with”.³¹³ In January 2021, PSNI Assistant Chief Constable, Mark McEwan updated our Committee that the PSNI had commissioned the terms of reference for the Centre as part of discussions on its establishment with the Northern Ireland Department of Finance and Northern Ireland Department of Justice.³¹⁴

127. Mark Larmour informed the Committee that the Northern Ireland Office had not “had any conversations with devolved colleagues on where this matter sits or on the detail around such a project”.³¹⁵ However, he added

we would be very interested in seeing what we could learn from the Scottish model and, given that there is so much ongoing co-operation between criminal justice partners in Northern Ireland anyway, whether that could be built on. We are very interested in securing further discussions on that.³¹⁶

128. The PSNI told us that the creation of a bespoke Northern Ireland centre of excellence for law enforcement co-operation and co-ordination would integrate operational and investigative collaboration across law enforcement agencies. Bringing the agencies together under one roof should facilitate rapid and effective investigations. The Government must support the Northern Ireland Executive in establishing a bespoke Northern Ireland centre of excellence for co-operation and co-ordination to combat crime. There would be demonstrable benefit in ensuring that law enforcement agencies such as HM Revenue & Customs, the National Crime Agency, the security services and Border Force, participate in this centre.

307 [Taskforce meets at new Scottish crime-fighting centre in Gartcosh](#), BBC News, 10 February 2014

308 [Q117](#) (Steve Rodhouse, Director General of Operations, National Crime Agency)

309 [Q118](#) (Steve Rodhouse, Director General of Operations, National Crime Agency)

310 [Q119](#) (Steve Tracey, Assistant Director, Organised Crime Directorate, HMRC)

311 [Q119](#) (Steve Tracey, Assistant Director, Organised Crime Directorate, HMRC)

312 See: [Q84](#); [Q86](#) (Simon Byrne, Chief Constable, Police Service of Northern Ireland)

313 [Q61](#) (Simon Byrne, Chief Constable, Police Service of Northern Ireland)

314 [Q300](#) (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland); [Q302](#) (Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland)

315 [Q388](#) (Mark Larmour, Director, Northern Ireland Office)

316 [Q388](#) (Mark Larmour, Director, Northern Ireland Office)

Conclusions and recommendations

Cross-border security

1. We welcome the fact that the UK and EU have agreed a new security partnership as part of the agreement of the Trade and Co-operation Agreement. At the time of the inquiry hearings, Brexit had had no discernible operational impact on cross-border policing and the ability to co-operate with partners in the EU has been maintained. Before the announcement of the agreement, we had heard concerns that a failure to secure a deal on security could have led to a reliance on cumbersome extradition and intelligence sharing processes. The agreement mitigates these concerns and, importantly, provides a foundation for the continuation of UK and Irish law enforcement agencies' well developed means of co-operating to maintain the security of the Common Travel Area. (Paragraph 18)
2. Patterns of behaviour by smugglers and organised crime gangs on the island of Ireland have not changed significantly following the end of the transition period, but there is no room for complacency. We therefore welcome law enforcement and crime agencies' assurance that the high level of cross-border operational capability has been retained through replacement co-operation mechanisms agreed in the Trade and Co-operation Agreement. (Paragraph 28)
3. Cross-border arrangements providing for effective security co-operation across the Common Travel Area are to the mutual benefit of all on these islands. The importance of bodies and fora such as the Joint Agency Task Force, the Annual Cross-Border Conference on Organised Crime, the Common Travel Area Forum and where appropriate the British-Irish Intergovernmental Conference cannot be overestimated in their use in supporting and developing co-operation between law enforcement on both sides of the border countering cross-border criminality and for security co-operation (and other issues) between the UK and Ireland more widely. *The Government and the Irish Government must agree to convene the British-Irish Intergovernmental Conference (either virtually or physically) as soon as possible, and no later than the end of June 2021, to discuss security co-operation, as part of wider ongoing efforts to minimise the opportunities for organised crime gangs to exploit the Common Travel Area. The Government and the Irish Government should build on established practice for supporting cross-border co-operation to minimise the opportunities for organised crime gangs. Steps must be intelligence-led and have a clear operational purpose. The Government should also work proactively with the Executive to ensure that the PSNI and the National Crime Agency are fully equipped to identify and address specific organised crime threats.* (Paragraph 29)
4. The Specialised Committee on Law Enforcement and Criminal Justice Co-operation will have a crucial role in developing and monitoring the law enforcement, security and criminal justice arrangements in the Trade and Co-operation Agreement. This important work would benefit from the formal input of devolved representatives. *When the Specialised Committee is established, the Government must invite representatives from the Northern Ireland Executive to participate in the Committee (on the same basis as they do within the Executive) to allow them to articulate their perspective on security co-operation on the island of Ireland.* (Paragraph 34)

Extradition

5. We welcome the Surrender agreement agreed as part of the Trade and Co-operation Agreement. Its introduction will avoid the significant delays that might have occurred if the UK and Ireland had been forced to rely on the cumbersome 1957 European Convention on Extradition. (Paragraph 44)
6. The new suspect surrender arrangements agreed between the UK and EU are similar to the EU Surrender Agreement with Norway and Iceland and include many of the features of the European Arrest Warrant. Importantly for co-operation between the UK and Ireland, the new arrangements mean that extradition will continue to be subject to judicial control rather than operating through political channels. The emphasis on the principle of proportionality is welcome and represents an improvement on the European Arrest Warrant. (Paragraph 50)
7. The new extradition arrangements agreed between the UK and EU include some important differences from the European Arrest Warrant. The Trade and Co-operation Agreement introduces a political offence exception and allows states to refuse to extradite their own nationals. There is a requirement to establish double criminality, which can be waived in defined circumstances, although the Government has no plans to do so. Those differences should not significantly affect extradition processes between the UK and Ireland. However, the speed of extradition between the UK and Ireland may be slowed in some cases, if there is a requirement to establish double criminality as part of the process of suspect surrender. *The Government must commission a review of the effect of the new extradition arrangements after they have been in force for two years. Research on the effect of the need to establish double criminality on the speed of extradition processes between the UK and Ireland should form part of this review.* (Paragraph 57)
8. The UK's loss of access to SIS II has the potential to create delays in UK law enforcement agencies receiving arrest warrant notices when the location of the suspect is not known, if partner agencies in EU Member States do not routinely enter arrest warrant notices into the Interpol I-24/7 database. We would hope that, given the UK's historical role in Interpol and the demonstrable benefits for pan-European safety and security, this would be something that EU Member States would support and encourage. *The Government must set out how it plans to mitigate, limit or eliminate delays in receiving arrest warrants and operational information from EU partners following the loss of access to SIS II. The Government and relevant UK law enforcement agencies must also set out how it plans to encourage partner agencies in EU Member States to enter arrest warrants into the Interpol I-24/7 database to mitigate the operational loss of SIS II.* (Paragraph 63)

Cross-border information sharing

9. Over the past two decades, the PSNI and the Gardaí have made great progress in developing co-operation mechanisms to tackle cross-border criminality on the island of Ireland. We are assured that this will continue after Brexit. The structures that have been built up to aid UK and Irish law enforcement agencies in their mutual aim of frustrating cross-border crime will become increasingly important now that the UK has left the EU and lost access to some EU security and justice databases.

There is, though, a risk that the tools and systems used by UK law enforcement agencies for cross-border information sharing will fall behind those that Irish and other EU authorities have access to. We have heard that this is in part due to the European Union's approach to granting third countries full access to such measures. There is also the risk in the future that any unilateral divergence may have an impact on information sharing. This could lead to an imbalance in capabilities between UK and Irish authorities and inadvertently hand criminals an opportunity to exploit these discrepancies. In doing so, the impact would be felt on the streets of Great Britain, as much as on the island of Ireland. *The Government must use the Specialised Committee on Law Enforcement and Criminal Justice Co-operation to, where possible and cognisant of third country limitations, make the case for ongoing and organic alignment between the UK and EU in the development of information sharing systems.* (Paragraph 72)

10. We are heartened to see an agreement providing for reciprocal transfers of Passenger Name Record (PNR) data. That agreement will help to protect people in Northern Ireland against serious crime and terrorism by allowing UK law enforcement agencies to exchange data on serious criminals with their counterparts in EU Member States as well as enabling UK and Irish law enforcement agencies to share relevant information. (Paragraph 76)
11. It is positive that the Government has negotiated successfully an agreement with the EU to provide for reciprocal access to biometric data (and in the future vehicle registration data) of suspected criminals. That will help UK law enforcement agencies and law enforcement agencies in connected EU Member States to identify terrorists and organised criminals. *The Government should set out if, and how, it plans to use these arrangements to co-operate on sharing biometric data with Ireland in particular.* (Paragraph 81)
12. The PSNI and the Gardaí have developed bilateral mechanisms for sharing operational policing information. The Trade and Co-operation Agreement does not appear to impede the continuing exchange of operational information between UK and Irish law enforcement agencies, but both countries should be ambitious and build on the arrangements already in place. *The Government must set out how it plans to support the development of existing bilateral mechanisms for the exchange of operational policing information between UK and Irish law enforcement agencies in line with technological advances to ensure that operational information exchange is as efficient as possible.* (Paragraph 87)
13. The establishment of UK-CRIS to replace the UK's participation in the European Criminal Records Information System (ECRIS) is welcome. Effective policing of the open border on the island of Ireland is assisted by efficient and reliable assessment of criminal records. The 20-day time limit included in the Trade and Co-operation Agreement is an improvement on the 1959 Convention on Mutual Legal Assistance in Criminal Matters which the UK and EU would have had to rely upon if no agreement on security had been reached. However, it is not as strict as the 10-day time limit that is in place under ECRIS. *The Government must work with the Irish Government to ensure that criminal record data requested for the purposes of criminal proceedings continues to be exchanged as quickly as possible between UK*

and Irish law enforcement agencies, aiming for the shorter time limits as set out when using ECRIS rather than the 20-day time limit set out in the Trade and Co-operation Agreement; and reporting on its performance against those limits. (Paragraph 94)

14. UK law enforcement agencies will continue to have access to Europol through the third-country arrangement negotiated in the Trade and Co-operation Agreement. Access to Europol is important for law enforcement agencies when co-ordinating Europe-wide investigations, particularly when more than two countries are involved in an operation. However, the loss of full membership of Europol reduces, but does not eliminate, the ability of the UK to shape the future development of the organisation through its management board. *There is clear benefit in the Government advancing proactively the case for the UK's involvement in Europol through the Specialised Committee on Law Enforcement and Criminal Justice Co-operation. (Paragraph 103)*

Data adequacy and the EHCR

15. It is welcome that the UK has successfully obtained draft data adequacy decisions from the European Commission. The UK maintaining data adequacy status is key for the continuation of efficient data sharing between the PSNI and the Gardaí, as well as other UK and Irish crime agencies, and the finalising of data adequacy decisions is therefore critical. If granted, the UK's data adequacy status will be reviewed periodically, and it may be subject to legal challenge as previous EU data adequacy decisions on third countries statuses have been. *The Government must explain how it plans to ensure that the UK's data protection regime continues to clear the necessary bar to maintain the country's data adequacy status. The Government must proactively engage with the European Commission on this as part of efforts to ensure that data adequacy decisions are reached in good time, ahead of deadlines for their adoption, and to avoid uncertainty about the future of data sharing arrangements. (Paragraph 111)*
16. The Committee supports fully the European Convention on Human Rights. We welcome the Government's assurance, stated at the dispatch box and to this Committee in November 2020 and in March 2021, that it remains "absolutely committed" to the European Convention on Human Rights. The Trade and Co-operation Agreement is based on the UK continuing to apply the ECHR. The Government's ongoing application of the ECHR is important in facilitating continued data sharing and effective extradition arrangements between the UK and Ireland. Robust human rights and legal safeguards both for accused persons and for victims of crimes are critical to providing a base from which effective and efficient co-operation can be facilitated. There is no room for doubt about the UK's commitment to the ECHR or to its domestic effect. We welcome the fact that the Government will continue to uphold the European Convention on Human Rights in full, as successive Governments have done since 1950, when the UK was one of its founding signatories. (Paragraph 115)

Future innovations in UK-Irish cross-border security co-operation

17. The work of the cross-border Joint Agency Task Force to tackle cross-border crime remains important. *At a strategic level, the Task Force should meet quarterly rather than biannually, or as operational necessities warrant.* (Paragraph 122)
18. The PSNI told us that the creation of a bespoke Northern Ireland centre of excellence for law enforcement co-operation and co-ordination would integrate operational and investigative collaboration across law enforcement agencies. Bringing the agencies together under one roof should facilitate rapid and effective investigations. *The Government must support the Northern Ireland Executive in establishing a bespoke Northern Ireland centre of excellence for co-operation and co-ordination to combat crime. There would be demonstrable benefit in ensuring that law enforcement agencies such as HM Revenue & Customs, the National Crime Agency, the security services and Border Force, participate in this centre.* (Paragraph 128)

Formal minutes

Thursday 22 April 2021

Virtual meeting

Members present:

Simon Hoare, in the Chair

Scott Benton	Mr Robert Goodwill
Mr Gregory Campbell	Claire Hanna
Stephen Farry	Fay Jones
Mary Kelly Foy	Ian Paisley

Draft Report (*Cross-border co-operation on policing, security and criminal justice after Brexit*), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 128 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Fourth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available (Standing Order No. 134).

[Adjourned till Wednesday 28 April at 8.45am

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Wednesday 7 October 2020

Gemma Davies, Associate Professor, Northumbria Law School, Northumbria University; **Dr Rachael Dickson**, Birmingham Law School, University of Birmingham; **Dr Amanda Kramer**, School of Law, Queen's University Belfast; **Professor Valsamis Mitsilegas**, School of Law, Queen Mary University of London; **Professor Steve Peers**, School of Law, University of Essex

[Q1–54](#)

Wednesday 4 November 2020

Simon Byrne, Chief Constable, Police Service of Northern Ireland; **Mark McEwan**, Assistant Chief Constable, Police Service of Northern Ireland

[Q55–93](#)

Steve Rodhouse, Director General of Operations, National Crime Agency; **Steve Tracey**, Assistant Director, Organised Crime Directorate, HMRC

[Q94–120](#)

Wednesday 18 November 2020

Naomi Long MLA, Minister of Justice, Northern Ireland Executive; **Linda Hamilton**, Deputy Director, EU Exit and Victims Support Division, Northern Ireland Executive Department of Justice

[Q121–160](#)

Wednesday 25 November 2020

Mr Robin Walker MP, Minister of State, Northern Ireland Office; **Mark Larmour**, Director, Northern Ireland Office

[Q161–214](#)

Wednesday 13 January 2021

Gemma Davies, Associate Professor, Northumbria Law School, Northumbria University; **Professor Valsamis Mitsilegas**, School of Law, Queen Mary University of London; **Colin Murray**, Reader in Public Law, Newcastle Law School, Newcastle University; **Professor Steve Peers**, School of Law, University of Essex

[Q215–253](#)

Wednesday 27 January 2021

Mark McEwan, Assistant Chief Constable, Police Service of Northern Ireland

[Q254–306](#)

Paul Morgan CBE, Senior Director, Border Readiness Directorate, Border Force; **Steve Rodhouse**, Director General of Operations, National Crime Agency

[Q307–349](#)

Wednesday 3 March 2021

Mr Robin Walker MP, Minister of State, Northern Ireland Office; **Mark Larmour**, Political Director, Northern Ireland Office

[Q350–391](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

INQ numbers are generated by the evidence processing system and so may not be complete.

- 1 Davies, Ms Gemma (Associate Professor of Law, Northumbria University) ([CBC0015](#))
- 2 Davies, Ms Gemma (Associate Professor of Law, Northumbria University) ([CBC0012](#))
- 3 Dickson, Dr Rachael (Research Fellow, University of Birmingham); and Dr Amanda Kramer (Lecturer, Queen's University Belfast) ([CBC0014](#))
- 4 Independent Reviewer of Terrorism Legislation ([CBC0001](#))
- 5 Kramer, Dr Amanda (Lecturer in Law, Queen's University Belfast); and Dr Rachael Dickson (Research Fellow, Birmingham Law School, University of Birmingham) ([CBC0009](#))
- 6 Murray, Colin (Reader in Public Law, Newcastle University); and Dr Clare Rice (Research Assistant, Newcastle University) ([CBC0010](#))
- 7 Northern Ireland Human Rights Commission ([CBC0002](#))
- 8 Northern Ireland Office ([CBC0011](#))
- 9 Police Service of Northern Ireland ([CBC0016](#))
- 10 Police Service of Northern Ireland ([CBC0004](#))
- 11 UK-Irish Criminal Justice Cooperation Network (Davies, Ms Gemma, Associate Professor of Law, Northumbria University; Professor Katy Hayward, Professor of Political Sociology, Queen's University, Belfast; and Ms Maura Butler, Chair, Association for Criminal Justice Research and Development, Ireland) ([CBC0005](#))
- 12 Ulster Unionist Party ([CBC0013](#))
- 13 Walker, Professor Emeritus Clive (School of Law, University of Leeds) ([CBC0006](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website.

Session 2019–21

Number	Title	Reference
1st	Unfettered Access: Customs Arrangements in Northern Ireland after Brexit	HC 161
2nd	New Decade, New Approach Agreement	HC 160
3rd	Addressing the Legacy of Northern Ireland's Past: the Government's New Proposals (Interim Report)	HC 329
1st Special	Unfettered Access: Customs Arrangements in Northern Ireland after Brexit: Government Response to the Committee's First Report of Session 2019–21	HC 783
2nd Special	New Decade, New Approach Agreement: Government Response to the Committee's Second Report of Session 2019–21	HC 792
3rd Special	Addressing the Legacy of Northern Ireland's past: the Government's New Proposals: Government Response to the Committee's Third Report of Session 2019–21	HC 1153