

## **Cabinet Secretary for Justice and Home Affairs of the Scottish Government — Written evidence (PBS0007)**

Thank you for the opportunity to provide evidence to the Committee's inquiry into UK-EU cooperation on law enforcement and criminal justice in the context of Part Three of the Trade and Cooperation Agreement ("the TCA"). This letter should be treated as the written evidence of the Scottish Government, following the invitation to submit received on 23 March 2023.

As Cabinet Secretary for Justice and Home Affairs, I am responsible for significant elements of Part 3, both in policy terms, where the subject matter is devolved, and in operational terms, for example, in extradition, which is reserved but with functions executively devolved to Scottish Ministers.

I understand both the Crown Office and Police Scotland will provide their own evidence to the Committee. I will leave it to those organisations to provide comments on the operational impacts caused by Brexit.

Scotland's distinct justice policies and separate legal system mean that it is crucial that diverse voices from across the UK's jurisdictions are heard. Specific consideration must therefore be given to respecting the devolution settlement and separate Scottish jurisdiction as solutions to Brexit-related issues are considered, particularly during the upcoming TCA review process.

### **Extradition**

The Scottish Ministers exercise certain functions under the Extradition Act 2003. The move from the European Arrest Warrant to TCA-based surrender has increased the work necessary to exercise those functions. Particularly around conditional bars to surrender, there is a greater requirement to consider individual EU member states' requests and to coordinate responses across the Scottish justice sector.

On nationality bars, there are real concerns that the absolute bars on surrender imposed by 10 EU member states could lead to impunity. The Scottish Government is aware of and closely monitoring the efforts, both in the UK and EU, to consider whether a transfer of proceedings is an appropriate remedy for this Brexit deficiency. However, any such arrangements must be able to sufficiently protect the rights of victims and witnesses to take part and be protected from harm during any domestic proceedings, particularly where that participation is facilitated from Scotland and different procedures and standards apply to the protection of victims and witnesses.

### **ECHR**

The European Convention on Human Rights ("ECHR") is fundamental to the UK-EU relationship. Article 524 of the TCA provides that remaining party to the ECHR is the bedrock upon which law enforcement and judicial cooperation in criminal matters takes place.

UK Ministers have variously pledged not to leave or denounce the ECHR, and if this remains UKG policy, it should be made absolutely clear to the EU. Repeated Ministerial statements appearing to suggest that the UK will not comply with its

international obligations, including the ECHR, seriously undermine the trust EU partners have in the UK.

Even if the UK remains a party to the ECHR, the proposals found in the British Bill of Rights Bill could cause significant operational problems. Article 524 also makes clear the importance of giving ECHR rights and freedoms domestic effect. We know the EU and its member states have concerns about the proposed reforms. The UK Government must take these concerns seriously, and not seek to undermine our system of rights protection for political gain.

There is a serious risk that proposed reforms could inflict serious and long-lasting damage on both the UK's internal legal and constitutional order and on its international reputation, in particular the UK-EU relationship. This could lead to the termination or suspension of crucial elements of the TCA, including those parts which help keep people in the UK and EU safe and secure from harm.

I therefore call upon the UK Government and UK Parliament to reject any proposals which threaten that cooperation, and which undermine our fundamental rights.

### **Strategic Input**

One predictable outcome of Brexit was the UK's voice being lost in strategic discussions. While, operationally, relations and operations at Europol and Eurojust, for example, continue largely as they did pre-Brexit, the UK, and its operational authorities, no longer have a seat at the table where key, long-term decisions are made. A new way or forum must be found or created which allows for our operational partners to discuss strategy, long-term trends and common challenges.

While the TCA mitigates some of the harms caused by Brexit, there will always be room for improvement, and finding those improvements would be best served by creating a platform for our operational partners to discuss how best to work together. The TCA did create structures such as the Partnership Council and Specialised Committee on Law Enforcement and Judicial Cooperation in Criminal matters, but these were not intended to be, nor do they operate as, a forum where competent authorities can exchange ideas and expertise in order to create common solutions.

I therefore urge the UK Government to consider how the UK and its operational agencies could show leadership and share their expertise with EU counterparts in a strategic way.

### **Data protection**

The UK Government's direction of travel on data protection could potentially undermine transparency and public trust. Failure to uphold current data protection standards could jeopardise law enforcement and judicial cooperation with our European partners that is essential for the safety of our citizens.

It is demonstrably in Scotland's interests for the UK to remain aligned with EU data protection standards, to protect citizens' privacy and aid our businesses. Furthermore, these changes must pose no risk to hard-won data adequacy. As

the EU has made clear, UK divergence from the EU's privacy rules could cause significant and unnecessary disruption to Scotland's cooperation with EU partners if UK data protection standards are not considered adequate by the EU.

The Scottish Government calls on the UK Government and UK Parliament to ensure that the UK adequacy decisions are protected and that any data protection reforms carefully consider the risk to those decisions. This is in order to ensure that law enforcement cooperation with European partners, essential to the safety and well-being of our citizens, can continue.

## **Conclusion**

Our relationship with the EU is of absolute importance to our safety and security. The TCA is only able to mitigate some of the damage caused by EU exit because of the incredible skills and dedication shown by our police and prosecution partners when using the available tools and measures. I would like to thank them for their continued efforts in keeping Scotland and the rest of the UK safe.

Lastly, I would like to thank the Committee for the opportunity to provide this evidence. If the Scottish Government can be of any further assistance, please do not hesitate to make contact via my officials.

*April 2023*