



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

5th Meeting, 2013 (Session 4)

Tuesday 19 February 2013

The Committee will meet at 10.45 am in Committee Room 6.

1. **Decisions on taking business in private:** The Committee will decide whether to take items 3, 4 and 5 in private.
2. **Policing:** The Committee will consider correspondence from the Chair of the Scottish Police Authority.
3. **Policing:** The Committee will consider the arrangements for future scrutiny of policing.
4. **Crime and Courts Bill (UK Parliament legislation):** The Committee will consider the legislative consent memorandum lodged by Kenny MacAskill (LCM(S4) 11.2).
5. **Work programme:** The Committee will receive an update on communication with the Crown Office.
6. **Victims and Witnesses (Scotland) Bill (in private):** The Committee will consider its approach to the scrutiny of the Bill at Stage 1.

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The papers for this meeting are as follows—

Agenda item 2

Paper by the Clerk

J/S4/13/5/1

Agenda item 3

Paper by the Clerk (private paper)

J/S4/13/5/2 (P)

Agenda item 4

Paper by the Clerk (private paper)

J/S4/13/5/3 (P)

[Legislative consent memorandum on the Crime and Courts Bill \(LCM\(S4\) 11.2\)](#)

Agenda item 6

Paper by the Clerk (private paper)

J/S4/13/5/4 (P)

Papers for information

Civil EU JHA dossiers - January 2013 update

J/S4/13/5/5

Criminal and police JHA update January 2013

J/S4/13/5/6

Justice Committee

5th Meeting, 2013 (Session 4), Tuesday, 19 February 2013

Correspondence from the Scottish Police Authority

Note by the clerk

Purpose

1. The Committee is invited to consider recent correspondence from the Scottish Police Authority in relation to (a) the representation made by Scottish Government officials on behalf of the Cabinet Secretary for Justice regarding responsibility over human resources and finance; and (b) staffing of the SPA's interim support team. These two letters are attached at Annexes A and B.

Correspondence of 4 February: responsibilities

2. The Committee agreed on 23 January to request sight of the 'codicil' referred to in the SPA's letter of 18 January regarding responsibility for HR and finance.¹ The SPA's response of 4 February explains that the codicil referred to is a representation made by Scottish Government officials on behalf of the Cabinet Secretary for Justice. Details of the representation made are provided in the letter at Annexe A.

3. Also suggested in the letter is a meeting between SPA Board Members and the Committee to discuss, amongst other things, plans for engagement between the SPA Board and the Committee and its proposed sub-committee.

Correspondence of 8 February: staffing

4. The SPA's Interim Head of Public Affairs wrote to the Committee on 8 February to provide details of the interim project team which is supporting the establishment of the SPA (attached at Annexe B).

Recommendation

5. The Committee may wish to agree to note the two letters from the SPA and to consider whether it wishes to meet with SPA Board Members as suggested in the 4 February correspondence.

¹ The SPA's letter of 18 January stated that "SPA Members agreed to consider a codicil to a paper [on business activities] suggested by the Scottish Government which requests that in the areas of HR and Finance some staff are appointed as police staff under the direction and control of the Chief Constable, while others will be SPA staff". The SPA unanimously agreed the business activities paper and codicil at its meeting on 18 January.

ANNEXE A

Correspondence to the Justice Committee from the SPA on responsibility over human resources and finance (dated 4 February)

In response to your letter dated 23 January 2013, please find below the representation made by Scottish Government officials on behalf of the Cabinet Secretary for Justice. This representation is what I have referred to in my previous correspondence as a codicil.

“The Cabinet Secretary has asked the board to ensure that, in taking forward the detailed design of the Finance and HR services that will support the police service, the Chief Constable has the support of police staff who will assist him in fulfilling the requirements that the Act confers on him.

It is therefore the Scottish Government’s view that under the Act this is needed to allow the Chief Constable to perform his administration responsibilities effectively.”
The board approved the Business Activities paper with the inclusion of the Scottish Government representation that “...detailed arrangements for HR and finance ensure that some staff will be appointed as police staff, under the direction and control of the chief constable, while others will be SPA staff.”

Thank you for informing us about the proposal regarding the establishment of a special sub-committee to examine policing matters. Board members would like to invite the Committee to consider an early round table discussion about the new Parliamentary sub-committee and plans for engagement between the new sub-committee and the SPA Board.

Vic Emery
Chair, Scottish Police Authority
4 February 2013

ANNEXE B

Correspondence to the Justice Committee from the SPA on staffing of the interim support team (dated 8 February)

In recent days a number of comments have been made in the media about the interim project team supporting the establishment of the new Scottish Police Authority, and the process by which that team has been established.

For the Committee's information, I am today setting out some background details on the team as it stands today. In the interests of transparency, the same information is today being issued in a media release.

As you will be aware, by the time the members of the SPA Board had been appointed in late October 2012 there were just 150 days left before the new police arrangements were due to be up and running. In order to meet these challenging timescales, project teams have had to be put together very quickly to ensure the key decisions needed for day 1 are taken.

There are a total of 23 employees working to the SPA. Nineteen are seconded from policing and national and local government, two have been hired from outwith policing, and two are seconded employees who are contractors.

The SPA executive team is headed by Interim Chief Executive Andrea Quinn. Andrea was Chief Executive of the Scottish Police Services Authority (SPSA) and is seconded to the SPA. She retains her accountable officer responsibilities and continues to attend the board meetings of the SPSA, in addition to her interim role for the SPA. She continues to receive only her SPSA salary.

Over that period, the Interim Chief Executive has put together a small team to support the SPA board in establishing its decision-making processes and procedures to allow it to function, and to begin to fulfil its responsibilities to maintain policing and hold the service to account.

Eleanor Walker, Interim Business Manager to the Chair and Board commenced work in November 2012 on a 6-month contract. She was a direct appointee given the urgent need to establish a 13 person national Board, its relationships with Police Scotland and Scottish Government, and the administration of board business. By 18 February, the SPA board will have already met four times in public to make decisions and scrutinise business. That is equivalent to the total number of public meetings held by existing police authorities in an eight month period.

Eamon Hegarty, Interim Finance Director, commenced work at the end of January 2013 on a 6-month contract. He was appointed as one of several candidates interviewed for the role, and following an earlier recruitment exercise within policing which did not attract a suitable candidate.

A further two senior members of the team – John Fox-Davies and Bruce Faulkner – have been seconded from SPSA where they are employed as contractors, paid through the Hays specialist recruitment agency.

John Fox-Davies was recruited as Director of Development for SPSA, and was the organisation's lead on police reform planning. For SPA he is leading on the development of the SPA strategic plan and on performance.

Bruce Faulkner is a specialist in business improvement and project support and within SPSA supported the Chief Information Officer and Chief Executive to drive forward improvements in ICT. In the last three months, he has been focussing on developing the SPA's decision-making processes, based around a business-case led approach, to ensure that as a public authority the SPA fulfils its obligations to transparency and best value.

The remaining 18 staff members are all employees from policing, central government and local government backgrounds who are seconded to the SPA. They carry out a range of activities within the start-up team including programme management, board administration, strategic planning, organisational development, communications and local engagement, health and safety, risk management, ICT and property. These project roles have been filled by advertised competitive processes wherever possible, with some appointments to roles where necessary.

Two further senior roles are likely to be appointed in the coming weeks. The role of SPA HR director is currently being advertised within Scottish policing. A further role to lead procurement activity for the SPA is likely to be advertised in the coming weeks. Both roles are likely to be interim for the next 6-12 months while formal consultation to agree permanent structures takes place. These roles will be recruited in line with the SPA interim appointments policy. It is expected that all senior Director-level roles in SPA, and within Police Scotland, will be advertised internally, and if required externally on a concurrent basis.

SPA has made no permanent appointments since its inception and will not do so until organisational structures for SPA are agreed and we begin to move beyond the transitional arrangements. This is likely to be after 1 April. The first permanent appointment will be that of a Chief Executive for SPA and that will follow a transparent and competitive public appointments process.

As you will be aware, this is a fundamental reform of Scottish policing, not simply a merger. Alongside the very real need to rationalise and reduce duplication, which will have an inevitable impact on the ultimate number of staff working within policing, there will also be a need to inject some new skills and thinking not currently available within the existing workforce.

All organisational structures and the people appointed to them, whether within the business function of the SPA or within Police Scotland, will be subject to the scrutiny of the SPA board which is ultimately accountable for the entire police budget. It is therefore not in the SPA board's interests to encourage and support any unnecessary resources or expense in any part of the new police arrangements in the run up to 1 April and beyond.

I hope that you will find this brief explanation of the resourcing of the SPA interim team helpful, and would be grateful if clerks could ensure that it is made available to Justice Committee members.

John McCroskie
Interim Head of Public Affairs, Scottish Police Authority
8 February

PRINCIPAL EU JHA CIVIL DOSSIERS – JANUARY 2013 UPDATE

Proposal	Current Position	Next Steps
<p>Proposed Regulation on Jurisdiction, Applicable Law and the Recognition and Enforcement of Decisions in matters of Matrimonial Property Regimes (Devolved)</p> <p>This proposal relates to “matrimonial property regimes” which mean a set of rules concerning property relationships of the spouses between themselves and in respect of third parties. It will create rules to govern which court should have jurisdiction to deal with such disputes and which law should apply (including in some circumstances an ability for couples to choose the law), and to provide a mechanism for the recognition and enforcement of court judgments throughout the EU.</p>	<p>Extensive consultation with stakeholders took place in Scotland and rest of UK on the basis of which the UK submitted an initial, sceptical, response at the end of April 2007. The response indicated that the proposals did not adequately reflect the position of common-law jurisdictions such as Scotland and England, nor had they been prepared with proper regard for better regulation principles.</p> <p>In March 2011 the European Commission published two proposed regulations concerning jurisdiction, applicable law and the recognition and enforcement of decisions in matters concerning matrimonial property regimes and the property consequences of registered partnerships.</p> <p>The UK Government, supported by the Scottish Government, opted-out of this proposal September 2011.</p> <p>There has been little progress in negotiations to date, although political guidelines were agreed at the December 2012 JHA Council in order to inform the general direction moving forward.</p>	<p>Negotiations will continue under the Irish Presidency.</p>

Proposal	Current Position	Next Steps
<p>Proposed Regulation on Jurisdiction, Applicable Law and the Recognition and Enforcement of Decisions regarding the Property consequences of Registered Partnerships.</p> <p>This proposal relates to “property consequences of registered partnerships” which mean a set of rules concerning property relationships of the spouses or partners, between themselves and in respect of third parties. It create rules to govern which court should have jurisdiction to deal with such disputes and which law should apply (including in some circumstances an ability for couples to choose the law), and to provide a mechanism for the recognition and enforcement of court judgments throughout the EU.</p>	See above	See above

Proposal	Current Position	Next Steps
<p>Proposed Common European Sales Law (CESL) (Devolved)..</p> <p>The European Commission published (11 October 2011) a proposal for a Regulation establishing a European Sales Law optional instrument, which aims to establish a Common Sales Law for the European Union (CESL).</p> <p>The Regulation contains a set of uniform contract law rules covering the whole life cycle of a contract, which would form part of the national law of each Member State, as an alternative regime of contract law to the national law which would otherwise have applied. This would operate in cross-border sale of goods contracts and contracts for digital content and could only be used where there was agreement between the seller and buyer to apply this regime to their contract rather than their own national law which would otherwise have applied to their relations.</p> <p>The provisions are restricted to sale of goods and contracts for digital content (and closely related) matters, and the optional law is available only in business to business transactions if one is a small to medium sized enterprise, and in business to consumer transactions.</p>	<p>The current legal base suggested by the Commission is Article 114 TFEU (approximation of laws in relation to the internal market). As this is a non JHA legal base, the UK opt in Protocol does not apply.</p> <p>Initial negotiations focused on general issues. These high level issues have included (a) the legal base, with some arguing that Article 352 would be more appropriate (b) potential relationship with other instruments, and in particular 'Rome I' (law applicable to contractual obligations) (c) whether the measure should be optional/binding or non binding. More fundamentally there is still a wide divergence of views among Member States as to whether such an instrument will actually fulfil the Commission objective of facilitating cross border commerce.</p> <p>As part of a UK wide call for evidence, the Scottish Government held a stakeholder event on 15 May 2012, at which participants expressed a variety of views on the proposed Regulation.</p> <p>Discussion at the June 2012 JHA Council was inconclusive, but the Presidency thought that lack of consensus on matters such as legal base ought not to prevent the working group starting consideration of the details of the draft Regulation.</p> <p>The formal UKG response to the Commission was published in October 2012. It concluded that the proposal would be both time consuming and cumbersome to negotiate and implement, that there were fundamental flaws in the scheme as proposed, and that it would not meet the objectives set for it by the Commission itself. It urged the Commission to conduct a further study into the barriers to cross border trade before proceeding further.</p>	<p>Negotiation and discussions on the proposal are ongoing.</p>

Proposal	Current Position	Next Steps
<p>Recast of Regulation 44/2001, Brussels I, on jurisdiction, recognition and enforcement of judgements in civil and commercial matters. (Devolved)</p> <p>Brussels I seeks to facilitate the 'free circulation of judgments' in civil procedure within the EU in the context of mutual recognition of judicial decisions, by setting out rules in relation to jurisdiction and the recognition and enforcement of judgments. It also seeks to minimise the possibility of concurrent proceedings.</p> <p>The Brussels I 'recast' proposal, published in December 2010, aimed to update the Regulation by taking account of certain ECJ rulings (notably in relation to arbitration) and also to streamline proceedings by abolishing intermediate proceedings at the enforcement stage, also known as 'exequatur'.</p>	<p>With the agreement of the Scottish Government, the UKG decided to opt-in to this draft Regulation.</p> <p>After slow initial progress, a period of more focused negotiations in the first half of 2012 took the recast proposal towards agreement.</p> <p>The UKG assessment is that UK negotiating objectives, agreed also with the Scottish Government, were met in all essential points.</p> <p>In particular, (a) agreement was reached on clarification that arbitration should be excluded from scope (b) jurisdiction will not be extended to countries outside the EU, save in very limited circumstances (c) although a new streamlined procedure will be brought in, all the current protections to safeguard legitimate interest of judgment debtors have been preserved and will be considered where enforcement is being sought (d) choice of courts agreements have been safeguarded.</p> <p>At the June 2012 JHA Council meeting Ministers endorsed the position arrived at by the negotiators and this was also agreed to in due course by the European Parliament.</p>	<p>The final agreed text was published as Regulation (EU) 1215/2012 on 12 December 2012.</p> <p>The effective implementation date is 10 January 2015. The Scottish Government will be considering what may be needed to give effect to the Regulation in the coming months.</p>

Proposal	Current Position	Next Steps
<p>Proposed Draft Regulation for a European Account Preservation Order (Devolved)</p> <p>Following a Green Paper and representations from the European Parliament, the Commission finally published a proposal for a draft Regulation in July 2011. It proposes in cross border cases to: enable creditors to obtain account preservation orders on the basis of the same conditions irrespective of the country where the competent court is located; allow creditors to obtain information on the whereabouts of their debtors' bank accounts; and reduce costs and delays for creditors seeking to obtain and enforce an account preservation order in cross-border situations.</p> <p>The proposed measures for both arrestment and information disclosure would be additional to any remedy already available in national law. However the recommendations do not detail any enforcement processes.</p>	<p>While welcoming in principle measures that facilitate easier resolution of disputes and enforcement judgments across borders for both businesses and citizens, both the Scottish and UK Governments also recognise that there needs to be a very careful balance between the rights of creditors to recover debts and the provision of adequate protection for defendants.</p> <p>The question of the rights of defendants is particularly sensitive in this field as the freezing of bank accounts is a measure which has far reaching consequences and it is proposed that there should be automatic mutual recognition of orders. A key UK objective therefore is to seek to ensure during negotiations that safeguards for the defendant are effective and that recourse to them is as easy as possible. The UK JHA opt in Protocol applies, and the UK Government, supported by Scottish Government, has opted-out of this proposal initially pending clarification of this and other technical issues. However, the UK is participating in the negotiations.</p> <p>Scottish Government and Accountant in Bankruptcy officials are also considering potential interplay with and implications for Scottish procedure e.g. the suggested interim (pre-judgment) bank arrestment (like the Scottish "arrestment on the dependence"), and with respect to enforcement, which would appear to have potential impact on Sheriff Officers/Messengers at Arms.</p> <p>Following negotiations under the Cypriot Presidency in the second half of 2012 some concerns have been addressed but there is more to be done to ensure that there is adequate protection for the debtor.</p>	<p>Negotiations are continuing under the incoming Irish Presidency, which it is understood is keen to make progress.</p>

Proposal	Current Position	Next Steps
<p>Proposed Regulation on mutual recognition of protection measures in civil matters (Devolved)</p> <p>The draft Regulation, part of the EC's package on victims, was published on 18 May 2011. It has the same aim as the counterpart criminal law Directive – to facilitate cross border application of domestic protection measures.</p> <p>This Regulation follows on from a Member State initiative put forward by Spain (European Protection Order) which was ultimately limited to cover criminal matters only. The instruments are intended to complement each other so that as many orders as possible are covered despite the differences in systems between Member States (MS). See criminal dossier update.</p>	<p>The UK opt in applies and the UKG, supported by the SG, have chosen to participate in this Regulation from the outset.</p> <p>Negotiations have proceeded slowly, but successive Danish and Cypriot Presidencies have consolidated progress and as a result a 'general approach' was agreed among MS at the December 2012 JHA Council.</p> <p>Issues which were resolved in the general approach were that (a) provision would be restricted to a closed list of measures common in all MS (b) the 'Brussels IIa' Regulation. (<i>Jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility</i>) would be excluded from scope (c) jurisdictional matters would be governed by national law (d) there would be obligations to notify the person causing the risk of the nature of the protection measure.</p> <p>This agreement will allow Trilogue negotiations with the European Parliament to proceed.</p> <p>The UKG and SG believe this to be an acceptable current outcome.</p>	<p>The Trilogue will be taken forward by the Irish Presidency.</p>

Proposal	Current Position	Next Steps
<p>Alternative Dispute Resolution (ADR) (Devolved)</p> <p>The European Commission published legislative proposals on 29 November 2011 for a draft <u>Directive</u> on alternative dispute resolution for consumer disputes and a draft <u>Regulation</u> on online dispute resolution for consumer disputes. ADR refers to schemes that are available to help complainants resolve their disputes out of court. The most common forms are mediation, where an independent third party helps the disputing parties to come to a mutually acceptable outcome, and schemes where an independent third party considers the facts and takes a decision which may or may not be binding on one or other of the parties.</p> <p>The Commission claimed the proposed Directive would ensure quality ADR schemes existed to deal with contractual disputes arising from the sale of goods and the provision of services by traders across the EU. The draft Regulation would enable consumers and traders to access directly an online dispute resolution platform (ODR platform) which will help to resolve contractual disputes arising from cross-border online transactions through the intervention of an ADR scheme complying with the Directive.</p>	<p>After very intensive negotiations a Member State (MS) general approach was agreed at the Competitiveness Council on 30 May 2012. The Trilogue process with the European Parliament also proceeded relatively quickly, and a final text was agreed in principle in December 2012. This text however still awaits formal institutional sign off, now expected around March/April 2013.</p> <p>Although the legal base for these proposals is Article 114 TFEU (approximation of laws in relation to the internal market) the UKG believes that a provision added during the Trilogue, in respect of prescription and limitation periods, may trigger the JHA opt in.</p> <p>Overall the assessment of the UKG, which the SG shares, is that the outcome was favourable for UK objectives, although compared to the MS general approach text the final agreement will require all businesses, in the event of an unresolved dispute, to provide information about ADR, and all online traders will need to provide a link to the ODR platform, regardless of whether they intend ultimately to use ADR. The ODR Regulation will also now include both cross border and domestic online disputes. The possibility for ADR entities to retain rules to allow them to refuse disputes in certain circumstances (e.g. frivolity) was confirmed and strengthened. With respect to safeguards, provisions to prevent conflict of interest have been tightened up</p>	<p>Following final publication in the Official Journal Member States will have two years to comply, which we estimate currently will be April/May 2015.</p> <p>The Scottish Government will be liaising with UK Government on implementation.</p>

Proposal	Current Position	Next Steps
<p>Insolvency Amendment Regulation (Reserved/devolved)</p> <p>In a proposal published first on 13 December 2012, the Commission is proposing amendments to Council Regulation (EC) No 1346/2000 on insolvency proceedings, which makes provision for coordination and administration of cross-border insolvencies where a debtor (a corporate body or an individual) has its centre of main interests ("COMI") in the EU. The Regulation does not seek to harmonise insolvency law across the EU.</p> <p>The current Regulation is thought to be satisfactory, but, for example, covers only terminal liquidation, and is thus unable to facilitate pre insolvency rescue and restructuring proceedings in cross border cases. In addition to extending scope to cover such proceedings, the amendment Regulation also clarifies the rules on which Member State (MS) court will take on the main proceedings (jurisdiction); seeks to improve the efficiency and co-ordination of secondary proceedings, which have been the source of some confusion under the current regime; increases requirements to publish court decisions (to minimise the risk of parallel proceedings commencing) and will require national insolvency registers to be inter connected via the European E Justice Portal; makes it possible for the co-ordination of insolvency proceedings relating to different members of a group of companies to be dealt with under the Regulation; and seeks to limit the possibilities for 'bankruptcy tourism'.</p>	<p>This proposal has been brought forward under Article 81 TFEU (judicial co-operation in civil matters). This Article engages the UK JHA opt in procedure. If the UK wished to opt in at the initial stage it must notify this within 3 months of the publication of the last language version.</p> <p>Working group negotiations have yet to commence.</p> <p>Officials in the Accountant in Bankruptcy are assessing the potential impact of draft Regulation for Scottish procedure. The existing Regulation is generally thought by UK stakeholders to be satisfactory, but after ten years in operation some reform may be justified. The Commission proposal is founded on an analysis of the current regime, including consultation with stakeholders.</p>	<p>The Irish Presidency will oversee the initial negotiations. While it is understood that this dossier will have some priority, it is not currently thought that they will be able to conclude negotiations by the end of their term.</p>

PRINCIPAL EU JHA CRIMINAL AND POLICE DOSSIERS JANUARY 2013 UPDATE

Subject and Summary of Proposal	Current Position	Next Steps
<p>Framework Decision on Mutual Recognition of Confiscation Orders. (Reserved/devolved)</p> <p>This FD applies the principle of mutual recognition to seizure of assets. The effect, in general, is that an order to confiscate assets made by a court in one EU jurisdiction can be enforced in any other.</p>	<p>Published on 6 October 2006 as Council Framework Decision 2006/783/JHA.</p>	<p>Implementation deadline was 24 November 2008.</p> <p>Proceeds of crime legislation is contained in a single UK wide statute, but implementation involves both devolved and reserved issues and the Scottish Government are therefore in contact with Home Office counterparts on this matter. It is believed that primary legislation is required, and when a suitable legislative slot is identified, a decision will be taken as to whether separate Scottish provisions are required or whether the legislation can extend to Scotland by way of a legislative consent motion.</p>
<p>Framework Decision on the European Evidence Warrant. (Mainly devolved)</p> <p>This FD applies the principle of mutual recognition to the provision of certain types of readily available evidence in cross border criminal proceedings. It will begin to replace traditional mutual legal assistance by, for example, creating deadlines to respond and limiting grounds for refusal.</p>	<p>Published on 18 December 2008 as Council Framework Decision 2008/978/JHA.</p>	<p>Implementation deadline was 19 January 2011.</p> <p>Many of the functions related to mutual legal assistance are matters of criminal procedure, and are dealt with in operational terms for Scottish interests by the Crown Office. The current UK mutual legal assistance provisions are largely to be found in the Crime (International Co-operation) Act 2003. An affirmative order-making power designed to implement the FD was enacted in the Criminal Justice and Licensing (Scotland) Act 2010. However, as the proposed European Investigation Order Directive would effectively replace this FD, implementation is on hold. It is understood that this is the approach being taken by most other Member States.</p>

Subject	Current Position	Next Steps
<p>Framework Decision on the European Supervision Order (mutual recognition of supervision measures as an alternative to provisional detention.) (Devolved)</p> <p>The broad aim of this measure is to allow the substitution, in suitable cases, (<i>where bail would be considered for a national in the same circumstances</i>) of pre-trial detention for defendants in criminal proceedings arising in other Member States, with a non-custodial supervision measure in the person's normal place of residence i.e. a type of bail, which would be mutually recognised.</p>	<p>Published on 23 October 2009 as Council Framework Decision 2009/829/JHA.</p>	<p>Implementation deadline was 1 December 2012.</p> <p>Implementing legislation will be required in Scotland. The Scottish Government are assessing the requirements for this and examining potential legislative vehicles.</p>
<p>Framework Decision on recognition and supervision of suspended sentences and alternative sanctions. (Devolved)</p> <p>This FD enables convicted persons who have been given such sentences to return to their normal place of residence, and to facilitate the giving of such sentences, where this is otherwise appropriate, by setting out a scheme of mutual recognition and execution. Scope includes parole within suspended sentences, as well as alternative/conditionally suspended sentences.</p>	<p>Published on 27 November 2008 as Council Framework Decision 2008/947/JHA.</p>	<p>Implementation deadline was 6 December 2011.</p> <p>Provisions in the Criminal Justice and Licensing (Scotland) Act 2010 enable Scottish Ministers to modify existing primary legislation by an affirmative SSI to implement the FD. The practical implications of implementation and a process for the transfer in and out of relevant judgements has now been developed and work on the SSI is progressing.</p>

Subject	Current Position	Next Steps
<p>Prüm Convention (Devolved/Reserved)</p> <p>The Convention was initially agreed between 7 Member States, outside the EU legislative framework, and makes provision for closer co-operation in a range of areas, such as DNA and fingerprint exchanges, joint police operations, etc. It was agreed to extract from the Convention a selection of key measures, mainly in the area of information exchange, and convert them into an EU Council Decision. Therefore, provisions on, for example, air marshals and cross border “hot pursuit” were not included. For information exchanges, the provisions operate on an “anonymous” hit/no hit basis. If a hit is confirmed then more detailed information is to be requested in accordance with national law, using conventional mutual legal assistance channels if appropriate.</p>	<p>The Council Decision, Implementing Agreement and Technical Annex were published on 6 August 2008. (See link)</p> <p>http://eurlex.europa.eu/JOHtml.do?uri=OJ:L:2008:210:SOM:EN:HTML.</p>	<p>The date for implementation of Prüm was 3 years and 20 days from 6 August 2008 – that is, August 2011. The UK, along with several other EU Member States, have not met this deadline, due to the technical complexity of some of the provisions.</p> <p>Within the UK a Strategic Outline Business Case was completed by NPIA in April 2010, which outlined various options and associated costs for the delivery of Prüm. This matter is still under consideration by UK Ministers and a final decision is awaited, including on funding. The UK bid for and were successful in obtaining funding from the EU for a period of 3 years for work on DNA issues which could be beneficial to the implementation of Prüm.</p> <p>In respect of Scotland’s separate DNA and fingerprint provision, Scottish Government officials and experts continue to be involved through membership of the Prüm Programme Board to ensure that Scotland’s interests are fully represented.</p>
<p>Framework Decision on the enforcement of judgements in absentia (Devolved)</p> <p>The object of this FD is to (a) underline the procedural rights of persons subject to criminal proceedings; (b) facilitate criminal judicial co-operation by clarifying mutual recognition of decisions between MS; and (c) promote greater consistency in mutual recognition where judgements in absentia may be a factor. It amends 5 existing FDs with relevant provisions. (Financial penalties, mutual recognition of confiscation, prisoner transfer, supervision/probation etc, and the European Arrest Warrant)</p>	<p>Published as Council Framework Decision 2009/299/JHA on 26/2/2009.</p>	<p>The implementation deadline was 28 April 2011.</p> <p>This measure is limited to cross border and there are therefore no implications per se for purely domestic provision, but analysis is ongoing to determine whether any refinements are required to UK provisions with regard to the Framework Decisions in question. In general, the main purpose is to clarify where the responsibilities lie between issuing and executing authorities. The UK is already compliant with regard to the EAW and it is believed the Repatriation of Prisoners Act allows the UK to transfer prisoners in accordance with relevant international arrangements.</p>

Subject	Current Position	Next Steps
<p>Framework Decision amending FD 2002/475/JHA on combating terrorism (Reserved/Devolved)</p> <p>The original FD approximates the definition of terrorist offences in all Member States and determines the cases in which Member States are obliged to assume jurisdiction over terrorist offences. It includes specific measures on protection of and assistance to victims. The amending FD aims to update the earlier FD, aligning it with the recent Council of Europe Convention on prevention of terrorism by including public provocation to commit terrorist offences, recruitment for terrorism and training for terrorism within scope.</p>	<p>Published as Council Framework Decision 2008/919/JHA on 28/11/2008.</p>	<p>The implementation deadline was 9 December 2010.</p> <p>The position of the UK Government is that the UK is, for the most part, compliant.</p> <p>Nonetheless, Art 1 of FD 2008/919 goes wider than the current UK legislation (Schedule 1 of the Terrorism Act 2006) which places limits on extra-territorial jurisdiction re “Convention offences”.</p> <p>However, the UK Government has yet to amend UK law to comply with FD 2008/919 in this respect due to the lack of an appropriate legislative vehicle.</p>
<p>Framework Decision on prevention and settlement of conflicts of jurisdiction. (Devolved)</p> <p>This FD seeks to establish the procedural framework under which national authorities exchange information about ongoing criminal proceedings which may give rise to a conflict of jurisdiction, and under which they would enter into direct discussions in order to reach mutual agreement on the best placed jurisdiction for conducting criminal proceedings.</p>	<p>The text was formally published as FD 2009/948/JHA.</p>	<p>The implementation deadline was 15 June 2012.</p> <p>The final text restricted scope to potential ne bis in idem (double jeopardy) cases and focused on promoting direct discussions between prosecutors.</p> <p>The Scottish Government is considering whether any changes to domestic legislation will be required to comply with the FD.</p>

Subject	Current Position	Next Steps
<p>EU Directive on preventing and combating trafficking in human beings, and protecting victims, replacing Framework Decision 2002/629/JHA (Reserved/Devolved.)</p> <p>This Directive will replace the 2002 FD on Trafficking, which established the rules under which all Member States have to legislate for human trafficking.</p> <p>The Directive takes a victim centred approach, including a gender perspective, to cover actions in different areas such as criminal law provisions, prosecution of offenders, victims' support and victims' rights in criminal proceedings, prevention, and monitoring of the implementation.</p>	<p>This Directive, tabled on 29 March 2010, builds on the Council of Europe Convention on Action against Trafficking in Human Beings, which the UK ratified in December 2008, becoming bound by its terms in April 2009.</p> <p>Following negotiations the Member States and the EU Parliament agreed a text in December 2010, thus achieving a 'First Reading' deal. It was formally published on 5 April 2011 as Directive 2011/36/EU.</p> <p>In June 2010 the UK Government decided not to opt in at the outset. The Scottish Government disagreed with this approach, arguing that to do so would be seen as weakening the UK stance against human trafficking. Under the UK JHA opt in Protocol the UK can however apply to opt in to measures at any point after they have been agreed and published, if it has not done so initially.</p> <p>On the 9 May 2011, the UK Parliament supported the UK Government's revised position to apply to the European Commission to opt into the Directive. The UK Government subsequently wrote formally in this regard. The Commission agreed the application and notified the UK Government of its decision on 14 October 2011.</p>	<p>Member States must ensure implementation by April 2013. Scotland is already broadly compliant with the Directive.</p> <p>Scottish Government officials are currently considering with Whitehall officials what further measures are required to achieve overall compliance.</p>

Subject	Current Position	Next Steps
<p>Directive on combating the sexual abuse, and sexual exploitation of children and pornography, repealing existing Framework Decision 2004/68/JHA (Reserved/Devolved.)</p> <p>This Directive repeals Framework Decision (FD) 2004/68/JHA. It is a response to new forms of abuse and sexual exploitation of children caused by the misuse of the Internet and communications technologies and builds on the 2007 Council of Europe (CoE) Convention on the Protection of Children against Sexual Exploitation. It will require Member States to treat the sexual exploitation of children, both through the creation and sharing of images of child sexual abuse and through the misuse of the Internet to contact and 'groom' children for subsequent abuse, as serious criminal offences. It includes provisions for offences for helping make arrangements for sex offenders who travel, risk assessments for offenders, procedures to protect children as victims and witnesses, and provides for the exchange of information between Member States about individuals who are disqualified from working with children.</p>	<p>Trilogue negotiations with the European Parliament concluded in October 2011 and it was published on 13 December as Directive 2011/92/EU.</p> <p>Under the terms of its opt in Protocol, the UK Government decided to opt in to this Directive at the outset. The Scottish Government was consulted as part of this process and was content with the UKG position.</p>	<p>The implementation period is 2 years and participating Member States must ensure implementation by 18 December 2013.</p> <p>Scotland is already broadly compliant with this Directive and Scottish Government officials are considering what measures will be required to ensure compliance.</p>

Subject	Current Position	Next Steps
<p>Directive on the right to interpretation and translation in criminal proceedings (Devolved)</p> <p>This Directive sets out EU minimum standards, building on ECHR, under which suspects/defendants are provided with interpretation and translation in criminal proceedings. Both interpretation and translation rights are covered. Member States (MS) will have a duty to ascertain whether an interpreter is required, and there is provision for a review of decisions. Competent national authorities are under a duty to ensure the translation of essential documents. There is no exhaustive list, but as a minimum, it must include the detention order, the charge/indictment and any judgement. However, an oral translation may be permitted in appropriate circumstances provided this does not affect the fairness of the proceedings. MS must meet the costs and take measures to ensure the quality of interpretation/translation. The Directive also applies to EAW proceedings.</p> <p>It is the first part of a new package of measures on minimum rights for defendants/suspects in criminal proceedings in the EU outlined in the procedural rights “Roadmap”, whose overall purpose is to establish minimum standards in the EU by bringing forward a series of measures in key areas of criminal procedure such as translation, information on rights, and access to legal advice. The aim is to promote mutual trust and understanding among EU legal systems which are increasingly expected to accept and implement judicial decisions from one another in developing the common area of “freedom, security and justice” through mutual recognition.</p>	<p>The draft Directive was tabled as a Member State (MS) initiative early in 2010.</p> <p>Under the terms of its opt in Protocol, the UK Government decided to opt in at the outset. The Scottish Government was consulted as part of this process and was content with the UKG position.</p> <p>Following the successful conclusion of the negotiations the Directive was formally adopted and published as Directive 2010/64/EU on 27 October 2010.</p>	<p>Member States must take the measures necessary to implement the Directive by 27 October 2013.</p> <p>The Scottish Government believes that translation and interpretation provision already meets high standards domestically, but is assessing what measures may be required to ensure implementation in Scotland.</p>

Subject	Current Position	Next Steps
<p>Directive on the European Protection Order (EPO)</p> <p>(Devolved)</p> <p>Spain, and a group of like minded Member States (MS), tabled this initiative to coincide with their Presidency of the Council of the EU in January 2010.</p> <p>The aim of an EPO is that where a victim has been granted a protection order in one MS, this MS can issue an EPO, at the victim's request, to extend the protection to the receiving jurisdiction without the need to raise separate proceedings which could lead to a break in continuity of protection. The Member State that the victim has moved to would then use the EPO to make the nearest equivalent order in accordance with its own national law. The Directive covers, inter alia, the scope of the EPO, when it is to be issued, its form, and the respective roles of the issuing and executing States.</p>	<p>There is wide consensus that assisting in the cross border protection of victims is important for the EU, but the issue of legal base is problematic. EU Member States (MS) approach protection orders in different ways with some being based in civil proceedings, some criminal and some, like Scotland and rest of the UK, using a mixture of civil and criminal proceedings with a mixture of sanctions. The Directive was, however, brought forward under a purely criminal legal base (Article 82(1) TFEU) (<i>MS civil law initiatives are not allowed under the Lisbon Treaty</i>) and there were serious concerns as to whether this would be sufficient to capture the different types of orders found throughout the EU.</p> <p>Although negotiations amongst the MS, and consequently with the European Parliament (<i>under the Belgian Presidency July – Dec 10</i>), delivered agreement on procedural matters, the lack of consensus on the legal base meant that agreement was delayed. However, it was then clarified that the Directive would be restricted to measures arising in criminal proceedings and the Commission (18 May 2011) published an equivalent Regulation to cover protection measures arising from civil proceedings. (See the civil law dossier grid) As a consequence agreement was then reached on the Directive. Under the terms of its JHA opt in Protocol, the UK Government, supported by the Scottish Government, decided to opt in to this Directive from the outset.</p>	<p>The Directive was finally published on 13 December 2011 (2011/99/EU) with an implementation deadline of 11 January 2015.</p>

Subject	Current Position	Next Steps
<p>Directive regarding the European Investigation Order in criminal matters (EIO) (Mainly devolved)</p> <p>The EIO was published in May 2010 on the initiative of Belgium and other co-sponsors.</p> <p>This is a significant proposal, which seeks to put in place a single platform for obtaining evidence in criminal proceedings. The basis for the measure is mutual recognition of the issuing judicial authority's decision for execution in another country. In addition to standard provisions such as obtaining identified items, there are also proposed provisions in more specialised areas, such as controlled deliveries, cross border surveillance, interception of telecommunications in real time, temporary transfer of prisoners to give evidence, hearing by video/teleconference, and provision of information on bank accounts. The EIO aims to improve the current system e.g. through the provision of a standardised request form, the introduction of formal deadlines for requests to be executed and limited grounds for refusal, as well as putting in place the mechanics required to transmit, receive and execute requests. There is also provision which facilitates attendance by the requesting authority at the execution of the request in the executing jurisdiction.</p> <p>It is intended that the EIO will replace the patchwork of current mutual legal assistance provision in the EU, including the European Evidence Warrant, and is viewed as being an investigative counterpart to the European Arrest Warrant (EAW).</p>	<p>Progress in negotiations has been slow due to protracted discussions on a combination of complex technical issues and matters of principle. This became focused in particular on the grounds for authorities to refuse to execute requests. In practice, under the current regime of mutual legal assistance, it is believed that requests for assistance are in fact rarely refused. However, there is significant flexibility in the provisions, while mutual recognition within the proposed EIO implies higher levels of automatic execution.</p> <p>Lengthy discussions were needed to secure consensus on these provisions and to permit some flexibility within the EIO for executing authorities to refuse or vary execution, for example, with regard to more complicated requests or where coercive measures may prove necessary. The outcome of these negotiations was Member State agreement to a 'partial' general approach on Articles 1 -18 at the June 2011 JHA Council. Attention turned subsequently to the Articles covering specialised areas, such as information on bank accounts. The Polish Presidency got agreement among MS on these at the December 2011 JHA Council to enable 'Trilogue' negotiations with the European Parliament to begin, although progress since then has been slow due to general inter institutional issues between the EP and the Council.</p> <p>The UKG has decided to opt in to this Directive. The Scottish Government was consulted as part of this process and was content with the UKG position.</p>	<p>After little progress under the Cypriot Presidency the Irish Presidency is expected to make more progress in negotiations with the European Parliament.</p>

Subject	Current Position	Next Steps
<p>Directive on the provision of information in criminal proceedings ("letter of rights") (Devolved)</p> <p>This proposal aimed to set common minimum standards regarding the right to information in criminal proceedings throughout the EU. This forms the second step of the procedural rights Roadmap and was published by the Commission in July 2010.</p> <p>The draft text included provision to give suspected/accused persons information, both oral and written, about their procedural rights. This included information about the right of access to a lawyer, the right to be informed of the charge, the right to interpretation and translation, information about detention periods, and the right to remain silent. For arrested persons, such information was to be provided in written form (a "letter of rights"). It also included provisions on the right to access to material evidence, being an attempt to address disclosure of evidence issues. It is also intended to apply to European Arrest Warrant (EAW) proceedings.</p> <p>Finally, non binding examples of letters of rights, both in the domestic context and with regard to the EAW, were provided.</p>	<p>Negotiations focused largely on the disclosure related provisions. It became clear that there was a considerable difference of procedure and understanding, mainly, but not exclusively, between the common law jurisdictions and the rest. This was reflected, for instance, in discussions around the concept of the 'case file' as found in many continental jurisdictions, but not within the UK. However, the negotiations produced a text acceptable to all on the Member State (MS) side, and agreement was reached at the December 2010 JHA Council.</p> <p>Trilogue negotiations with European Parliament covered issues such as the time in proceedings when particular information was to be given, provision on information about the charge, and what written information would be given. A 'First Reading' deal was achieved in November 2011.</p> <p>Under the terms of its opt in Protocol, the UK Government decided to opt in at the initial stage. The Scottish Government was consulted and was content with the UKG position.</p> <p>The main UK negotiating objective was to ensure that domestic disclosure provisions would not be compromised. The SG fully supported this stance, bearing in mind also the differences between Scotland and the rest of the UK in this regard. The SG is satisfied that the proposed provision does not run counter to the legislative scheme on disclosure in the Criminal Justice & Licensing (Scotland) Act 2010.</p>	<p>This measure was formally published as Directive 2012/13/EU on 22 May 2012. Member States have until 2 June 2014 to ensure compliance.</p> <p>An initial assessment is that existing practice in Scotland already conforms with much of the Directive.</p> <p>The requirement to create a letter of rights for suspects is consistent with a recommendation from Lord Carloway's review of criminal procedure.</p> <p>Work is therefore under way to develop a non-statutory letter of rights for Scotland to be introduced later this year. The right to information will be enshrined in primary legislation at the next available opportunity, prior to the implementation deadline.</p>

Subject	Current Position	Next Steps
<p>Directive on attacks against information systems (and repealing Council Framework Decision 2005/222/JHA) (Mainly reserved)</p> <p>This draft Directive seeks to address the threat from large-scale attacks on information systems by ensuring that Member States have adequate legislation to allow the prosecution and punishment of those organising, committing or supporting large-scale attacks. It also seeks to ensure that Member States respond quickly to requests from other Member States for exchange of information in cyber crime cases.</p> <p>This proposal takes into account new methods of committing cybercrime, especially the use of botnets. The term 'botnet' indicates a network of computers infected by malicious software (computer virus). Such a network of compromised computers ('zombies') may be activated to perform specific actions, such as attacking information systems (cyber attacks). These 'zombies' can be controlled – often without the knowledge of the users of the compromised computers – by another computer.</p> <p>It is very difficult to trace the perpetrators, as the computers that make up the botnet and carry out the attack may be in a different location from the offender himself.</p>	<p>The draft proposal was published by the Commission on 30 September 2010. The UK JHA opt in Protocol applies and the UK Government decided to opt in to the draft Directive at the initial stage. The Scottish Government was consulted as part of this process and was content with the UKG position.</p> <p>Early negotiations focused on penalty levels and jurisdictional issues, where several delegations, including the UK, had reservations. While the UK retains some reservations to the approach with regard to extra – territorial jurisdiction (ETJ), it was however, able to agree to the Presidency compromise text which allowed a general approach among Member States to be agreed at the June 2011 JHA Council. This text also confirmed that coverage of minor offences would be left to national discretion.</p> <p>Trilogue negotiations with the European Parliament were largely completed under the Danish Presidency. The main issues covered have been the level of sentences, the aggravating circumstances to those offences, identity theft and reporting of offences.</p>	<p>The Cypriot Presidency was unable to finalise this dossier due to inter institutional issues between the EP and the Council, so it will fall to the Irish Presidency to oversee the final stages of the negotiations.</p> <p>The main domestic legislation in the UK potentially affected by the draft proposal is believed to be the Computer Misuse Act 1990. On the basis of the current text, it is thought that the UK is already largely compliant, although it is likely that a number of small changes, particularly to include ETJ by nationality, will be required.</p>

Subject	Current Position	Next Steps
<p>Directive on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (Reserved)</p> <p>This draft Directive seeks to harmonise Member States' provisions on obligations for air carriers operating flights between a third country and the territory of at least one Member State, to transmit PNR data to the competent authorities for the purpose of preventing, detecting, investigating and prosecuting terrorist offences and serious crime. It does not require air carriers to collect any additional information from passengers or to retain any data, nor does it require passengers to provide any data in addition to that already being provided to air carriers.</p> <p>PNR data can be used by law enforcement authorities in several ways, for example, to identify persons who were previously "unknown", by assisting in the analysis of the most usual travel routes for trafficking people or drugs, or by helping with investigation and prosecution after a crime has been committed, by using PNR data to construct evidence and, where relevant, to find associates of criminals and unravel criminal networks.</p>	<p>The draft proposal was published by the Commission on 2 February 2011.</p> <p>The UK JHA opt in Protocol applies to this dossier, and the UK Government decided to opt in to the draft Directive at the initial stage. The Scottish Government was consulted as part of this process and was content with the UKG position.</p> <p>A central aim of the UK Government was to secure the ability to mandate the collection of PNR on intra-EU flights. Initially agreed at the April 2011 Justice and Home Affairs, this was confirmed at the April 2012 JHAC, which finally agreed on the Member State position to take forward into the Trilogue negotiations with the European Parliament.</p> <p>Other significant matters covered in the Member State agreed text were to confirm an initial full data retention period of 2 years and that the scope would be cross referenced to European Arrest Warrant offences, with a 3 year sentence threshold.</p>	<p>The Irish Presidency will oversee negotiations with the European Parliament.</p>

Subject	Current Position	Next Steps
<p>Directive establishing minimum standards on the rights, support and protection of victims of crime (Devolved)</p> <p>This Directive seeks to ensure minimum standards throughout the EU so that victims of crime receive appropriate protection and support, are able to participate in criminal proceedings, and are recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind, in all contacts with any public authority, victim support or restorative justice service.</p> <p>Provisions include ensuring that victims receive sufficient information in a form they can understand; that they have access to support services that provide information, advice, emotional and psychological support and practical assistance; that they have an opportunity to be heard during criminal proceedings, and may give evidence; and in accordance with their role in the relevant criminal justice system to have the right to have any decision not to prosecute reviewed. The procedural rules for such a review shall be determined by national law.</p> <p>There are also provisions in relation to vulnerable victims who may require special measures when being interviewed in court.</p>	<p>The draft proposal was published by the Commission on 18 May 2011. The UK JHA opt in Protocol applied, and the UK Government decided to opt in at the initial stage. The Scottish Government was consulted as part of this process and was content with the UKG position.</p> <p>Negotiations covered the definition of family member, and potential assistance available to them; the amount of information which authorities may be required to provide, including issues around prejudicing judicial process; issues around access to victim support services; the precise duties of the authorities re avoiding contact with the accused; the definition and identification of vulnerable accused; and fine tuning of provisions which cross reference to national law.</p> <p>As a priority of the Polish Presidency good progress was made in the negotiations towards a Member State (MS) approach (agreement December 2011) to take forward into the 'Trilogue' with the European Parliament.</p> <p>Trilogue negotiations were substantively completed under the Danish Presidency, by June 2012.</p> <p>The Scottish and UK Governments were content that the final text accorded with UK objectives and in particular that it did not encroach on UK provisions in relation to the role of victims in court.</p> <p>It was finally published as Directive 2012/29/EU on 25 October 2012.</p>	<p>Implementation is due by 16 November 2015.</p> <p>The Scottish Government is considering implementation and working with the Ministry of Justice (UK) and the Department of Justice (Northern Ireland) to ensure the necessary changes are made before the deadline in 2015.</p> <p>In Scotland, the Victims and Witnesses (S) Bill, which will be introduced in the Scottish Parliament in this session, will address many of the requirements of the Directive. The key principles of the Bill are that victims and witnesses should:</p> <ul style="list-style-type: none"> • know what is going on in cases which affect them; • know what to expect in relation to proceedings including whether hearings will go ahead as scheduled; • feel confident in coming forward and that their personal safety will be protected; • be able to contribute effectively to cases which affect them; • have access to appropriately tailored support before, during and after proceedings; and • offenders should pay for the injury, loss and distress they have caused. <p>The Bill will:</p> <ul style="list-style-type: none"> • redefine and extend the definition of child and vulnerable witnesses; • create the right to choose the sex of an interviewer; • extend and create easier access to special measures; • create a right to request and receive information about the proceedings;

		<ul style="list-style-type: none">• strengthen existing complaints procedures and create a duty on justice organisations to have clear standards of service;• require the courts to consider direct compensation;• create a victim surcharge fund to provide immediate and practical help for victims of crime;• allow representations to be made when a prisoner is first eligible for temporary release; and• allow representations to be made orally to the Parole Board for Scotland.
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Subject	Current Position	Next Steps
<p>Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest (Devolved)</p> <p>This proposed Directive combines Measures C and D from the Procedural Rights Roadmap. It aims to set common minimum EU wide standards on the rights of suspects/accused in criminal proceedings to have access to a lawyer, and to communicate on arrest with a third person, such as a relative, employer or consular authority.</p> <p>The initial draft provided that it would apply from the time a person was made aware that he was suspected or accused of a criminal offence. The intention was to ensure that suspected/accused persons are granted access to a lawyer as soon as possible and at the latest upon deprivation of liberty. It was envisaged that access to a lawyer would be granted upon questioning and in most circumstances when there was a procedural or evidence-gathering act requiring or permitting the presence of a suspect or accused person. The lawyer would be able to ask questions, request clarification and make statements. The duration and frequency of meetings between lawyer and suspect/accused was not be limited in a way that could prejudice the person's right of defence. Suspects/accused would have the right to communicate with at least one named person as soon as possible. Meetings, correspondence, telephone conversations etc between lawyer and client would be confidential, with no exceptions. In general it would only be possible to derogate from</p>	<p>The draft Directive was announced by the Commission on 8 June 2011.</p> <p>Scottish Ministers consider the draft Directive to be a positive development in principle. It should ensure that suspected persons across the EU have a right of access to legal advice before being questioned. The Directive should clarify the law and reduce the uncertainty generated by successive judgements of the ECtHR on legal access. It is likely to ensure a level of provision across Member States, helping to ensure access to a fundamental right.</p> <p>It was therefore with some reluctance that, following consultation with the UK Government, Scottish Ministers supported the decision not to opt-in initially. This decision was reached because certain aspects of the draft Directive gave cause for significant concern.</p> <p>The initial Commission draft expanded rights significantly in a number of areas. Particular concerns arose in relation to the point at which legal access must be provided; the requirement for a lawyer to be present during certain evidence-gathering acts (e.g. searches); its operation for minor offences; inflexibility where access might permit destruction of evidence; and an absolute ban on admissibility of evidence obtained in breach of the Directive.</p> <p>Member State negotiations were productive ('general approach' agreed at June 2012 JHA Council) and achieved a better balance between the rights of suspects and wider interests of justice</p>	<p>Trilogue negotiations will resume under the Irish Presidency.</p>

<p>the provisions of the Directive in very limited circumstances. With regard to waiver, the person would need to receive prior legal advice on the consequences. The remedy in cases where the right of access has been breached would have the effect as far as possible of replicating the position in which suspects/accused would have been had rights not been breached. In addition, statements made by the person or evidence obtained in breach would generally not be able to be used in evidence. It was proposed that the Directive would apply to EAW cases in both the issuing and executing State.</p>	<p>than the Commission's original proposal. In particular the operative text of the Directive was changed to make clear that Member States needed to take concrete steps to ensure that suspects can access a lawyer.</p> <p>Trilogue negotiations with the EU Parliament have however not been concluded, despite considerable efforts during the Cypriot Presidency, and only after this process is complete will the Scottish and UK Governments be in a position to assess whether it will be possible to opt in.</p>	
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Subject	Current Position	Next Steps
<p>Data Protection Directive (Reserved)</p> <p>A draft proposal for a measure “on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data” was published on 25 January 2012. It will repeal and replace the Framework Decision (FD) 2008/977/JHA of 27 November 2008.</p> <p>The Commission believes that new rules governing the processing of personal data for the purpose of law enforcement and judicial co-operation are needed given the unprecedented growth of new and emerging technologies and the parallel increase in flows of information within and across national borders. The Commission also wants to provide greater consistency across Member States in the interpretation and implementation of rules governing data protection rights and contends that a harmonised set of rules will provide both greater certainty for individuals in understanding their rights and greater efficiencies in law enforcement co-operation.</p> <p>Amongst proposed changes to the FD scheme are extension to the scope of data processing to include domestic processing for the purpose of policing and judicial co-operation; new rights of access and information for data subjects; and a right for data subjects to directly demand the erasure of their personal data by the data controller.</p>	<p>The legal base for the proposal is Article 16(2) of the Treaty on Functioning of the European Union (“TFEU”) As this is not a ‘Title V’ JHA legal base the UK JHA opt in /out does not apply. However a Recital clarifies that the UK will only be bound by the Directive where it has opted in to the measures to which it applies.</p> <p>Negotiations have begun at working group level, although there has been little time available under the Danish and Cypriot Presidencies and therefore little progress has been made. (The working group dealing with this dossier has been concentrating on the counterpart Regulation dealing with the internal market.) However, some Member States have aired concerns that the proposal is overly prescriptive and that it may impinge on national competencies.</p> <p>Due to the technical nature of this dossier negotiations are likely to continue for some time. The Directive is part of a comprehensive Commission package which seeks to covers all areas of EU competence, and includes a non JHA Regulation.</p>	<p>The Irish Presidency will oversee ongoing negotiations. They have stated that data protection is a priority for them, but like the preceding Presidencies they are likely to concentrate on the Regulation.</p>

Subject	Current Position	Next Steps
<p>Confiscation Directive (Reserved/Devolved)</p> <p>The draft Directive published by the Commission in March 2012 proposes minimum EU rules in relation to freezing and confiscation of criminal assets and instrumentalities through direct, value, extended, non conviction based and third party confiscation. It would replace in whole or in part certain earlier EU legislation contained in Joint Action 1998/699/JHA, and Framework Decisions 2001/500/JHA and 2005/212/JHA.</p>	<p>It is thought that the UK jurisdictions already meet or exceed most of what is proposed in the draft Directive, although there may be some issues with respect to specific property confiscation, in contrast to value based regimes, and the UK's civil law founded non conviction confiscation regimes.</p> <p>There is also provision for a proposed urgent freezing procedure, which would not require a court order. In the UK a court order is always needed at the moment.</p> <p>The UK opt in Protocol applies to this dossier. On the basis of concerns raised by their initial analysis of the draft in relation, inter alia, to the relationship with UK civil confiscation provision, the UKG has decided not to opt into the Directive at the initial stage. However, subject to satisfactory clarifications the objective is to consider opting in post agreement. The Scottish Government was consulted by the UKG on the opt in and was content with this approach.</p> <p>Following intensive negotiations under the Cypriot Presidency a 'general approach' was agreed by the Member States at the December 2012 JHA Council to take into the Trilogue negotiations with the European Parliament.</p>	<p>The Irish Presidency will oversee Trilogue negotiations with the European Parliament.</p>