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Home Affairs Committee

Home Office preparations for the UK exiting the EU

Twelfth Report of Session 2017–19

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

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Home Affairs Committee

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Home Office and its associated public bodies.

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Evidence relating to this report is published on the [inquiry publications page](#) of the Committee's website.

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The current staff of the Committee are Elizabeth Hunt (Clerk), Harriet Deane (Second Clerk), Simon Armitage (Committee Specialist), Penny McLean (Committee Specialist), Robert Sabbarton (Committee Specialist), David Gardner (Senior Committee Assistant), Mandy Sullivan (Committee Assistant) and George Perry (Senior Media and Communications Officer).

Contacts

All correspondence should be addressed to the Clerk of the Home Affairs Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 6856; the Committee's email address is homeaffcom@parliament.uk.

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Summary

In November 2018, the UK Government and EU jointly published a withdrawal agreement that set out the terms by which the UK would exit the EU. At the same time, a non-binding political declaration was published that outlined the principles on which the future relationship between the UK and EU would be based.

The terms of the UK's exit from the EU contained in the withdrawal agreement and political declaration have consequences for Home Office responsibilities on policing and security cooperation, UK border operations and immigration.

The transitional arrangements secured in the withdrawal agreement are vital for the UK in all three areas, because no adequate preparations have been made for other arrangements to be put in place. Leaving the EU without a transitional period would put security and border operations at significant risk.

The political declaration is seriously lacking in detail and provides insufficient clarity about both the future security partnership and future arrangements at the border. There is a real danger that the UK's position will be weakened in the future partnership. The Government has provided a distinct lack of information on its immigration proposals, and of time for Parliament to consider them before the vote on the deal.

On security and policing issues, continued cooperation between the UK and the EU via Europol, criminal databases and through extradition arrangements are all crucial. We are very concerned by the lack of clarity offered by the political declaration about each mechanism. We are deeply disappointed at the EU's resistance to UK participation in the Second Generation Schengen Information System (SIS II) database given the importance of this security cooperation to both the UK and the EU. There has also been a concerning lack of progress in securing the UK's future relationship with Europol and the European Arrest Warrant. As it stands there is a significant risk that the UK and the EU are facing a security downgrade.

We are also concerned that insufficient preparations have been made for negotiating the security treaty. The lack of a security backstop in the withdrawal agreement means there is a real risk that the transitional arrangements will expire before the future security partnership is concluded, and therefore there will be a security shortfall. We are concerned that security arrangements are being subordinated to the trade arrangements and political considerations.

It is seriously damaging that the Government is not being open with Parliament on the implications of the deal it has reached with the EU. We disagree with the Home Secretary's description of access to SIS II as merely a "nice to have", and we are seriously worried about complacency in this area. We urge the Government to be clearer with Parliament about the security risks.

On border issues, we welcome the negotiation of transitional arrangements. However, we have the same deep concern about the lack of clarity in the political declaration. The deal could entail close alignment with the EU customs union and single market rules on the one hand, and could mean substantial divergence on the other. There are a 'spectrum' of possible outcomes for checks and controls at the border, but the

Government has offered no certainty about where on that spectrum the UK will be. This makes it difficult both for Parliament to assess the merits of the proposals, and for the Home Office to make adequate preparations for the implementation of the future partnership.

On immigration issues, it is impossible for us to respond to the Government's policy for its post-Brexit system, as at the time of agreeing this report we still have not seen the Immigration White Paper we were first promised 18 months ago, and it seems highly unlikely that the White Paper will be published before the meaningful vote on the 11 December, which is extremely disappointing. Given that new immigration arrangements will have a significant impact on UK citizens' ability to live and work in the EU in future and on EU citizens ability to live and work in the UK, we are very troubled that this information is not available to Parliament before the vote.

The Government has previously made it clear that failing to reach a deal on security would be an unthinkable outcome in the Brexit negotiations. However, we are concerned that security and home affairs considerations are not being given sufficient priority.

Introduction

1. In November 2018, the UK Government and EU jointly published a withdrawal agreement that set out the terms by which the UK would exit the EU in March 2019. At the same time, a non-binding political declaration was published that outlined the principles on which the future relationship between the UK and EU would be based.
2. The terms of the UK's exit from the EU contained in the withdrawal agreement and political declaration have significant implications for UK border operations, and policing and security cooperation between the UK and EU. The withdrawal agreement also includes provisions for EU citizens already resident here, and the Government has promised an Immigration White Paper setting out the new migration arrangements for EU citizens, with implications for what reciprocal access can be expected for UK citizens seeking to live and work in the EU.
3. If the withdrawal agreement is agreed, there would be limited changes to UK border operations and policing and security cooperation during the transition period. There has not been agreement on what will happen after the transition period ends. The political declaration provides for a wide range of outcomes for UK policing and security cooperation and border operations with the EU. The more the UK intends to diverge from current processes, which are heavily aligned with the EU, the greater the amount of work the Home Office will need to do.
4. This short report looks at the provisions in the withdrawal agreement and the political declaration and assesses them against our previous reports and recommendations on policing and security, borders and immigration. It concludes that whilst the transition and protection for citizens' rights are welcome, we have considerable concerns about the political declaration, the lack of clarity over the future partnership, and the preparedness of the Home Office to cope with the challenges ahead.

1 Policing and security cooperation

5. As we have detailed in earlier reports,¹ the UK's full participation in efforts to tackle cross-border threats has resulted in the existence of 40 areas of cooperation between the UK and the EU over security, law enforcement and criminal justice.²

Whether in a deal or no deal scenario, the Home Office will need to ensure that the UK:

- is able to contribute to and benefit from policing agencies such as Europol to the degree it currently does;
- has extradition arrangements with the EU that are as quick and efficient as the European Arrest Warrant; and
- retains access to crucial EU policing and security data systems- such as the Second Generation Schengen Information System (SIS II) and the European Criminal Records Information System (ECRIS).

6. Our latest report on this subject concluded that the European Commission should recognise the existing deep level of security cooperation between the UK and EU, and not treat the UK as any other third country.³ It also stated that the Government needed to do much more to agree a comprehensive security deal with the EU, including setting out its policies on the UK incorporating the EU Charter of Fundamental Rights into UK law (to facilitate data protection) and respecting the remit of the European Court of Justice (part of the Court of Justice of the EU, or CJEU).⁴ The Government responded that it agreed with us about the importance of maintaining deep security cooperation with the EU; that it would respect the remit of the CJEU relating to agencies, and that it would seek a data adequacy decision to allow data-sharing to continue.⁵

7. More recent evidence has reaffirmed the importance of agreeing a deal which facilitates ongoing cooperation on policing and security. In October 2018, the Director General of the National Crime Agency, Lynne Owens, told us that, without access to EU tools or a planning period that allows for “sensible negotiation” with bilateral partners, there is “a risk that this country will be less safe as a result.”⁶ This view was endorsed by DAC Richard Martin of the Metropolitan Police Service and National Police Chiefs’ Council, who said that “entrepreneurs of crime” will “exploit any gap that they can find in the market”, and will “certainly exploit it across borders”. He warned that “if we were not to get a deal, then we will not be as safe as we currently are.”⁷

8. Lynne Owens also described the significant loss of capability were tools like SIS II and the European Arrest Warrant to be lost. She explained that “At the moment, if they [officers] stop somebody on the streets of the UK, they conduct a PNC [Police National

1 Home Affairs Committee, [UK-EU security cooperation after Brexit](#), March 2018

Home Affairs Committee, [UK-EU security cooperation after Brexit: Follow-up report](#), July 2018

2 HM Government, [Technical note: Security, law enforcement and criminal justice](#), May 2018, paragraph 7

3 Home Affairs Committee, [UK-EU security cooperation after Brexit: Follow-up report](#), July 2018

4 Home Affairs Committee, [UK-EU security cooperation after Brexit: Follow-up report](#), July 2018

5 Home Affairs Committee, [UK-EU security cooperation after Brexit: Follow-up report: Government Response to the Committee's Seventh Report](#), October 2018

6 Home Affairs Committee, Oral evidence: [Government Preparations for Brexit: Border and Security Operations](#), 30 October 2018, Q249

7 Home Affairs Committee, Oral evidence: [Government Preparations for Brexit: Border and Security Operations](#), 30 October 2018, Q249

Computer] check or indeed they sit from within National Crime Agency buildings and do the same”. In a no deal situation, “the best that we can come up with is a very manual system. It is that individual officer ringing into a point of contact in the National Crime Agency, who will then ring a third country. When policing is under pressure, that is quite a big ask of a frontline officer”.⁸ The Minister of State for Policing and the Fire Service, Rt Hon Nick Hurd MP, confirmed to us in November that many of the tools that the police and security forces would have to use if the UK left without a deal, such as Interpol systems, would be less efficient and effective than the ones they currently use.⁹

The withdrawal agreement

9. The withdrawal agreement published in November provides for policing and security cooperation to continue in most respects through the transition period.¹⁰ The UK would be able to use tools such as the European Arrest Warrant, access EU data systems such as SIS II, and participate in joint investigations until the end of the transition.¹¹ The agreement also provides for a short winding down period after transition; for example, SIS II alerts and information will be provided up to three months after the end of the transition period, providing the ‘hit’ was raised beforehand.¹² There would be some restrictions, for example an EU member state may refuse to execute a European Arrest Warrant against its own citizens during the transition period, in which case the UK could declare that it will not surrender nationals to that state (we outline concerns about this loss of capability below).¹³ Overall, however, UK policing and security agencies would retain the tools they currently use during the transition period.¹⁴

10. We welcome the fact that the withdrawal agreement allows the UK to retain access to most EU law enforcement tools during the transition period, although we remain concerned about the limitations on extradition, as outlined in our previous reports and set out further below.

The political declaration

11. The political declaration provides little clarity about the extent of UK-EU policing and security cooperation after transition. The declaration states that the future relationship will provide for:

“comprehensive, close, balanced and reciprocal law enforcement and judicial cooperation in criminal matters, with a view to delivering strong operational capabilities.”¹⁵

8 Home Affairs Committee [Oral evidence: Government Preparations for Brexit: Border and Security Operations](#), 30 October 2018, Q216

9 Home Affairs Committee [Oral evidence: Government preparations for Brexit](#), 14 November 2018, Q253

10 [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#), as endorsed by leaders at a special meeting of the European Council on 25 November 2018

11 Withdrawal agreement (footnote 10), Article 62 and 63

12 Withdrawal agreement (footnote 10), Article 63

13 Withdrawal agreement (footnote 10), Article 185

14 HM Government, [Explainer for the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union](#), 14 November 2018

15 HM Government, [Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom](#), as agreed on 25 November 2018, paragraph 82

It also highlights that the UK will be a non-Schengen third-country that does not provide for the free movement of persons, and it makes it clear that the closer and deeper the partnership the UK wants with the EU, the stronger the accompanying obligations will be. For example, this will take account of the degree to which the UK will respect the integrity of EU dispute resolution processes and the role of the CJEU in interpreting EU law.¹⁶ The political declaration does not explain exactly how this balance will be achieved, and it is likely that further negotiations will be required in order to agree the precise degree of future cooperation. The Home Secretary, Rt Hon Sajid Javid MP, told us in November 2018 that the discussions on the future security arrangements had not yet begun, but that he believed that the political declaration provided a solid basis for negotiations and a firm indicator of the scope of a future relationship.¹⁷

12. We are seriously concerned about the lack of detail in the political declaration about the future security and policing relationship. The declaration allows for a wide range of scenarios and varying degrees of cooperation, depending on the trade-offs the UK Government is willing to make. This level of uncertainty is not in the interests of law enforcement in either the UK or the EU. We are disappointed with the EU's position that the UK cannot have access to a number of crucial security and policing mechanisms, but we are also concerned that the terms of the withdrawal agreement and political declaration will weaken the UK's negotiating position in attempting to secure its priorities, including access to these mechanisms in the future.

Negotiating and ratifying a final agreement

13. The Government proposed in September 2017 that the UK and the EU should negotiate a new security treaty providing a “comprehensive framework for future security, law enforcement and criminal justice cooperation” and a clear legal basis for continued participation.¹⁸ The Government was looking to have a security treaty agreed by March 2019, in other words by the time the UK left the EU.¹⁹ The then Home Secretary, Rt Hon Amber Rudd MP, told us in October 2017 that she was “optimistic that we can reach a treaty with the EU, which will include Europol, European Arrest Warrants, and the various structures and databases”.²⁰ However, the Policing Minister indicated to us in November 2018 that any security treaty might be included as part of a wider agreement, including trade arrangements.²¹ Negotiations on a final agreement will have to be completed quickly, given that the transition period ends on 31 December 2020.²² There are a number of factors that might influence how long it takes to negotiate and ratify a treaty. For example, if the subject matter does not fall under the ‘exclusive competence’ of the EU, then individual EU member states’ national and regional parliaments would all need to ratify any agreement. These are known as ‘mixed agreements’.²³ It is very likely that a security treaty would fall into this category, since the EU has designated freedom, security and justice as areas of ‘shared competency’ between the EU and member states.²⁴

16 Political declaration (footnote 15), paragraphs 82 and 83

17 Home Affairs Committee, [Oral evidence: The work of the Home Secretary](#), 27 November 2018, Qq644–651

18 [HM Government, Security, law enforcement and criminal justice: a future partnership paper](#), 18 September 2017

19 Home Affairs Committee, [Oral evidence: The work of the Home Secretary](#), 17 October 2017, Q1

20 Home Affairs Committee, [Oral evidence: The work of the Home Secretary](#), 17 October 2017, Q45

21 Home Affairs Committee, [Oral evidence: Government preparations for Brexit](#), 14 November 2018, Q275, Q292

22 Withdrawal agreement (footnote 10), Article 126

23 EUR-Lex, [International agreements and the EU's external competences](#), website accessed November 2018

24 European Union, Document 12016E004, Consolidated version of the Treaty on the Functioning of the European Union, Part One - Principles, Title I - [Categories and Areas Of Union Competence](#)

In July, the House of Lords' EU Committee's Home Affairs Sub-Committee agreed that a security treaty would probably be a mixed agreement,²⁵ and the Home Secretary admitted to us recently that, depending on its scope, any treaty might need to be ratified by member states.²⁶

14. It is therefore likely that, by the end of the transition period, a future security agreement or treaty will require agreement by the European Council, the European Parliament and the national and regional assemblies of all EU member states. This will be challenging to achieve: according to the Institute for Government, there are currently 12 legislative elections scheduled across EU27 countries between November 2018 and the end of 2020.²⁷ In addition, elections for the European Parliament take place in May 2019, and the current European Commission's term of office expires in October 2019.²⁸ Overall, the Institute for Government concluded that very little progress is likely to be made on determining the future relationship between the UK and EU in 2019, leaving only one full year to negotiate and then fully ratify any deal.

15. The withdrawal agreement does include the option for the UK to request to extend the transition period once, for up to two years.²⁹ The evidence we received suggests that an extension of the transition period is likely to be required to avoid a cliff edge in security. In December 2017 Sir Alan Dashwood QC, Emeritus Professor of European Law, University of Cambridge, told us:

“Since most of the competences in the field of security are EU competences— not exclusive ones but the EU has competence in this field—even if ratification by all of the 27 may take a very long time, it sometimes takes two to three years to get in a full set of ratifications.”³⁰

16. The withdrawal agreement does not include provision for specific pillars of the withdrawal agreement, such as security provisions, to be extended in isolation from the whole suite of transitional arrangements. Therefore any requirement to extend the security transitional arrangements would have to be considered in the context of the wider trade and economic partnership and negotiations.

17. There is a possibility that the European Commission could provisionally apply any treaty, so that it comes into effect immediately while EU member states ratify it. This would only apply to areas that are exclusively EU competencies, such as negotiating a customs union or establishing competition rules for the single market,³¹ unless member states agree otherwise.³²

18. The Home Secretary was not able to give us an indicative timeline, or even confirm that this was planned for, as regards to the security negotiations and ratification process, and referred the question to the Department for Exiting the European Union. He told us:

25 House of Lords European Union Committee, [Brexit: the proposed UK-EU security treaty](#), July 2018, paragraph 130

26 Home Affairs Committee, [Oral evidence: The work of the Home Secretary](#), 27 November 2018, Q651

27 Institute for Government, [EU member state elections and the Brexit negotiations](#), November 2018

28 Institute for Government, [EU member state elections and the Brexit negotiations](#), November 2018

29 Withdrawal agreement (footnote 10), Article 132

30 Home Affairs Committee, [Oral evidence: Home Office delivery of Brexit: policing and security co-operation](#), 5 December 2017, Q7

31 EUR-Lex, [Document 12016E003, Official Journal of the European Union, Article 3](#)

32 European Parliament, [A guide to EU procedures for the conclusion of international trade agreements](#), October 2016

I could not tell you exactly how long it would take. It would have to go through ratification I am sure, through our own Parliament of course, but the European Parliament. Depending on its scope, there would have to be even more ratification processes than that.³³

19. The Home Secretary also told us that detailed discussions on the future security partnership had not yet begun and would not start until next year. The Home Secretary nevertheless expressed confidence that a deal could be done in the time available, because of the unique starting point, with the UK and the EU having been partners in this area for so long.³⁴

20. The EU's track record for negotiating such extensive agreements suggests that it will be extremely challenging to conclude the future security partnership in the time available, even if the transition period is extended for the maximum two years. For example, the EU took five years to negotiate the Comprehensive Economic and Trade Agreement (CETA) with Canada, and then two more years to ratify it.³⁵

21. We are extremely concerned at the lack of progress in the negotiations on future security cooperation and the significant risk of a capability gap in future if this is not resolved before the transition period expires. Much debate on the withdrawal agreement has focused on the backstop for the border between Northern Ireland and the Republic of Ireland. There is no such backstop for security cooperation between the UK and the EU, and yet the Home Office does not appear to have worked out a basic timetable outlining when a treaty would need to be agreed and the various milestones it would have to reach to get approval from all the required bodies. Based on the evidence we have received, it will be near-impossible for a security treaty to be negotiated and ratified by December 2020. We are dismayed by the Government's failure to plan adequately for the continuity of future security cooperation with the EU.

22. We are also disappointed that there is no provision to extend transitional security cooperation arrangements, independently of the trade arrangements, until a new relationship is in place. We are concerned that crucial security issues could end up being overshadowed by wider trade and economic considerations and timetables.

Specific areas of cooperation

23. Our previous reports on security and policing cooperation have focused on three main areas: Europol, extradition (the European Arrest Warrant), and EU data systems such as SIS II and ECRIS.³⁶ We now consider each of these in turn.

Judicial and criminal cooperation

24. Europol is an EU law enforcement agency based in The Hague in the Netherlands, which provides support and coordination functions to member states and non-EU

33 Home Affairs Committee, [Oral evidence: The work of the Home Secretary](#), 27 November 2018, Qq651–654

34 Home Affairs Committee, [Oral evidence: The work of the Home Secretary](#), 27 November 2018, Q660

35 House of Commons Library, [CETA: the EU-Canada free trade agreement](#), July 2018

36 Home Affairs Committee, [UK-EU security cooperation after Brexit](#), March 2018

Home Affairs Committee, [UK-EU security cooperation after Brexit: Follow-up report](#), July 2018

partners.³⁷ The withdrawal agreement states that UK participation and cooperation in Europol would continue during transition.³⁸ Articles 62 and 63 provide for investigations to continue throughout the transition period and beyond, if begun before the end of the transition period. To support this, for cases that start before the end of the transition period, the UK would be allowed to use the Europol SIENA system for one year after transition ends.³⁹ The political declaration does not confirm what level of participation the UK will have in Europol and Eurojust after the transition period ends; it simply recognises the value in operational cooperation and states that the UK and EU will work together to identify the terms for UK cooperation via Europol and Eurojust.⁴⁰ The Home Secretary told us in November that, despite the lack of detail in the political declaration and its non-binding nature, he still believed this provided a solid indication of the likely future relationship given the significant contribution the UK makes to Europol.⁴¹

25. We recommended in March that the Government should do all it can to achieve the negotiating objective of a future relationship with Europol that maintains the operational status quo in full. We also recognised how difficult this might be to achieve, given that the closest another country has come to negotiating an operational agreement with Europol still falls short of this ambition (in this case Denmark, which is an EU member state).⁴² The Government agreed with our recommendation, stating that existing third country agreements with Europol would not provide the UK with the same kind of capability and influence as it currently enjoys; it therefore intends to negotiate a new agreement that goes beyond existing precedents for third country cooperation with Europol.⁴³

26. We welcome the confirmation in the withdrawal agreement that the UK will continue to participate in Europol activities throughout transition. We are very concerned, however, that the Government is no closer to achieving its goal of the UK having a future relationship with Europol that goes beyond the agency's existing agreements with other countries. The political declaration contains no detail on the UK's future relationship with Europol, and we urge the UK Government and European Commission to set out what its intention is for the future relationship in this area. If the negotiations fail to deliver a bespoke arrangement between the UK and Europol that maintains existing capabilities, it will mean a security downgrade and a failure of the Government in achieving its objectives for the negotiation.

Extradition - the European Arrest Warrant (EAW)

27. The European Arrest Warrant (EAW) has been operational since 2004. It is a simplified procedure through which EU member states can issue a warrant for arrest and extradition, which is valid throughout the bloc. Warrants are subject to strict time limits: final decisions in the extraditing country must be made within 60 days of arrest, or within 10 days if the defendant consents to the surrender.⁴⁴ Other advantages of the EAW over standard extradition arrangements include member states' inability to refuse

37 Home Affairs Committee, [UK-EU security cooperation after Brexit](#), March 2018

38 Withdrawal agreement (footnote 10), Articles 62 and 63

39 Withdrawal agreement (footnote 10), Articles 62 and 63

40 Political declaration (footnote 15), Paragraph 88

41 Home Affairs Committee, [Oral evidence: The work of the Home Secretary](#), 27 November 2018, Qq643–644, Q660

42 Home Affairs Committee, [UK-EU security cooperation after Brexit](#), March 2018, paragraphs 52 to 54

43 Home Affairs Committee, [UK-EU security cooperation after Brexit: Follow-up report: Government Response to the Committee's Seventh Report of Session 2017–19](#), October 2018

44 Europa.eu website, [European Arrest Warrant](#), accessed November 2018

to surrender their own nationals; much more limited grounds for refusal; and the absence of ‘double criminality’, which means that the offence does not have to be an offence in both countries for the extradition to take place, provided it is sufficiently serious.⁴⁵ The EAW is significantly faster and cheaper than its predecessor arrangements, based on the 1957 European Convention on Extradition.⁴⁶ According to the Institute for Government, an extradition takes 48 days under the EAW, whereas the average extradition under the Convention takes a year.⁴⁷

28. The withdrawal agreement provides for the UK to continue using the EAW during transition, and any requests made through the EAW system before the transition ends will be honoured.⁴⁸ However, it also states that a member state may refuse to execute a warrant for one of its own nationals during transition, in which case the UK could declare that it will not surrender UK nationals to that EU state.⁴⁹ Similar restrictions already apply under the 1957 Convention, on which the UK might have to rely in a ‘no deal’ scenario: the Home Office told us in November that around 18 or 19 states might refuse to extradite their own nationals under the Convention.⁵⁰ The legal basis for extradition between the UK and the Republic of Ireland under the 1957 Convention is also unclear. The Government told the European Scrutiny Committee in 2014 that Ireland had repealed the relevant legislation.⁵¹ The Policing Minister denied this was the case in November,⁵² so we requested details of the advice he has received to the contrary. He is yet to respond to this request. The CPS previously estimated the number of member states with bars on extraditing their own nationals outside the EAW at 22.⁵³ The total number of own nationals extradited to the UK under the European Arrest Warrant from 2010 to 2016 was 333, with the most common offences being drugs trafficking, rape, grievous bodily harm, fraud and child sex offences.⁵⁴

29. The political declaration states that the UK and EU should establish effective arrangements based on streamlined procedures and time limits to allow the surrender of suspected and convicted persons efficiently and effectively.⁵⁵ These arrangements may include provisions for the UK and member states to waive the requirement to demonstrate double-criminality, and determine whether the extradition arrangements should be applicable to their own nationals or for political offences.⁵⁶

30. Our previous report outlined our concerns about the ‘own nationals’ exemption, which means that some member states cannot extradite their own nationals outside the EU.⁵⁷ In November, the Policing Minister told us that the Government was examining

45 Home Affairs Committee, [UK-EU security cooperation after Brexit](#), March 2018

46 House of Commons Library, [The European Arrest Warrant](#), April 2017

47 Institute for Government, [Negotiating Brexit: policing and criminal justice](#), September 2018

48 Withdrawal agreement (footnote 10), Article 62

49 Withdrawal agreement (footnote 10), Article 185

50 Home Affairs Committee [Oral evidence: Government preparations for Brexit](#), 14 November 2018, Q324

51 House of Commons European Scrutiny Committee, [The UK’s block opt-out of pre-Lisbon criminal law and policing measures: Government Response to the Committee’s Twenty first Report of Session 2013–14](#), January 2014

52 Home Affairs Committee [Oral evidence: Government preparations for Brexit](#), 14 November 2018, Qq317–319

53 Select Committee on the European Union Home Affairs Sub-Committee, [Corrected oral evidence: Brexit: future EU-UK security and police co-operation](#), 2 November 2016, Q63

54 National Crime Agency, [European Arrest Warrant statistics 2009–2017](#) (calendar year)

55 Political declaration (footnote 15), Paragraph 89

56 HM Government, [Explainer for the Political Declaration setting out the framework for the future relationship between the United Kingdom and the European Union](#), 25 November 2018

57 Home Affairs Committee, [UK-EU security cooperation after Brexit](#), March 2018

alternatives to extraditing EU nationals from EU member states with these exemptions, including the possibility that the member state will prosecute the crime instead.⁵⁸ When we asked whether this would require UK victims of crime to travel to EU countries for trials, possibly spending months in another country to see the process through, we were not given a clear answer, with the Minister responding that the emphasis would be on “bringing justice to bear in that city”.⁵⁹

31. It is unclear how long negotiations over extradition arrangements will take. Iceland and Norway began negotiations over extradition arrangements with the EU in 2001 and, despite being members of the Schengen agreement, only came to agreement in 2014.⁶⁰ It has still not been fully ratified.⁶¹ As outlined in our previous report, it also has significant shortcomings compared to the EAW.⁶² In July Claude Moraes MEP, the Chair of the European Parliament’s Committee on Civil Liberties, Justice and Home Affairs, told us that the UK might be able to negotiate a deal similar to the Norway/Iceland agreement, but he argued that clarity was urgently needed on how the UK would respect the European Court of Justice and resolve disputes.⁶³ Our previous reports have highlighted this trade-off—namely that the closer the UK wants to remain to the status quo, the greater the role the EU is likely to demand for the CJEU.⁶⁴ The Home Secretary told us in November that it would be possible to negotiate a new extradition arrangement before the transition period ends.⁶⁵

32. We remain extremely concerned about the ‘own national’ exemption that will apply to UK-EU extradition during the transition period. It is unclear whether this will require victims of serious crimes committed in the UK by EU nationals, including murder, rape and child sexual abuse, to travel to EU countries to participate in criminal trials. If this is likely to be the case, the Government needs to be open with the public and Parliament about the implications for access to justice for victims, and set out what practical arrangements it will put in place to support the prosecutions of EU nationals in their own countries, including support for victims and witnesses.

33. Our previous reports have highlighted our concerns about the significant legal and constitutional obstacles to negotiating an extradition arrangement that is equivalent to the EAW. We are concerned that the Home Office is overly-optimistic about how easy it will be to negotiate a replacement process to take over once transition ends, given how long it has taken Norway and Iceland to negotiate a parallel agreement, as Schengen countries. Negotiations might be particularly challenging if the Government is seeking an alternative dispute resolution mechanism from the CJEU.

58 Home Affairs Committee [Oral evidence: Government preparations for Brexit](#), 14 November 2018, Qq329–332

59 Home Affairs Committee [Oral evidence: Government preparations for Brexit](#), 14 November 2018, Q331

60 Official Journal of the European Union, [Council decision of 27 November 2014 on the conclusion of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway](#) EUR-Lex, Document 21999A0710(02) Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter’s association with the implementation, application and development of the Schengen acquis - Final Act

61 Centre for European Reform, [Plugging in the British - Completing the circuit](#), Sophia Besch, Ian Bond and Camino Mortera-Martinez, June 2018

62 Home Affairs Committee, [UK-EU security cooperation after Brexit](#), March 2018

63 Home Affairs Committee, [Oral evidence: EU policing and security co-operation](#), July 2018, Qq67–71

64 Home Affairs Committee, [UK-EU security cooperation after Brexit](#), March 2018

65 Home Affairs Committee, [Oral evidence: The work of the Home Secretary](#), 27 November 2018, Q660

Access to European data systems

34. The EU's data-sharing tools are a central aspect of member states' cooperation in policing and security, allowing for a wide range of information to be exchanged on a 'real-time' basis. This includes data on suspects wanted for arrest or questioning, stolen vehicles, missing people, criminal records, DNA and fingerprint data, and criminal offences and structures. Key European data systems include:

- **The Second Generation Schengen Information System (SIS II)**, which allows authorities to enter and consult alerts on missing and wanted individuals and lost and stolen objects. This can enable the arrest of a wanted individual or raise awareness of a potential threat to national security. SIS II is also used to disseminate European Arrest Warrants throughout participating member states.
- The **Prüm** system for sharing databases for DNA profiles, vehicle registration data and fingerprints.
- **Passenger name record (PNR)** data, which will flag individuals travelling to other states and provide a rich data set that will allow analysis of patterns of travel.
- The **European Criminal Records Information System (ECRIS)**, which ensures speedy exchange of information on convictions made in other member states.

For more information on these systems, please see our previous reports.⁶⁶

35. The Government has been emphatic about the value gained from these tools, and its response to our March report reiterated the fact that the ability of law enforcement agencies to transfer data both within the EU and with third countries was important to our collective security.⁶⁷ The withdrawal agreement states that data and information will continue to be exchanged during the transition period, and the UK will be able to continue accessing EU data systems.⁶⁸ As we outlined in previous reports, countries outside the EU require an "adequacy decision" from the European Commission to allow for the exchange of personal data with EU member states.⁶⁹ The political declaration states that the EU will begin its assessment of the UK during the implementation period, with a view to adopting relevant adequacy decisions. In the same timeframe, the declaration states that the United Kingdom will take steps to ensure comparable facilitation of personal data flows to the Union.⁷⁰ EU law will continue to apply to the "stock" of personal data until adequacy decisions have been granted, after which time UK domestic rules on personal data protection will apply.⁷¹ Our previous reports have highlighted the process of gaining a data adequacy decision will not necessarily be quick or straightforward.⁷²

66 Home Affairs Committee, [UK-EU security cooperation after Brexit](#), March 2018

Home Affairs Committee, [UK-EU security cooperation after Brexit: Follow-up report](#), July 2018

67 Home Affairs Committee, [UK-EU security cooperation after Brexit: Government Response to the Committee's Fourth Report of Session 2017–19](#), September 2018

68 Withdrawal agreement (footnote 10), Article 63

69 Home Affairs Committee, [UK-EU security cooperation after Brexit](#), March 2018

70 HM Government, [Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom](#), as agreed on 25 November 2018, paragraph 9

71 HM Government, [Explainer for the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union](#), 14 November 2018

72 Home Affairs Committee, [UK-EU security cooperation after Brexit](#), March 2018

36. The political declaration does not state that the UK will continue to access all data systems to which it currently has access, nor does it make that an objective or aspiration. It states that there will be reciprocal arrangements for timely, effective and efficient exchanges of Passenger Name Record (PNR) data and results of processing of such data stored in respective national PNR processing systems, and of DNA, fingerprints and vehicle registration data (Prüm). There is also consideration made for sharing of other data between law enforcement authorities, and between judicial authorities in criminal matters.⁷³

37. The political declaration does not provide for access by the UK to SIS II, the system to exchange data on missing and wanted individuals and lost and stolen objects, and ECRIS, the database containing information on convictions made in other member states.⁷⁴ The Prime Minister indicated on 15 November, prior to the conclusion of the political declaration, that it was her intention to deliver continued access:

There are two further areas of exchange of information that I and the Home Secretary believe are important—SIS II and the European Criminal Records Information System—and we will take those matters forward with the European Union in our further negotiations.⁷⁵

38. Instead, the declaration envisages capabilities that might “approximate” those systems.⁷⁶ Multiple witnesses have emphasised to us the importance of SIS II, and our previous report said that it was crucial to our law enforcement and border security capabilities.⁷⁷ SIS II contains 76.5 million records and was checked over 500 million times by the UK last year.⁷⁸ DAC Martin reiterated its value to us in October:

We probably have over 200,000 people missing at some point during the year on average. An officer puts that missing person on to a police national computer here and it automatically goes on to SIS II, so even if that person goes abroad, at least there is a way for us to track, measure and do those things. If we do not have SIS II, we will have to develop some form of matrices that will allow us to decide who we should put on the system. How many of those 200,000-odd people are we going to put on each time in a very manual system? As I said before, it just slows everything down and makes it much clunkier, so there is a big impact on the frontline.”⁷⁹

39. In November, the Policing Minister agreed that a loss of these databases, in the event of a no-deal or a lack of agreement before the end of transition, would be a step backwards.

73 [Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom](#), as agreed on 25 November 2018, paragraphs 86 and 87

74 [Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom](#), as agreed on 25 November 2018, paragraphs 86 and 87

75 Hansard, [EU Exit Negotiations](#), 15 November 2018

76 [Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom](#), as agreed on 25 November 2018, paragraph 87

77 Home Affairs Committee, [UK-EU security cooperation after Brexit: Follow-up report](#), July 2018

78 HM Government, [EU Exit - Assessment of the Security Partnership](#), November 2018

79 Home Affairs Committee, [Oral evidence: Government Preparations for Brexit: Border and Security Operations](#), 30 October 2018, Q216

He suggested that there would be workarounds and other systems, such as the Interpol I-24/7—acknowledging that these might not provide the same functionality, but would allow the police and security forces to continue to operate.⁸⁰

40. Both the Home Secretary and the Policing Minister told us in November that there is mutual interest in the UK continuing to have access to EU databases, since the UK is such a large contributor of information to these systems.⁸¹ As our previous reports have noted, however, ongoing access is unlikely to be easy to negotiate: there are no existing models for third country data exchange covering the degree of data-sharing in criminal justice that the UK will be seeking after Brexit. SIS II is likely to be particularly challenging, as access is currently limited to EU member states and Schengen countries, and the UK was previously denied access to the Schengen Visa System on the basis that it does not participate in the migration aspects of Schengen.⁸² Even recent EU agreements over much more limited levels of data exchange with the US and Canada have encountered major legal obstacles, with the CJEU taking a strict approach to privacy and data protection rights.⁸³

41. We welcome the withdrawal agreement’s confirmation that the UK will be able to access EU data systems throughout the transition period. We also welcome the direct reference to the Prüm and PNR databases in the political declaration. We are seriously concerned, however, about the absence of any reference to SIS II or ECRIS and the lack of detail on wider data sharing. We are extremely disappointed by arguments made from within the EU that ECRIS should only be available to EU member states and that SIS II should only be open to member states or countries within the Schengen Area. We are also very concerned that Home Office Ministers are not taking seriously enough the risks arising from losing these capabilities. It is clear from the evidence we received that there can be no substitute for SIS II, and our previous reports highlighted the significant risks that would be created if we lose access to it. A failure to retain access to SIS II and ECRIS would be a significant downgrade of our policing and security capability at a time when cross border crime and security threats are increasing. UK agencies check SIS II over 500 million times a year and there is no adequate contingency. Losing access would, as the police have warned, make us less safe. It is crucial that the Home Office plans for a possible cliff edge in data exchange after the transition period ends, and publishes a full and detailed risk assessment of the impact of losing access.

Government assessment of the security partnership

42. On 28 November, the Government published the document “EU Exit: Assessment of the security partnership” with an accompanying Written Ministerial Statement in which the Brexit Secretary stated that the analysis “compares the Future UK-EU Security Partnership as set out in the political declaration with a no deal scenario.”⁸⁴

43. However, the assessment acknowledges that, where the political declaration is uncertain about the precise outcome of negotiations, it “uses as a reference point the

80 Home Affairs Committee, [Oral evidence: Government preparations for Brexit](#), 14 November 2018, Qq306–308

81 Home Affairs Committee, [Oral evidence: The work of the Home Secretary](#), 27 November 2018, Q660, Q680
Home Affairs Committee, [Oral evidence: Government preparations for Brexit](#), 14 November 2018, Q268

82 Home Affairs Committee, [UK-EU security cooperation after Brexit](#), March 2018

83 Home Affairs Committee, [UK-EU security cooperation after Brexit](#), March 2018

84 HM Government, [EU Exit - Assessment of the Security Partnership](#), November 2018
[Exiting the European Union: Written statement - HLWS1089](#), 28 November 2018

Government’s position set out in the White Paper on the Future Relationship between the UK and the EU”.⁸⁵ The White Paper proposed a closer maintenance of existing mechanisms than that hitherto achieved in the negotiations. For example, the White Paper proposes “access to systems that allow for a timely and efficient response to these alerts through SIS II” and “continued participation in ECRIS”, neither of which are referred to in the political declaration.⁸⁶ Moreover, the assessment is explicit that it makes no attempt to address the “immediate legal and operational uncertainty with the risk of operational disruption and potential security implications” that would arise in the event of no deal.⁸⁷

44. The Minister of State for Immigration, Rt Hon Caroline Nokes MP, wrote to us on 20 November acknowledging that “co-operation between the UK and the EU would be negatively affected in a no deal scenario, both in terms of the quality and quantity of how we currently work together”.⁸⁸

45. The Immigration Minister also wrote that if we had to stop using SIS II, “we would adapt by reverting to using Interpol channels insofar as possible”.⁸⁹ Senior police told us the extent of the security downgrade this would entail. Lynne Owens described the Interpol contingency as “a much clunkier system than the one we currently operate”.⁹⁰

46. While SIS II contains 76.5 million alerts, automatically flags information to European policing partners and permits discrete markers so that an individual’s movements can be monitored, the Interpol equivalent (I-24/7) has a fraction of the alerts in circulation and would require partners to “actively check the Interpol notices”. Richard Martin told us that due to “time delays and snags that build in ... from a practical point of view it does have a massive impact”.⁹¹ He also quoted research to us that suggested losing access to ECRIS would mean a response to a request about a foreign national’s criminal history would take an average of 66 days, compared to 10 days under ECRIS.⁹² Lynne Owens warned of the risk that “this country will be less safe” as a result of losing access to EU tools without a period to plan bilateral replacements. DAC Martin stated that “if we were not to get a deal, then we will not be as safe as we currently are”.⁹³

47. However, the Home Secretary told us that “we will be as safe—if we are talking about the SIS II system, for example, as we were just now.” He told us: “In terms of keeping our country safe, SIS II is a nice to have but our country is still safe even if, for whatever reason, we did not get access to that system.”⁹⁴ The Home Secretary said that he was “very confident” that the UK would be able to work with the EU to access the type of data contained on SIS II.⁹⁵

85 HM Government, [EU Exit - Assessment of the Security Partnership](#), November 2018, paragraph 7

86 HM Government, [The Future Relationship between the United Kingdom and the European Union](#), 12 July 2018, paragraphs 30 and 34

87 HM Government, [EU Exit - Assessment of the Security Partnership](#), November 2018, paragraph 24

88 [Minister for Immigration to Home Affairs Committee Chair](#), 20 November 2018

89 [Minister for Immigration to Home Affairs Committee Chair](#), 20 November 2018

90 Home Affairs Committee, [Oral evidence: Government Preparations for Brexit: Border and Security Operations](#), 30 October 2018, Q222

91 Home Affairs Committee, [Oral evidence: Government Preparations for Brexit: Border and Security Operations](#), 30 October 2018, Q222

92 *ibid*

93 Home Affairs Committee, [Oral evidence: Government Preparations for Brexit: Border and Security Operations](#), 30 October 2018, Q249

94 Home Affairs Committee, [Oral evidence: The work of the Home Secretary](#), 27 November 2018, Q684

95 Home Affairs Committee, [Oral evidence: The work of the Home Secretary](#), 27 November 2018, Qq684–689

48. From the evidence we have received, it is clear that no deal would represent a risk to public safety and security, and that the gaps in the current political declaration also signify considerable risks to our future security in the Government's current agreement. Based on that evidence, we do not believe that the Government's published assessment of the security partnership is a full assessment of the risks that we currently face. Nor do we share the Home Secretary's view that we will be as safe as we are now if we lose key capabilities or cooperation, or that SIS II is simply a "nice to have". We are extremely concerned that the Government is either being complacent or failing to be transparent about the security implications and it should provide full and accurate information to parliament about the security risks. There is far too much complacency on this issue, on the part of both the UK Government and the EU.

2 The UK border system

UK border operations

49. In 2017, around 205 million people crossed the border between the UK and EU, along with 77 million people from the rest of the world. In the same period, just over 400 million tonnes of freight crossed the UK border.⁹⁶ The Home Office is the main Government department responsible for managing this traffic, which it does through several directorates. Border Force is responsible for securing the border and managing the traffic of goods and people across it, which includes operating on behalf of HM Revenue and Customs to collect customs duties and conduct physical searches of goods. Meanwhile, UK Visas and Immigration makes decisions on applications from people to enter and stay in the UK.⁹⁷

Implications of the withdrawal agreement for UK border operations

50. EU membership means that goods from non-EU countries are in free circulation once they reach the EU. With both the UK and Ireland in the EU, there is therefore no need to make regular checks on people or goods travelling across the many land crossing points.⁹⁸ Nor are there requirements to make customs declarations for intra-EU trade.⁹⁹

51. In November 2018, the UK and the EU published a final withdrawal agreement for the UK's exit from the EU.¹⁰⁰ This established the terms of the UK's departure from the EU on 29 March 2019.¹⁰¹ The key points of the withdrawal agreement relating to the UK border system are:

- a) **Movement of people across borders:** UK nationals living in the EU and EU nationals living in the UK continuously and lawfully for five years by the end of the transition period will have the right to reside permanently.¹⁰² There will be no exit or entry visa requirements for UK and EU citizens travelling between the UK and EU member states during transition.¹⁰³ In Ireland, the common travel area will continue to operate and, unless it is superseded by the future relationship, a single customs territory will be established between the UK and the EU, as part of the commitment to avoid a hard border between the Republic of Ireland and Northern Ireland.¹⁰⁴

96 National Audit Office, [The UK border: preparedness for EU exit](#), October 2018

97 National Audit Office, [The UK border](#), October 2017

98 Home Affairs Committee, [Home Office delivery of Brexit: customs operations](#), November 2017

99 Home Affairs Committee [Oral evidence: Government Preparations for Brexit: Border and Security Operations](#), 30 October 2018, Q175

100 [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#), as endorsed by leaders at a special meeting of the European Council on 25 November 2018

101 HM Government, [Explainer for the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union](#), 14 November 2018

102 Withdrawal agreement (footnote 10), Articles 13 and 15

103 Withdrawal agreement (footnote 10), Article 14

104 Withdrawal agreement (footnote 10), Protocol on Northern Ireland

- b) **Movement of goods across borders:** Goods that enter the UK or the EU market under EU law before the end of the implementation period may continue to circulate freely between the UK and the EU.¹⁰⁵ There will, however, be additional procedures for live animals and for animal and germinal products.¹⁰⁶

These conditions will apply throughout the transition period, which will continue until 31 December 2020. The UK has the option to request one extension to the transition period, for a maximum of two years.¹⁰⁷

52. In November 2017, we highlighted the importance of having a transitional period, given that customs was a “cliff-edge” issue: without agreement, significant new customs checks would be required immediately on leaving the EU.¹⁰⁸ The agreement that the UK will stay in a customs union with the EU during transition should ensure minimal disruption to border operations during the transition period, since there would be no requirement for additional customs checks.¹⁰⁹

The political declaration and implications for UK border operations

53. On 25 November, the UK and the EU also published a political declaration concerning the future relationship between the UK and the EU.¹¹⁰ The declaration allows for a wide range of outcomes regarding the trade in goods. It states there would be an “ambitious customs arrangements” to “build and improve on the single customs territory provided for in the Withdrawal Agreement which obviates the need for checks on rules of origin”, with no tariffs, fees, charges or quantitative restrictions across all goods sectors, supported by deep regulatory and customs cooperation, underpinned by provisions ensuring a level playing field for open and fair competition.¹¹¹ However, any alignment by the UK to EU rules would only be considered “a factor in reducing risk” at the border, rather than preventing the application of customs and regulatory checks and controls.¹¹²

54. Other statements in the political declaration, however, suggest more regulatory divergence, which could lead, the declaration states, to “a spectrum of different outcomes for administrative processes as well as checks and controls.”¹¹³ The document also refers to “facilitative arrangements and technologies” which could ensure the absence of a hard border on the island of Ireland on a permanent footing, but the Government has not brought forward any recent proposals, workable plans or investment timetables to achieve this objective.¹¹⁴

55. The political declaration recognises “the development of an independent trade policy by the United Kingdom” and the Prime Minister has indicated that the UK will not be

105 Withdrawal agreement (footnote 10), Article 47

106 HM Government, [Explainer for the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union](#), 25 November 2018, paragraph 52

107 Withdrawal agreement (footnote 10), Articles 126 and 132

108 Home Affairs Committee, [Home Office delivery of Brexit: customs operations](#), November 2017

109 HM Government, [Explainer for the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union](#), 25 November 2018, paragraph 55

110 HM Government, [Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom](#), as agreed on 25 November 2018

111 Political declaration (footnote 15), paragraphs 22, 23 and 26

112 Political declaration (footnote 15), paragraph 28

113 Political declaration (footnote 15), paragraphs 24 and 28

114 Political declaration (footnote 15), paragraph 27

bound by the common external tariff of the EU Customs Union.¹¹⁵ This would imply significant additional checks at UK-EU borders and also rules of origin checks. At the same time, the Prime Minister has stated, going beyond what is set out in the document, that the UK-EU free trade area will have no “rules of origin checks” and that the UK “will be working for frictionless trade”.¹¹⁶ The Prime Minister has implied that the proposals for a facilitated customs arrangement set out in the July White Paper could achieve the UK’s objectives, yet these have been criticised by EU leaders and the Government itself accepts that frictionless trade “is not an aim shared by everyone in the EU”.¹¹⁷ No arrangements that could reconcile the objectives of frictionless trade and an independent trade policy are set out in the political declaration.

56. The political declaration provides little certainty about future arrangements. Our 2017 report on customs operations highlighted the need for clarity about future arrangements in the event of no-deal, or after any transition period ends, so that preparations can begin.¹¹⁸ Likewise, private traders and infrastructure operators will need clarity in order to make preparations.¹¹⁹ We concluded in November 2017 that it was essential that the Government urgently provided a greater deal of certainty regarding future border and customs processes, in order to allow stakeholders to make the necessary preparations.¹²⁰

57. We are extremely concerned by the lack of any clarity on what the customs and border arrangements in the future partnership might be, and therefore what the Home Office and the rest of Government should be preparing for. The political declaration does not reconcile the Government’s objectives of achieving an independent trade policy and frictionless trade, and provides no assurance that there will not be additional checks and controls at the border.

Home Office preparations

58. The Home Office faces significant challenges recruiting enough staff to operate at the border ahead of Brexit. In October, the Immigration Minister told us that, deal or no deal, Border Force would need 900 extra staff in place by March 2019.¹²¹ In November, Home Office officials told us that the Home Office required 4,100 people to work on Brexit, but as at 13 November it had only recruited 2,662 of them.¹²² This is no surprise given the Home Office told the Public Accounts Committee in November that it had an 84-stage recruitment process.¹²³

59. The Home Office has also struggled to upgrade its IT systems. In 2010, the Home Office attempted to replace its immigration casework system (CID) and 20 other IT and paper-based systems with a new Immigration Case Work (ICW) computer. This

115 Political declaration (footnote 15), Paragraph 17; [Liaison Committee, Oral evidence from the Prime Minister: Brexit](#), 29 November 2018, Q68

116 Hansard, [Leaving the EU](#), 26 November 2018

117 Liaison Committee, [Oral evidence from the Prime Minister: Brexit](#), 29 November 2018; Department for Exiting the European Union, [Taking back control of our borders, money, and laws while protecting our economy, security and Union](#), November 2018

118 Home Affairs Committee, [Home Office delivery of Brexit: customs operations](#), November 2017

119 National Audit Office, [The UK border: preparedness for EU exit](#), October 2018

120 Home Affairs Committee, [Home Office delivery of Brexit: customs operations](#), November 2017

121 Home Affairs Committee, [Oral evidence: Government Preparations for Brexit: Border and Security Operations](#), 30 October 2018, Q99

122 Home Affairs Committee, [Oral evidence: Work of the Home Office](#), 13 November 2018, Q82

123 Public Accounts Committee, [Oral evidence: Brexit and the UK Border: Progress Review](#), 5 November 2018, Q119

programme was closed in 2013, after £347 million in spending, despite having failed to deliver all the planned functions.¹²⁴ Attempts to deliver other IT systems, such as the e-borders programme to collect advance passenger information, or the Department's programme to upgrade the communications systems used by UK emergency services, have also experienced significant problems.¹²⁵

60. We welcome the agreement between the UK and EU that there will be a transitional period, and the commitment to keep trade between the UK and EU tariff-free after the transition period ends. We are disappointed, however, by the political declaration's ambiguity regarding the future scale of checks and controls at the border. The wide range of outcomes allowable under the declaration will make it extremely challenging for the Home Office to make preparations for UK border operations after transition ends. Given the Home Office's track record in hiring people and developing IT systems, any significant programmes of work will need to begin immediately. The Home Office should provide us with a statement outlining the programmes it will need to carry out to transition successfully to whatever the new system will be, and when they will deliver them by.

Immigration

61. The provisions to protect the rights of EU citizens resident in the UK and the rights of UK citizens in the EU were set out in previous documents, which we considered in our report, 'Home Office delivery of Brexit: Immigration' in February of this year.¹²⁶ In that report we welcomed the Government's announced intention to make the registration process for EU residents a smooth process, but also noted the significant risks attached to implementation of information-sharing and digital services across government, and highlighted a number of unanswered questions. Since then the Government has published a statement of intent, added 'Appendix EU' to the Immigration Rules and commenced testing of the settled status application process.¹²⁷ A second and considerably more significant trial phase is now underway, involving up to 250,000 EU citizens working in the health and education sectors and due to continue until 21 December.¹²⁸ We will look again at how the rights of EU citizens resident in the UK, as well as the rights of UK citizens in the EU, are being protected in the New Year, when the results of this testing are known.

62. On future EU migration, in our eighth report ("Policy Options for Future Migration from the EEA: Interim report"), we highlighted that reciprocal arrangements for migration could have a considerable bearing on how close an economic partnership the UK can agree with the EU.¹²⁹ The Government originally stated that an immigration White Paper would be published in the autumn of 2017. The then Home Secretary told us in October

124 National Audit Office, [Reforming the UK border and Immigration System](#), July 2014

125 National Audit Office, [E-borders and successor programmes](#), December 2015
National Audit Office, [Upgrading emergency service communications: the Emergency Services Network](#), September 2016

126 Home Affairs Committee, [Home Office delivery of Brexit: immigration](#), February 2018

127 Policy paper, [EU Settlement Scheme statement of intent](#), June 2018

128 Gov.uk, [Immigration Rules: Next phase of EU Settlement Scheme confirmed](#), 11 October 2018
Home Affairs Committee, [Oral evidence: Government Preparations for Brexit: Border and Security Operations](#), 30 October 2018, Q49

129 Home Affairs Committee, [Policy options for future migration from the European Economic Area: Interim report](#), 31 July 2018

2017 that it would be published “by the end of the year”.¹³⁰ The current Home Secretary told us he planned to “do a White Paper before the summer recess” when he came before us in May, and then in July he told us the White Paper would be published “in the autumn”.¹³¹ On 27 November, the Home Secretary could not confirm whether the White Paper would be published before the ‘meaningful vote’ on the withdrawal agreement and political declaration on 11 December. He said: “I would certainly expect it by the end of this year in December”.¹³² On 29 November, the Prime Minister told the Liaison Committee that “there is still discussion ongoing as to the timing of the immigration White Paper.”¹³³

63. At the time of agreeing this report, the White Paper has not yet been published. In terms of the Government’s policy on future migration arrangements, they remain as limited as they were when we released our previous report on policy options for future migration from the EEA.¹³⁴ This lack of detail has led to considerable concern, including around the Government’s policy intentions in the event of a no-deal. The Immigration Minister wrote to us after some confusion on this matter, stating that in the event of a no deal there would need to be some kind of transition.¹³⁵ As the political declaration says very little about the potential policies that will apply to UK citizens and EU citizens in a future immigration system, Parliament is being asked to vote on leaving the EU without fully knowing how it will affect people’s ability to live and work in different countries in future. That means businesses have little idea how they might be able to recruit talent from elsewhere in the EU. Similarly, UK citizens and businesses do not know what rights they will have to move, live and work in the EU.

64. It is deeply unhelpful and unsatisfactory that Parliament will not be able to consider the Government’s immigration proposals in advance of the vote on the 11 December. We have consistently expressed significant concerns about the long delays to the paper’s publication, given that immigration was an issue that was so central to the referendum campaign in 2016. Based on the evidence we have seen, we were left with the clear impression that the continued delays in publication of the White Paper have been exacerbated by confusion over who is driving the policy between the Home Office and the Prime Minister. The Government has provided a distinct lack of information on its immigration proposals, and of time for Parliament to consider them before the vote on the deal. This is an unacceptable way for the Government to operate.

130 Home Affairs Committee, [Oral evidence: Work of the Home Secretary](#), 28 March 2018, Q29, Q197

131 Home Affairs Committee, [Oral evidence: Windrush Children](#), 15 May 2018, Q280; Home Affairs Committee, [Oral evidence: Work of the Home Secretary](#), 10 July 2018, Q412

132 Home Affairs Committee, [Oral evidence: The work of the Home Secretary](#), November 2018, Qq534–536

133 Liaison Committee, [Oral evidence from the Prime Minister: Brexit](#), 29 November 2018, Q80

134 Home Affairs Committee, [Policy options for future migration from the European Economic Area: Interim report](#), 31 July 2018

135 Home Office ([BBS0002](#))

Conclusions and recommendations

Policing and security cooperation

1. We welcome the fact that the withdrawal agreement allows the UK to retain access to most EU law enforcement tools during the transition period, although we remain concerned about the limitations on extradition, as outlined in our previous reports and set out further below. (Paragraph 10)
2. We are seriously concerned about the lack of detail in the political declaration about the future security and policing relationship. The declaration allows for a wide range of scenarios and varying degrees of cooperation, depending on the trade-offs the UK Government is willing to make. This level of uncertainty is not in the interests of law enforcement in either the UK or the EU. We are disappointed with the EU's position that the UK cannot have access to a number of crucial security and policing mechanisms, but we are also concerned that the terms of the withdrawal agreement and political declaration will weaken the UK's negotiating position in attempting to secure its priorities, including access to these mechanisms in the future. (Paragraph 12)
3. We are extremely concerned at the lack of progress in the negotiations on future security cooperation and the significant risk of a capability gap in future if this is not resolved before the transition period expires. Much debate on the withdrawal agreement has focused on the backstop for the border between Northern Ireland and the Republic of Ireland. There is no such backstop for security cooperation between the UK and the EU, and yet the Home Office does not appear to have worked out a basic timetable outlining when a treaty would need to be agreed and the various milestones it would have to reach to get approval from all the required bodies. Based on the evidence we have received, it will be near-impossible for a security treaty to be negotiated and ratified by December 2020. We are dismayed by the Government's failure to plan adequately for the continuity of future security cooperation with the EU. (Paragraph 21)
4. We are also disappointed that there is no provision to extend transitional security cooperation arrangements, independently of the trade arrangements, until a new relationship is in place. We are concerned that crucial security issues could end up being overshadowed by wider trade and economic considerations and timetables. (Paragraph 22)
5. We welcome the confirmation in the withdrawal agreement that the UK will continue to participate in Europol activities throughout transition. We are very concerned, however, that the Government is no closer to achieving its goal of the UK having a future relationship with Europol that goes beyond the agency's existing agreements with other countries. The political declaration contains no detail on the UK's future relationship with Europol, and we urge the UK Government and European Commission to set out what its intention is for the future relationship in this area. If the negotiations fail to deliver a bespoke arrangement between the UK

and Europol that maintains existing capabilities, it will mean a security downgrade and a failure of the Government in achieving its objectives for the negotiation. (Paragraph 26)

6. We remain extremely concerned about the ‘own national’ exemption that will apply to UK-EU extradition during the transition period. It is unclear whether this will require victims of serious crimes committed in the UK by EU nationals, including murder, rape and child sexual abuse, to travel to EU countries to participate in criminal trials. If this is likely to be the case, the Government needs to be open with the public and Parliament about the implications for access to justice for victims, and set out what practical arrangements it will put in place to support the prosecutions of EU nationals in their own countries, including support for victims and witnesses. (Paragraph 32)
7. Our previous reports have highlighted our concerns about the significant legal and constitutional obstacles to negotiating an extradition arrangement that is equivalent to the EAW. We are concerned that the Home Office is overly-optimistic about how easy it will be to negotiate a replacement process to take over once transition ends, given how long it has taken Norway and Iceland to negotiate a parallel agreement, as Schengen countries. Negotiations might be particularly challenging if the Government is seeking an alternative dispute resolution mechanism from the CJEU. (Paragraph 33)
8. We welcome the withdrawal agreement’s confirmation that the UK will be able to access EU data systems throughout the transition period. We also welcome the direct reference to the Prüm and PNR databases in the political declaration. We are seriously concerned, however, about the absence of any reference to SIS II or ECRIS and the lack of detail on wider data sharing. We are extremely disappointed by arguments made from within the EU that ECRIS should only be available to EU member states and that SIS II should only be open to member states or countries within the Schengen Area. We are also very concerned that Home Office Ministers are not taking seriously enough the risks arising from losing these capabilities. It is clear from the evidence we received that there can be no substitute for SIS II, and our previous reports highlighted the significant risks that would be created if we lose access to it. A failure to retain access to SIS II and ECRIS would be a significant downgrade of our policing and security capability at a time when cross border crime and security threats are increasing. UK agencies check SIS II over 500 million times a year and there is no adequate contingency. Losing access would, as the police have warned, make us less safe. It is crucial that the Home Office plans for a possible cliff edge in data exchange after the transition period ends, and publishes a full and detailed risk assessment of the impact of losing access. (Paragraph 41)
9. From the evidence we have received, it is clear that no deal would represent a risk to public safety and security, and that the gaps in the current political declaration also signify considerable risks to our future security in the Government’s current agreement. Based on that evidence, we do not believe that the Government’s published assessment of the security partnership is a full assessment of the risks that we currently face. Nor do we share the Home Secretary’s view that we will be as safe as we are now if we lose key capabilities or cooperation, or that SIS II is simply a “nice to have”. We are extremely concerned that the Government is either being

complacent or failing to be transparent about the security implications and it should provide full and accurate information to parliament about the security risks. There is far too much complacency on this issue, on the part of both the UK Government and the EU. (Paragraph 48)

The UK border system

10. We are extremely concerned by the lack of any clarity on what the customs and border arrangements in the future partnership might be, and therefore what the Home Office and the rest of Government should be preparing for. The political declaration does not reconcile the Government's objectives of achieving an independent trade policy and frictionless trade, and provides no assurance that there will not be additional checks and controls at the border. (Paragraph 57)
11. We welcome the agreement between the UK and EU that there will be a transitional period, and the commitment to keep trade between the UK and EU tariff-free after the transition period ends. We are disappointed, however, by the political declaration's ambiguity regarding the future scale of checks and controls at the border. The wide range of outcomes allowable under the declaration will make it extremely challenging for the Home Office to make preparations for UK border operations after transition ends. Given the Home Office's track record in hiring people and developing IT systems, any significant programmes of work will need to begin immediately. The Home Office should provide us with a statement outlining the programmes it will need to carry out to transition successfully to whatever the new system will be, and when they will deliver them by. (Paragraph 60)
12. It is deeply unhelpful and unsatisfactory that Parliament will not be able to consider the Government's immigration proposals in advance of the vote on the 11 December. We have consistently expressed significant concerns about the long delays to the paper's publication, given that immigration was an issue that was so central to the referendum campaign in 2016. Based on the evidence we have seen, we were left with the clear impression that the continued delays in publication of the White Paper have been exacerbated by confusion over who is driving the policy between the Home Office and the Prime Minister. The Government has provided a distinct lack of information on its immigration proposals, and of time for Parliament to consider them before the vote on the deal. This is an unacceptable way for the Government to operate. (Paragraph 64)

Formal minutes

Wednesday 5 December 2018

Members present:

Rt Hon Yvette Cooper, in the Chair

Kate Green

Douglas Ross

Tim Loughton

John Woodcock

Stuart McDonald

Draft Report (*Home Office preparations for the UK exiting the EU*), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 64 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Twelfth 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, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 11 December at 11.00 am.]

Witnesses

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

Tuesday 30 October 2018

Rt Hon Caroline Nokes MP, Minister of State for Immigration, Home Office, **Shona Dunn**, Second Permanent Secretary, Home Office, **Paul Lincoln**, Director General, Border Force, and **Jon Thompson**, Permanent Secretary and Chief Executive, HM Revenue and Customs

[Q1–199](#)

Deputy Assistant Commissioner Richard Martin, Metropolitan Police and National Police Chiefs' Council and **Lynne Owens**, Director General, National Crime Agency

[Q200–249](#)

Wednesday 14 November 2018

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

[Q250–357](#)

Published written evidence

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

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

- 1 Home Office ([BBS0002](#))
- 2 National Crime Agency ([BBS0001](#))

Published Correspondence

The following correspondence related to the inquiry can be viewed on the [inquiry publications page](#) of the Committee's website.

- 3 [Letter from the Chair to Rt Hon Nick Hurd MP, Minister of State for Policing Minister and the Fire Service, dated 23 November 2018](#)

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. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Report	Home Office delivery of Brexit: customs operations	HC 540 (HC 754)
Second Report	Immigration policy: basis for building consensus	HC 500 (HC 961)
Third Report	Home Office delivery of Brexit: immigration	HC 421 (HC 1075)
Fourth Report	UK-EU security cooperation after Brexit	HC 635 (HC 1566)
Fifth Report	Windrush: the need for a hardship fund	HC 1200 (HC 1558)
Sixth Report	The Windrush generation	HC 990 (HC 1545)
Seventh Report	UK-EU security cooperation after Brexit: Follow-up report	HC 1356 (HC 1632)
Eighth Report	Policy options for future migration from the European Economic Area: Interim report	HC 857
Ninth Report	Domestic Abuse	HC 1015
Tenth Report	Policing for the future	HC 515
Eleventh Report	Policy options for future migration from the European Economic Area: Interim report: Government Response to the Committee's Eighth Report	HC 1663
First Special Report	The work of the Immigration Directorates (Q1 2016): Government Response to the Committee's Sixth Report of Session 2016–17	HC 541
Second Special Report	Asylum accommodation: Government Response to the Committee's Twelfth Report of Session 2016–17	HC 551
Third Special Report	Unaccompanied child migrants: Government Response to the Committee's Thirteenth Report of Session 2016–17	HC 684
Fourth Special Report	Home Office delivery of Brexit: customs operations: Government Response to the Committee's First Report	HC 754
Fifth Special Report	Immigration policy: basis for building consensus: Government and Office for National Statistics Responses to the Committee's Second Report	HC 961

Sixth Special Report	Home Office delivery of Brexit: immigration: Government Response to the Committee's Third Report	HC 1075
Seventh Special Report	The Windrush generation: Government Response to the Committee's Sixth Report	HC 1545
Eighth Special Report	Windrush: the need for a hardship fund: Government Response to the Committee's Fifth Report	HC 1558
Ninth Special Report	UK-EU security cooperation after Brexit: Government Response to the Committee's Fourth Report	HC 1566
Tenth Special Report	UK-EU security cooperation after Brexit: Follow-up report: Government Response to the Committee's Seventh Report	HC 1632