

Impact Assessment

Title: Law Enforcement and Security (Separation Issues etc.) (EU Exit) Regulations 2020

Date: 29 September 2020

Stage: FINAL

IA No: HO0379

RPC Reference No: N/A

Intervention: Domestic

Lead department: Home Office

Other departments or agencies: Ministry of Justice

Measure: Secondary legislation

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RPC Opinion: Not Applicable

Business Impact Target: Not a regulatory provision

Cost of Preferred (or more likely) Option (in 2019 prices)

Net Present Social Value NPSV (£m)	N/A	Business Net Present Value BNPV (£m)	N/A	Net cost to business per year EANDCB (£m)	N/A
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What is the problem under consideration? Why is government intervention necessary?

The UK Government is preparing for a range of possible outcomes at the end of the Transition Period (TP). As part of this, and irrespective of the outcome of UK-EU negotiations, the UK must have a fully functioning legal framework that reflects the Withdrawal Agreement (WA) between the UK and the European Union (EU), and the EEA EFTA Separation Agreement (SA) between the UK and Norway, Iceland and Liechtenstein ('the EEA EFTA States'). The Government is implementing secondary legislation to give full effect to these Agreements in domestic law, and to ensure the UK has a fully functioning statute book at the end of the TP.

What are the policy objectives and the intended effects?

In order to enable the Government to meet its obligations under the WA and SA and ensure the law is clear and accessible to operational partners, these Regulations will support the implementation of separation provisions (and related data provisions) contained in the WA and SA relating to law enforcement and criminal justice (LECJ) cooperation. The WA and SA provisions will take effect at the end of the TP regardless of the outcome of current UK-EU negotiations. This will allow for the "winding down" of existing UK-EU/EEA EFTA cooperation and the smooth transition to new arrangements after the TP. The Regulations will also address a number of deficiencies in retained EU law in this area that would otherwise arise at the end of the TP.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Retaining existing LECJ arrangements is not possible as they will cease to be available at the end of the TP when certain provisions within the WA and SA come into effect. The options are:

Option 0: Do not legislate (do nothing): the UK Government would not legislate to give full effect to the LECJ elements of the WA and SA in domestic law, or address failures of retained EU law to operate effectively at the end of the TP and ensure a fully functioning statute book.

Option 1: Legislate (**the Government's preferred option**): the UK would legislate to give full effect to its legal obligations in the Agreements, and to address legislative deficiencies as described in Option 0. The statute book would continue to function effectively, providing certainty and clarity to operational partners.

Main assumptions/sensitivities and economic/analytical risks

Discount rate (%)

N/A

These Regulations are required regardless of the outcome of UK-EU/EEA EFTA negotiations. To estimate case volumes affected it was assumed that cases are distributed evenly throughout the year. It is unlikely this has any impact on the results.

Will the policy be reviewed? It will not be reviewed. If applicable, set review date N/A

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



Date:

7 October 2020

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Year(s):	Price Base	2019/20	PV Base	2019/20	Appraisal	10	Transition	1
Estimate of Net Present Social Value NPSV (£m)						Estimate of BNPV (£m)		
Low:	N/A	High:	N/A	Best:	N/A	Best BNPV	N/A	

COSTS, £m	Transition Constant Price	Ongoing Present Value	Total Present Value	Average/year Constant Price	To Business Present Value
Low	N/A	N/A	N/A	N/A	N/A
High	N/A	N/A	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A	N/A	N/A

Description and scale of key monetised costs by 'main affected groups'

Costs have not been monetised.

Other key non-monetised costs by 'main affected groups'

There will be downstream cost implications for the Ministry of Justice (MoJ) as the legislation adds Norway and Iceland to the list of territories specified under Part 2 of the Extradition Act. These costs are expected to be negligible as there only two to three extradition cases from the UK to Norway/Iceland per year.

BENEFITS, £m	Transition Constant Price	Ongoing Present Value	Total Present Value	Average/year Constant Price	To Business Present Value
Low	N/A	N/A	N/A	N/A	N/A
High	N/A	N/A	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A	N/A	N/A

Description and scale of key monetised benefits by 'main affected groups'

Benefits have not been monetised.

Other key non-monetised benefits by 'main affected groups'

Legislating will provide legal and operational certainty for the public sector, which could otherwise incur additional costs (including from the risk of litigation). Legislating will:

- Provide operational clarity regarding procedures (for example, requests) that are initiated but not completed before the end of the TP.
- Give full effect to LECJ rights and obligations in the WA and SA in the UK legal system.
- Correct deficiencies to ensure the UK has a fully functioning statute book at the end of the TP.

Legislating will have wider unquantified societal benefits in reducing uncertainty which could lead to poorer or impeded law enforcement and criminal justice (LECJ) cooperation between the UK and EU Member States, and ultimately could result in poorer justice outcomes.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:										
Cost, £m	N/A	Benefit, £m	N/A	Net, £m	N/A					
Score for Business Impact Target (qualifying provisions only) £m:					N/A					
Is this measure likely to impact on trade and investment?					N					
Are any of these organisations in scope?			Micro	N	Small	N	Medium	N	Large	N
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded:	N/A	Non-Traded:	N/A			

PEOPLE AND SPECIFIC IMPACTS ASSESSMENT (Option 2)

Are all relevant Specific Impacts included?	Y	Are there any impacts on particular groups?	N
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Evidence Base (for summary sheets)

A. Strategic Overview

A.1 Background

The UK currently participates in a number of EU LECJ measures which provide for cooperation in the areas of security, law enforcement and judicial cooperation in criminal matters. A body of EU law, including Council Decisions, Directives, and EU Regulations, governs cooperation on these matters among participating countries.

In January 2020, the UK ratified the Withdrawal Agreement (WA) with the EU and the Separation Agreement (SA) with the European Economic Area (EEA) European Free Trade Association (EFTA) States. As a result, separation provisions (also known as ‘Other Separation Issues’, or OSIs) concerning ongoing LECJ cooperation, contained within Title V of Part 3 of the WA and Title III of Part 3 the SA, and related data and information protection provisions contained within Title VII of the WA and Title IV of the SA, will take effect at the end of the Transition Period (TP). The function of these provisions is to allow for the ‘winding down’ of existing arrangements and the smooth transition of UK-EU/EEA EFTA cooperation to the arrangements that will take effect after the TP ends. These provisions in the WA and SA will take effect at the end of the TP regardless of the outcome of the UK-EU and UK-EEA EFTA negotiations on LECJ, and also place reciprocal obligations on EU Member States and EEA EFTA States.

Certain amendments to UK law are required so that the Government can give full effect to these provisions in the domestic legal system and so that the law is clear and accessible to operational partners. This will ultimately allow the Government to meet its obligations under the WA and SA.

Additionally, the Government must also address six deficiencies which would otherwise arise in the UK statute book at the end of the TP, when the body of EU law in relation to LECJ cooperation ceases to apply in the UK, except insofar as it is converted into domestic law as ‘retained EU law’ or as required to continue to apply under the WA or SA. These mostly relate to matters which have arisen since the Government legislated to address deficiencies through the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019. These deficiencies include amendments to reflect the adoption of new EU Regulations, the UK’s connection to Prüm, and a correction in relation to a Mutual Legal Assistance (MLA) Convention.

A.2 Groups Affected

The policy will impact UK public sector bodies which operate the security, law enforcement and criminal justice measures in scope of the Regulations. This includes central authorities, executing judicial authorities, law enforcement agencies, and the criminal justice system (CJS) across the UK. The introduction of these Regulations will ensure the law is clear and accessible to these operational partners.

It will also affect individuals and society as a whole. Individuals will similarly benefit from the certainty provided by UK law, and therefore their rights and obligations in the UK legal system, being made more clear and accessible to them. Further, individuals and society more generally will benefit from the fact that greater legal and operational clarity will ensure

that UK-EU/EEA EFTA co-operation in relation to ongoing LECJ cases and procedures at the end of the TP continues to function effectively. This will avoid poorer security and criminal justice outcomes for those involved in these ongoing cases and procedures.

A.3 Consultation

Within Government

Though the Home Office leads on these Regulations, the Home Office continues to work very closely with the Ministry of Justice given that the Regulations also cover matters relating to criminal justice. It was confirmed with Cabinet Office that no wider cross-government consultation was required given the technical nature of the Regulations, the lack of alternative policy options, that their effect is strictly limited to Home Office and Ministry of Justice policy interests, and that the primary effect will be to maintain operational continuity by applying current LECJ arrangements to the limited number of cases and procedures that are still ongoing at the end of the Transition Period.

The Home Office works closely with the police, other law enforcement and criminal justice agencies in the UK, as well as the devolved administrations, to ensure the UK is ready for a range of possible outcomes at the end of the year – both negotiated and non-negotiated. The Home Office regularly meets with about 20 delivery partners to review preparations and monitor any risks to readiness. These efforts to prepare the UK for the end of the TP have involved engagement with operational partners and devolved administrations on the LECJ provisions contained within the WA and SA, including these Regulations.

Public Consultation

No public consultation was required for the same reasons that cross-government consultation was not viewed to be necessary: the technical nature of the Regulations, the lack of alternative policy options, that their effect is strictly limited to Home Office and Ministry of Justice policy interests, and that the primary effect will be to maintain operational continuity by applying current LECJ arrangements to the limited number of cases and procedures that are still ongoing at the end of the Transition Period.

B. Rationale for intervention

The UK Government is preparing for a range of possible outcomes at the end of the Transition Period (TP). As part of this, and irrespective of the outcome of UK-EU negotiations, the UK must have a fully functioning legal framework that reflects the Withdrawal Agreement (WA) between the UK and the European Union (EU), and the EEA EFTA Separation Agreement (SA) between the UK and Norway, Iceland and Liechtenstein ('the EEA EFTA States'). The Government must give full effect to these Agreements in domestic law, and ensure the UK has a fully functioning statute book at the end of the TP.

The actions set out above are all technical changes to legislation. These changes cannot be delivered through alternative means other than government action, that is, implementing these legislative changes via secondary legislation. As such government intervention is necessary.

C. Policy objective

The intended outcomes are to enable the Government to meet its obligations under the WA and SA and ensure the law is clear and accessible to operational partners, enabling the Government to properly protect the public. Legislating to make the required technical changes will allow for the implementation of separation provisions (and related data provisions) contained in the agreements relating to LECJ cooperation. These provisions will take effect at the end of the TP regardless of the outcome of negotiations. Legislating in this way will support the “winding down” of existing UK-EU/EEA EFTA cooperation and the smooth transition to new arrangements after the TP. The Regulations will also address a number of deficiencies in retained EU law in this area that would otherwise arise at the end of the TP.

Overall, this will have the specific benefits listed in section E below.

D. Options considered and implementation

Option 0: Do not legislate (do nothing): the UK would not legislate to give full effect to the LECJ elements of the WA and SA in domestic law, or to address failures of retained EU law to operate effectively at the end of the TP and ensure a fully functioning statute book.

Option 1: Legislate (**the Government’s preferred option**): the UK would legislate to give full effect to its legal obligations in the agreements, and to address legislative deficiencies as described in Option 0. The statute book would continue to function effectively.

Preferred option and implementation plan

The required technical changes to legislation will be delivered via secondary legislation, entitled the Law Enforcement and Security (Separation Issues etc.) (EU Exit) Regulations 2020. These Regulations are being laid in the Autumn to ensure that they come into effect in time for the end of the TP at 11pm on 31 December. The Regulations perform three functions:

1. They make the necessary further, specific amendments to UK law to give full effect to the LECJ separation provisions contained within the WA and SA in the UK legal system. These separation provisions require the continued application of particular EU measures in the UK in respect of cases and procedures which are ongoing at the end of the TP, and place reciprocal obligations on EU Member States and EEA EFTA States. They will continue to have effect until these ongoing cases and procedures are completed.
2. They make amendments to UK law to give full effect to the related provisions within the Agreements that require preservation of relevant law on information and data protection in respect of data stocks accrued prior to the end of the TP under the LECJ measures or exchanged in relation to those ongoing procedures.
3. They make further amendments to address deficiencies which would otherwise arise at the end of the TP, in relation to retained EU law which has come into force since The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 were introduced, and to address a further deficiency which has been identified.

It is the UK public sector bodies that operate the LECJ measures in scope of the Regulations that will be responsible for the practical implementation of the separation provisions and related data provisions. Because these provisions only apply to procedures and cases that are ongoing at the end of the TP, and will cease to apply once they are completed, the implementation of these provisions is time-limited. For example, once all freezing and confiscation orders received before, but not concluded by, the end of the TP, have been executed by UK authorities, the Regulations’ provisions on Asset Freezing and Confiscation will no longer require practical implementation.

E. Appraisal

General assumptions and data

In order to estimate case volumes affected it was assumed that cases are distributed evenly throughout the year. It is unlikely this has any impact on the results. No further assumptions were made when assessing the impacts of this legislation.

Relevant data and usage statistics have been included where possible in Table A.1.

Table 1: Summary of costs and benefits.

	Set-up costs	Ongoing costs	Set up benefits	Ongoing benefits
Option 0	Not appraised.	Not appraised.	Not appraised.	Not appraised.
Option 1	None expected.	Small downstream justice costs are expected to arise from extraditions to Norway and Iceland – not monetised.	Provision of legal and operational certainty for cases that are ongoing at end of the TP – non - monetisable. Avoidance of risk of public sector incurring financial costs – non - monetisable. Individual and societal benefits from clarity on rights and obligations in UK legal system, and avoidance of poorer LECJ outcomes, in respect of ongoing cases at end of TP.	Legal and operational certainty arising from the UK having a fully functioning statute book by addressing deficiencies – non - monetisable. Avoidance of operational capability gap at end of TP in relation to certain types of MLA request from Italy – non-monetisable.

Option 0 – Do not legislate (do nothing):

Under this option, the UK would not legislate to give full effect to the WA and SA in the domestic legal system, or to address failures in retained EU law in LECJ matters at the end of the TP. This option should not be considered as it does not meet the Government's objectives. This option is also not assessed in full in this Impact Assessment because the costs and benefits incurred by not legislating are the reverse of Option 1 below, which is to legislate. For example, not to legislate could create legal and operational uncertainty, whereas to legislate would provide legal and operational certainty. To assess both options in full risks double counting expected impacts.

Option 1 – Legislate (the Government's preferred option)

Under Option 1, the UK would legislate to address failures of retained EU law to operate effectively in security, law enforcement and criminal justice, and to give full effect in the domestic legal system to the separation provisions (and related data provisions) contained in the WA and SA.

Each chapter of the Regulations performs one or more of the three functions set out in Section D above, and summarised as:

- **Separation** - giving full effect to the LECJ separation provisions contained within the WA and SA. These separation provisions “wind down” cooperation by requiring the continued application of particular EU measures in the UK in respect of cases and procedures that are ongoing at the end of the TP until those cases and procedures are complete.
- **Data** - preserving relevant law on information and data protection for information and data accrued prior to the end of the TP under the LECJ measures or exchanged in relation to those ongoing procedures.
- **Deficiency fix** - addressing deficiencies in retained EU law which would otherwise arise at the end of the TP.

Table A.1 (see Annex 1) sets out in more detail the expected impact of the legislation. This assessment has been made for each capability as set out by chapter within the Regulations. Each chapter considers which function is performed for each capability.

COSTS

Set-up costs

No set-up costs are expected. The primary effect of these Regulations is to ensure existing LECJ arrangements continue to be applied to ongoing cases and procedures that are still ongoing when the TP ends. Ensuring the continued application of existing arrangements does not involve set-up costs.

Familiarisation costs may occur but are expected to be minimal or none based on the assessment. The primary function of the Regulations is to allow for the implementation of WA and SA provisions which require the continued application of existing arrangements to cases and procedures that are ongoing at the end of the TP. Operational practices and processes for these cases and procedures will remain unchanged, meaning minimal familiarisation is required. Further, operational partners and officials are already familiar with the WA and SA provisions, in part due to regular engagement with Government officials.

Ongoing costs

Ongoing costs are expected in relation to extradition to Norway and Iceland, as the legislation adds Norway and Iceland to the list of territories specified under Part 2 of the Extradition Act. Moving Iceland and Norway from Part 1 to Part 2 reflects that the UK can no longer be part of the EU-Norway/Iceland surrender agreement after the Transition Period. These costs are also expected to be negligible due to the small volume of cases concerned. This cost has not been monetised.

Beyond this, no further ongoing costs are expected. Ensuring the continued application of existing arrangements to the small set of ongoing cases and procedures will not involve additional costs. Further, the separation and data provisions are time-limited – they will cease to apply once the small set of ongoing cases and procedures are completed after the TP. There is therefore no possibility for further ongoing costs.

BENEFITS

Set-up benefits

Legislating will ensure the legal framework underpinning the UK's LECJ cooperation with European partners continues to function correctly in relation to cases that are ongoing at the end of the TP. Legislating will therefore provide non-monetisable legal and operational clarity specifically on the correct mechanisms for continued UK-EU/EEA EFTA co-operation in relation to LECJ cases and procedures that are ongoing at the end of the TP. This benefit is not ongoing given that the separation and data provisions only apply to the limited number cases and procedures that are still ongoing at the end of the TP – they do not have continued application.

There is a related benefit of avoiding financial costs being incurred by the public sector, including through litigation, due to a lack of legal and operational uncertainty. It is not possible to effectively monetise this cost at this stage – for example, the likelihood and financial implications of legal challenges are too abstract to quantify.

There are also related non-monetisable societal benefits. Individuals will similarly benefit from the certainty provided by UK law, and therefore their rights and obligations in the UK legal system, being made more clear and accessible. Further, individuals and society more generally will benefit from the fact that greater legal and operational clarity will ensure that UK-EU/EEA EFTA co-operation in relation to ongoing LECJ cases and procedures at the end of the TP continues to function effectively. This will avoid poorer security and criminal justice outcomes for those involved in these ongoing cases and procedures.

Ongoing benefits

There is an ongoing non-monetisable benefit resulting from addressing the deficiencies in retained EU law. Doing so will provide ongoing legal and operational certainty to both operational partners and to individuals, and will ensure the UK continues to have a fully functioning statute book.

There is a specific non-monetisable operational benefit from addressing the deficiency on MLA. This will allow us to handle MLA requests from Italy to arrange witness hearings in the UK via telephone, or to exchange prisoners for investigative purposes. Without legislating,

a capability gap would arise at the end of the TP when the UK will no longer participate in the mechanism by which such requests are currently handled, the European Investigation Order (EIO).

NPSV, BNPV, EANDCB

Costs and benefits have not been monetised therefore, NPSV, BNPV and EANDCB have not been calculated.

Impact on small and micro-businesses

No direct costs or benefits to small and micro-business are expected.

F. Proportionality

Limitations in the evidence base have meant that a full quantitative analysis was not conducted. Instead a qualitative approach was taken and, where possible, supplemented with specific data to offer an indication of expected volumes. Given the relatively small volume of cases and procedures affected by these Regulations, it was not proportionate to undertake the research necessary to enable a full quantitative analysis. Further, it should be reiterated that legislating in order to give full effect to WA and SA provisions, and to address deficiencies in retained EU law, is not a policy choice – there is no practicable alternative that does not involve a significant risk of a practical breach in the UK's obligations under the WA and SA. Undertaking the research required for a full quantitative analysis would therefore be disproportionate in any case given could actual volumes of cases and procedures affected by the Regulations would not affect the Government's decision on whether to proceed with this legislation.

G. Risks

Expected impacts are difficult to estimate due to the availability of evidence. For example, without certainty for case turnover rates it has not been possible to estimate the volume of cases affected.

No further risks and assumptions have been identified. This impact assessment (IA) makes no assumption regarding the outcome of UK-EU and UK-EEA EFTA negotiations. This is because these Regulations are required regardless of the outcome of UK-EU and UK-EEA EFTA negotiations.

H. Direct costs and benefits to business calculations

No direct costs or benefits to business are expected.

I. Wider impacts

Legislating will provide legal and operational certainty for the public sector, which could otherwise incur costs (including from the risk of litigation). Legislating will provide provisions to address where procedures (for example, requests) are initiated but not completed before the end of the TP. It would have wider unquantified societal benefits in reducing uncertainty which could lead to poorer or impeded LECJ cooperation between the UK and EU/EEA EFTA States, and ultimately could result in poorer justice outcomes.

J. Trade Impact

No potential trade implications are expected to arise from this legislation.

K. Monitoring and evaluation (PIR if necessary), enforcement principles

This legislation is being implemented to ensure cases started before the end of the TP are seen through to completion under the correct legal framework; and that relevant data protection law continues to apply to data stocks accrued either before the TP, or after the TP in relation to these cases. This legislation also looks to fix redundancies in retained EU law and correct any deficiencies in UK law. Given that the effect of the legislation is time-limited and will only affect a relatively small number of cases and procedures, monitoring and evaluation is not needed.

L. Annexes

Annex 1

Table A.1, Specific impacts of the Regulations, 2020.

Chapter of the regulations	Function	What does the legislation do? Part 2 of the Regulations	What is the expected impact? (volumes)
Ch.1 - Asset Freezing and Confiscation (AFC)	<p>Separation</p> <p>Data</p> <p>Deficiency fix</p>	<p>Separation Places legislative signposts to the transitional provision (made by the separation provisions and Withdrawal Act) for freezing orders and confiscation orders received before the end of the TP.</p> <p>Data Places legislative signposts to the saving provision (made by the separation provisions and Withdrawal Act) for data and information stocks relating to freezing orders and confiscations orders accrued prior to the end of the TP, or pursuant to the separation arrangements.</p> <p>Deficiency fix Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders will come into effect in December. This instrument will revoke that Regulation at the end of the TP to prevent it from becoming retained EU law.</p>	<p>The legislation provides operational and legal certainty in the event that a freezing order or confiscation order is received before the end of the TP, ensuring that operational partners have certainty as to how to handle such cases (as well as data stocks held at the end of the TP and/or accrued pursuant to such arrangements).</p> <p>The legislation also fixes a deficiency in retained EU law, revoking Regulation (EU) 2018/1805. This will ensure that the UK has a fully functioning statute book, the practical impact of which will be to provide operational and legal certainty.</p>
Ch.2 - Cross-border Surveillance and Police Cooperation	<p>Separation</p> <p>Data</p>	<p>Separation The legislation provides a transitional provision for the continuation of unauthorised cross-border surveillance under Article 40 (2) of the Schengen Implementing Convention, which has commenced but is not completed prior to the end of the TP.</p> <p>It also places legislative signposts to the transitional provision (made by the separation provisions and Withdrawal Act) for police co-operation under Article 39 and cross-border surveillance under Article 40(1) and (2) of that Convention by EU Member States or EEA EFTA States.</p> <p>Data Preserves relevant law on information and data protection for information and data accrued prior to the end of the TP under this measure and exchanged in relation to ongoing surveillance.</p>	<p>The legislation provides operational and legal certainty in the event that a request for cross border surveillance was received and/or surveillance commenced, but not fully completed before the end of the TP. The effect of these provisions is to provide operational partners with certainty on how to handle such cases as we transition from Article 40 to alternative, non-EU arrangements after the TP ends.</p>

Ch.3 - Eurojust	<p>Separation Data Deficiency fix</p>	<p>Separation The legislation supports separation provisions from the WA and the SA, placing a legislative signpost to the transitional provision (made by the separation provisions and Withdrawal Act) for ongoing co-operation with Eurojust.</p> <p>Data The legislation removes the saving provision in the 2019 Law Enforcement Regulations on data safeguards, as it related to the Eurojust Council Decision which has subsequently been revoked and replaced (in EU law) by the Eurojust Regulation. This provision is not replaced as the Eurojust Regulation does not place data or information protection obligations on the UK; the operative obligations apply to Eurojust.</p> <p>Deficiency fix The legislation fixes a deficiency by deleting references in the 2019 Law Enforcement Regulations to the Council Decision and revoking the replacing Eurojust Regulation (which would otherwise become retained EU law at the end of the TP).</p>	<p>This legislation will provide operational partners with certainty in terms of what legislative underpinning applies to their ongoing cooperation via Eurojust following the TP.</p> <p>By fixing the deficiencies identified in relation to the Council Decision and Eurojust Regulation, the Regulations will ensure the UK has a fully functioning statute book at the end of the TP and provide legal and operational certainty as a result.</p>
Ch.4 -European Criminal Records Information System (ECRIS)	<p>Separation Data</p>	<p>Separation The legislation extends the transitional provision contained in the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 for the continuation of responding to ECRIS requests for information on convictions, by retaining all elements of the legal regime for responding to requests received before the end of the TP.</p> <p>Data The legislation also provides a saving provision retaining the data and information protections in the ECRIS regime for data received before the end of the TP and after the end of the TP pursuant to the WA.</p>	<p>This provides legal and operational certainty, in terms of the legislative regime governing ongoing co-operation with the EU in relation to ECRIS requests received but not responded to prior to the end of the TP (and related data stocks).</p> <p>The number of affected cases is assumed to be high, considering the average number of requests via ECRIS is c.4,000 per month.</p>
Ch.5 -Europol	<p>Data</p>	<p>Data The legislation provides a legislative signpost to the saving provision (made by the separation provisions and Withdrawal Act) for legal protections in relation to personal data and information received from Europol before the end of the TP.</p>	<p>This provides certainty for operational partners in relation to handling personal data and information received from Europol before the end of the TP.</p>

Ch. 6 - Exchange of Information and Intelligence	Separation Data	<p>Separation The legislation provides a legislative signpost to the transitional provision (made by the separation provisions and Withdrawal Act) which enables the continuation of an exchange of information and intelligence under the Swedish Initiative for requests made but not responded to before the end of the TP .</p> <p>It also preserves mandatory time limits for providing a response to such a request under the Swedish Initiative.</p> <p>Data Preserves relevant law on information and data protection for information and data accrued prior to the end of the TP via the Swedish Initiative and exchanged in relation to ongoing requests.</p>	This provides legal and operational certainty in terms of the legislative framework governing responses to requests for information or intelligence received prior to the end of the TP.
Ch.7 - Joint Investigation Teams (JITs)	Separation Data	<p>Separation The legislation extends the saving provision contained in the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 for the relevant law relating to civil liability for, and offences against, overseas officers. This ensures it continues to apply to the activities of overseas officers acting under the Schengen Implementing Convention (Art 39 and 40, where the request was made or surveillance started before the end of the TP), in addition to those acting as part of JITs established under EU legal bases (Mutual Assistance Convention or Council Framework Decision on JITs) which the UK was participating in prior to the end of the TP.</p> <p>Data The legislation extends the saving provision for information obtained by UK members of JITs so that the relevant law continues to apply to information obtained as part of a JIT before the end of the TP as well as information received after it in accordance with the WA and SA (that is, as part of ongoing JITs). It also adds legislative signposts to the data and information savings relating to JITs made by the separation provisions and Withdrawal Act.</p>	<p>The legislation will provide legal certainty for information provided to the UK via JITs before the end of the TP and after the end of the TP pursuant to the WA and SA.</p> <p>The legislation will also provide legal certainty for JITs signed under the Schengen Convention (or overseas officers who otherwise carry out activities on UK soil pursuant to the Schengen Convention), before the end of the TP, by ensuring that the legal framework governing civil liability for and offences against overseas officers is clear.</p>

<p>Ch.8 and 11 - Mutual Legal Assistance (MLA)</p>	<p>Separation Data Deficiency fix</p>	<p>Separation The legislation makes various provisions to enable the UK to deal with Mutual Legal Assistance requests received before the end of the transition period. The legislation extends the saving provision for overseas freezing orders (received under the Council Framework Decision on the execution in the EU of orders freezing property or evidence), to ensure such orders received from an overseas authority before the end of the TP can be executed under s1 of the Crime (International Cooperation) Act 2003 ('CICA 2003'). It places a legislative signpost to the separation provision in the WA for overseas requests (made under the additional protocol to the European Convention on Mutual Assistance in Criminal Matters 'MLAC') to provide information about bank accounts in the UK relating to a person who is the subject of an investigation in that territory, where the request is received before the end of the TP. This saves the existing MLA (CICA 2003) regime for those cases, enabling the information to be obtained. It places a legislative signpost to the separation provision in the WA for requests under the MLAC from Iceland, including for temporary transfer of prisoners, hearing witnesses in the UK by telephone and giving evidence by telephone link. This enables the MLAC regime to continue to apply where the request was received (or the prisoner transferred) before the end of the TP. The same effect is achieved for Norway by existing Regulation 89 of the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019. It makes transitional provision for certain MLA requests received under the MLAC or the Schengen Implementing Convention received before the end of the TP. It ensures provisions in CICA 2003 continue to apply to enable service of overseas procedural legal documents on a person in the UK, and for the UK to make arrangements to obtain evidence located in the UK, where the request for such assistance from the EU Member State, Norway or Iceland was received before the end of the TP. It also places a legislative signpost to the transitional provision (made by the separation provisions and Withdrawal Act) for mutual legal</p>	<p>The legislation provides legal and operational certainty in terms of the legislative framework governing mutual legal assistance requests received under the Mutual Assistance Convention or Schengen Implementing Convention, and freezing orders under the Council Framework Decision on Freezing Orders, prior to the end of the TP. Listing Italy appropriately under CICA 2003 will have an impact. It will ensure that UK operational partners have the legal powers to handle requests from Italy on specific matters i.e. hearing witnesses in the UK via telephone, or transferring prisoners for investigations. Failure to do so would create an operational capability gap from the end of the TP onwards. This is because at the end of the TP, the UK will no longer participate in the mechanism by which such requests are currently handled, the European Investigation Order (EIO).</p>
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		<p>assistance and police co-operation requests under the Schengen Implementing Convention which are ongoing at the end of the TP.</p> <p>Data Preserves relevant law on information and data protection for information and data accrued prior to the end of the TP via MLA requests and exchanged in relation to ongoing requests.</p> <p>Deficiency Fix An amendment is made to the CICA 2003 to add Italy as a participating country for the purposes of that Act, to enable (as with other EU Member States) certain MLA requests, for hearing witnesses in the UK via telephone or transfer of prisoners for investigations etc., to continue to be made after the end of the TP.</p>	
Ch.9 - Extradition	<p>Separation Data Deficiency fix</p>	<p>Separation These Regulations place a legislative signpost to the transitional provision (made by the separation provisions and Withdrawal Act) which provides that extradition requests where an arrest has been made prior to the end of the TP can continue to completion subject to the provisions of the Schengen Implementing Convention, the EU-Norway/Iceland Surrender Agreement or the European Arrest Warrant.</p> <p>Data In the context of extradition requests and procedures affected by the Schengen Implementing Convention, preserves relevant law on information and data protection for information and data accrued prior to the end of the TP via extradition requests, and exchanged in relation to ongoing procedures.</p> <p>Deficiency fix In the context of the Norway/Iceland Surrender Agreement, the legislation makes provision by adding the two countries to the list of territories specified under Part 2 of the Extradition Act after the end of the TP. This allows the Secretary of State to consider extradition requests from those countries. In the absence of the provisions, requests from those territories could neither be considered by the Secretary of State under the request-based system (Part 2 of the 2003 Act) or taken forward by the National Crime Agency under the warrant-based system (Part 1 of the 2003 Act).</p>	<p>The legislation provides legal and operational certainty in terms of the legislative framework governing extradition requests where an arrest has taken place prior to the end of the TP, but the extradition procedure has not been completed.</p> <p>It also fixes a deficiency in UK law for extradition requests from Norway and Iceland after the end of the TP. There are around two to three extradition cases per year from the UK to Norway and Iceland, and on average 1 case received from Norway and Iceland. This will incur a downstream cost for the justice system but, given the low case volumes, this is expected to be negligible. Moving Iceland and Norway from Part 1 to Part 2 reflects the fact that the UK can no longer be part of the EU-Norway/Iceland surrender agreement after the Transition Period</p> <p>The expected benefits of this legislation are non-monetisable.</p>

Ch.10 - European Investigation Orders (EIOs)	Separation Data	<p>Separation The legislation makes provision that EIOs received in the UK before the end of the TP can be responded to. No additional work is needed by the UK Central Authority or executing authorities in dealing with outstanding EIOs which are in progress as the end of the TP. Thus, an existing EIO will not need to be converted into an MLA request. .</p> <p>Data Preserves relevant law on information and data protection for information and data accrued prior to the end of the TP via EIOs and exchanged in relation to ongoing requests.</p>	<p>This provides legal certainty that requests made before the end of the TP can be responded to, and over the legislative framework governing such responses.</p> <p>Previous volumes demonstrate the average number of incoming requests for MLA made through using the EIO was 4289 (357 per month assuming the number of cases are spread evenly throughout the year) in 2019¹.</p>
Ch.12 - Passenger Name Record (PNR) data	Separation Data	<p>Separation The legislation provides for the continuity of requests made under Articles 9 and 10 of the PNR Directive and provides that the UK continues to be obligated after the end of the TP to respond to requests from Member States and Europol received before the end of the TP.</p> <p>Responses to requests for data received before the end of the TP can be sent after the end of the TP. Once all Article 9 and 10 requests have had a response, the legislative provision will cease to apply.</p> <p>Articles 9 and 10 of the PNR Directive allow the Passenger Information Units (PIUs) of Member States and Europol, to make requests of the PIU of another Member State for PNR data.</p> <p>Data Preserves relevant law on information and data protection for information and data accrued prior to the end of the TP via PNR requests and exchanged in relation to ongoing requests.</p>	<p>The number of PNR requests made by Member States and Europol to the UK, or by the UK to Member States and Europol, is limited. In any event, the impact of the legislation is to ensure the continuity of requests that are received before the end of the TP and that they can continue to be responded to in the same way after the end of the TP.</p> <p>Volumes affected are expected to be moderate. In most investigations PNR data constitutes an intelligence lead or piece of evidence. Often it is not possible to isolate and quantify the results attributed specifically to the use of PNR data. However, it is unlikely the legislation will impact a large number of cases. Over the period January 2019 to August 2020, the number of requests received by the UK Passenger Information Unit varied from only 4 to 60 requests per month, with an average of 23 requests received monthly.</p>
Ch.13 -Financial Intelligence Units (FIUs) and Asset Recovery Offices (AROs)	Separation Data	<p>Separation The Regulations place a legislative signpost to the transitional provision (made by the separation provisions and Withdrawal Agreement) for requests received from an EU Member State by the UK AROs or FIU before the end of the TP. This provides that the UK and EU Member States will continue to respond to requests after the end of the TP, provided they have been received before the end of the TP.</p>	<p>The legislation provides legal and operational certainty in terms of the legislative framework governing requests to FIUs and AROs which are made prior to the end of the TP, but the procedure has not been completed. It provides similar certainty in relation to the protections applicable to data stocks.</p>

¹ All figures are from local management information and have not been quality assured to the level of published National Statistics. As such they should be treated as provisional and therefore subject to change

		<p>Data Preserves relevant law on information and data protection for information and data accrued prior to the end of the TP via requests to FIU and/or AROs and exchange in relation to ongoing requests.</p>	
Ch.14 - Prüm	Data Deficiency fix	<p>Data Preserves relevant law on information and data protection for information and data accrued prior to the end of the TP via Prüm exchanges. New section 117B of the 2019 Law Enforcement Regulations preserves Chapter 6 (subject to modifications and with the exception of A25) of the Prüm Decision in so far as it applies to DNA profiles and personal data received by the UK before the end of the TP.</p> <p>Deficiency fix New section 117A(a) of the 2019 Law Enforcement Regulations seeks to ensure that the UK can continue to supply stage 2 data under A5 of the Prüm Decision where there was a match prior to the end of the TP.</p> <p>New section 117A(b) relates to the procedure in A7 whereby an EU Member State can ask the UK to collect a DNA sample, if they have a warrant. The provision states that if the UK has already collected the profile before the end of the TP, it can still send that profile. It does not allow the UK to collect a DNA profile (under the Prüm process) after the end of the TP, if a request had been received before the end of the TP.</p>	<p>The legislation will provide legal and operational clarity on how requests that are received before the end of the TP are to be handled, ensuring that Prüm DNA exchanges received before the end of the TP can be completed.</p>
Ch.15 -Schengen Information System (SIS II)	Separation Data Deficiency fix	<p>Separation The legislation places a legislative signpost to the transitional provision (made by the separation provisions and Withdrawal Act) which means the UK will continue to deal with hits received before the end of the TP. This facilitates the continued exchange of information in response to hits received before the end of the TP.</p> <p>In line with Article 47 of the SIS II Decision, data relating to actions on UK territory in response to a hit received before the end of the TP will be maintained post-TP to conclude any mandated further inquiries and activities.</p> <p>Data Preserves relevant law on information and data protection for information and data accrued via the Schengen Information System prior to the end of the TP.</p>	<p>The legislation will provide operational and legal clarity on how the UK will handle hits received before the end of the TP. In 2018 around 7,000 hits were recorded in the UK based on alerts from other countries. The time taken to conclude a case is quick, so it is unlikely many cases will be affected by the separation provisions.</p> <p>The impact of the continued application of the data and information safeguards is insignificant. They are currently applied (during the TP) and will be maintained only for a stock of legacy data. In respect of personal data, the UK has similar continuing obligations under the Data Protection Act 2018 in any event.</p> <p>The SIS II Regulation must be revoked to reflect the fact that at the end of the TP the UK will no longer participate in SIS II by virtue of the WA. If the SIS II Regulation is not accordingly revoked through these Regulations, the practical impact will be to create legal and operational uncertainty.</p>

Ch. 16 - International Agreements	Separation Data Deficiency fix	<p>Deficiency fix At the end of the TP the UK (with the exception of the separation provisions) will no longer participate in SIS II by virtue of the WA. The SIS II Regulation (Regulation 2018/1862), which would otherwise become retained EU law, is therefore revoked.</p> <p>Separation The legislation retains the residual rights and obligations under international agreements (such as the Schengen Acquis and Mutual Assistance in Criminal Matters agreements) to the extent they are otherwise continued by virtue of section 4(1) of the Withdrawal Act and are required to complete “in-flight cases” that are ongoing at the end of the TP (per the separation provisions).</p> <p>The International Agreements are mechanisms for EU cooperation with third states. The legislation affected by these provisions concerns Norway, Iceland and Liechtenstein participation in the EU tools in scope of the SA separation provisions.</p> <p>Data The legislation similarly preserves the residual rights and obligations relating to relevant law on information and data protection (contained in the otherwise revoked international agreements) for information and data accrued prior to the end of the TP and exchanged in relation to ongoing procedures and cases.</p> <p>Deficiency fix The legislation adds the Norway / Iceland Surrender Agreement to the list of international agreements for which residual rights are revoked.</p>	<p>The legislation provides extended saving provisions to capture directly effective rights arising under the International Agreements which relate to the separation provisions, therefore providing legal certainty whether directly effective rights under the international agreements continue to apply for in-flight cases.</p> <p>The practical effect of not including the Norway / Iceland Surrender Agreement in the list of international agreements (i.e. if the revocation were not made) would mean that any directly effective rights derived from this agreement would continue to have effect in domestic law (without reciprocity), which could have a practical impact (i.e. individuals could bring claims before domestic courts). The revocation is therefore necessary.</p>
Part 3 of the Regulations			
Ch. 1 and 2 - European Protection Orders (EPOs)	Separation	<p>Separation The legislation obliges the UK to continue to operate this EU mechanism for EPOs (Directive 2011/99/EU) for requests/orders that are received/started before the end of the TP.</p>	<p>The legislation provides legal and operational certainty for operational partners by giving effect to the separation provisions.</p> <p>Based on the Impact Assessment of The Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019, we expect that this legislation will only affect a very small number of cases (according to the Impact Assessment referred to above², as at 21 March 2019, there had been five EPO orders made and six EPO orders received by England &</p>

² Paragraph 5, p. 5 of <https://www.legislation.gov.uk/uk/si/2019/780/impacts>

			<p>Wales and NI authorities since the EPO Directive was implemented in 2015).</p>
<p>Ch.3 - European Supervision Orders (ESOs)</p>	<p>Separation</p>	<p>Separation The legislation obliges the UK to continue to operate this EU mechanism for ESOs (Framework Decision 2009/829/JHA) requests/orders that are received/started before the end of the TP.</p>	<p>The legislation provides legal and operational certainty for operational partners by giving effect to the separation provisions contained in the WA. Based on the Impact Assessment of The Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019, we expect that this legislation will only affect a very small number of cases (according to the Impact Assessment referred to above³, as at 21 March 2019, there had been 9 ESOs received by England & Wales and Northern Ireland from EU Member States).</p>
<p>Ch.4 - Mutual Recognition of financial penalties</p>	<p>Separation</p>	<p>Separation The legislation obliges the UK to continue to operate this EU mechanism for mutual recognition of financial penalties (Framework Decision 2005/214/JHA), where requests are received/started by the end of the TP.</p>	<p>The legislation provides legal and operational certainty for operational partners by giving effect to the separation provisions. Based on the Impact Assessment of The Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019, we can expect that this legislation will only affect a relatively small number of cases (according to the Impact Assessment referred to above⁴, the number of requests are low - an average of around 520 requests had been received per year in England and Wales in the seven years preceding that Impact Assessment).</p>

³ Paragraph 6, p. 5 of <https://www.legislation.gov.uk/uksi/2019/780/impacts>

⁴ Paragraph 8, p. 6 of <https://www.legislation.gov.uk/uksi/2019/780/impacts>

Impact Assessment Checklist

Mandatory specific impact test - Statutory Equalities Duties	Complete
<p data-bbox="124 255 539 291">Statutory Equalities Duties</p> <p data-bbox="124 309 1230 584">The Home Office carried out an Equality Impact Assessment (EIA) as part of its obligations under the public sector equality duty. The EIA concluded that that the introduction of these Regulations will have no significant negative discriminatory impacts. To the extent that any marginal indirect discrimination might potentially result from the introduction of these Regulations, this can be objectively justified by the fact that these Regulations are a proportionate means of meeting a legitimate policy aim of protecting the public.</p>	<p data-bbox="1326 398 1385 434">Yes</p>

Any test not applied can be deleted except **the Equality Statement**, where the policy lead must provide a paragraph of summary information on this.

The Home Office requires the **Specific Impact Test on the Equality Statement** to have a summary paragraph, stating the main points. **You cannot delete this and it MUST be completed.**

Economic Impact Tests

<p data-bbox="124 1032 437 1068">Clarity of legislation</p> <p data-bbox="124 1068 1262 1198">Introducing new legislation provides an opportunity to improve the clarity of existing legislation. Legislation with multiple amendments should be consolidated, and redundant legislation removed, where it is proportionate to do so.</p>	<p data-bbox="1342 1104 1401 1140">Yes</p>
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