



OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Thursday 6 September 2018

Session 5



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JUSTICE COMMITTEE

21st Meeting 2018, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)

*Maurice Corry (West Scotland) (Con)

*John Finnie (Highlands and Islands) (Green)

Jenny Gilruth (Mid Fife and Glenrothes) (SNP)

Daniel Johnson (Edinburgh Southern) (Lab)

Liam Kerr (North East Scotland) (Con)

*Liam McArthur (Orkney Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Michelle Ballantyne (South Scotland) (Con) (Committee Substitute)

Rt Hon David Mundell MP (Secretary of State for Scotland)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Justice Committee

Thursday 6 September 2018

[The Convener opened the meeting at 13:01]

Brexit (Impact on Civil and Criminal Justice Systems and Policing)

The Convener (Margaret Mitchell): Welcome to the Justice Committee's 21st meeting in 2018. It is good to see committee members back after the recess. We have received apologies from Jenny Gilruth, Daniel Johnson and Liam Kerr. I welcome Michelle Ballantyne, who is attending as substitute for Liam Kerr.

Agenda item 1 is to hear evidence from the Rt Hon David Mundell MP, Secretary of State for Scotland. It is my pleasure to welcome him to the meeting. Today's session will focus on the potential impact of Brexit on the civil and criminal justice systems and policing in Scotland. The committee will have similar sessions next Tuesday morning with the new Cabinet Secretary for Justice and the Lord Advocate.

Secretary of State, would you like to make brief opening remarks?

Rt Hon David Mundell MP (Secretary of State for Scotland): I am pleased to do so, convener.

I have written to the committee setting out a number of publications that the United Kingdom Government has issued in the period since I was previously due to appear before the committee. Again, I apologise for not being able to attend in June, as I was required to give a statement in the House of Commons. I look forward to covering the areas that are set out in my letter and those that the convener has set out in her opening remarks, and to explaining the work that is being undertaken by the UK Government and how we are collaborating with the Scottish Government and other key stakeholders in Scotland to ensure that Scotland's distinct justice system is fully taken into account.

I will not rehearse in detail the publications that I set out in my letter, but the committee will be aware that, in May and June, the UK Government presented proposals for the future partnerships on security and on civil judicial co-operation to inform discussion between the UK negotiating team and the European Union. In May, we also published a technical note detailing the UK's position on security, law enforcement and criminal justice. On

12 July, we published a white paper setting out our proposals for a future relationship, which includes much more detail on our ambitions for a security partnership, criminal justice co-operation and civil judicial co-operation than was in the earlier papers. A series of technical notices has also been published, the first 25 of which are already in the public domain. Yesterday, the Prime Minister indicated that there will be approximately 70 such notices, one of which will certainly cover civil law and judicial matters.

I think that the rest of the issues that you want to cover will best be taken forward through questions. My one caveat is that Home Office and Ministry of Justice colleagues would more normally deal with the detail on some areas. For detailed questions, I might seek to revert to the committee with written submissions.

The Convener: Thank you for that update and for your helpful letter about progress.

As time is relatively short, I ask for brief questions with little preamble, and for answers that are as concise as possible. That will allow us to cover as much ground as possible.

I start with a very pertinent question about the European arrest warrant. The two Russian agents who were responsible for the Salisbury poisonings cannot be extradited from Russia, but if they were to travel to an EU member state, they could be brought back to the UK under the European arrest warrant. Will you confirm that a similar arrangement will apply during the transition period and after the UK has left the EU?

David Mundell: Current events are pertinent to consideration of the European arrest warrant. You alluded to the fact that the Prime Minister made it clear yesterday that we are proceeding on that basis. If the individuals were to leave Russia and enter another European jurisdiction, they would be the subjects of such warrants.

We want an outcome that will afford our citizens maximum protection, which the current arrangement provides. That is why, after the implementation period during which the existing arrangements will apply, we will want to enter a specific new arrangement with the EU to continue to operate on such a basis. That will be subject to agreement, but it is clear from recent figures that EU member states would have significant benefits from maintaining such an arrangement with the UK. I understand that, in the past year, approximately 10,000 individuals in the UK were the subject of European arrest warrant proceedings, which meant that they were arrested and returned to other EU member states. We have exercised about 1,000 European arrest warrants in EU member states. There is a clear mutual benefit in coming to an agreement, which is our objective.

The Convener: The Salisbury case and the two Russian agents have brought the issue into sharp focus. Is it clear that what would, in effect, be a new extradition treaty would be just as effective as the European arrest warrant that operates now?

David Mundell: It is. We want to go further than the arrangements that would be in place if we were a third country: we want an extradition arrangement that is the equivalent of the European arrest warrant. There is no operational or legal reason why that cannot happen, if it can be agreed with the EU.

Rona Mackay (Strathkelvin and Bearsden) (SNP): What gap analysis has been done of the situation in which we no longer have the European arrest warrant? Has that analysis been shared with the Scottish Government?

David Mundell: Significant work has been done with the Scottish Government and, as members are aware, between UK police forces, including Police Scotland, on such matters.

As for what would happen in the unlikely event that we leave the EU without a deal, that is what the technical notice process is for: it sets out what we envisage will happen in those circumstances.

However, we see the huge benefits of the European arrest warrant, and we want to continue on the same basis, which is why we are making efforts to secure a security partnership that will yield that outcome. I know that the outcome that the Scottish Government wants is to continue with an equivalent of the European arrest warrant, as we do. That is the focus of our efforts.

Rona Mackay: Will there be contingency planning and finance?

David Mundell: Yes, there will. Discussions are on-going with the Scottish Government about contingency planning, and initial feedback on our focus has been positive. EU member states see the benefit of on-going co-operation, particularly in security, policing and justice matters, so there is a positive environment in which to have that negotiation. However, I am not suggesting that it would be a positive outcome not to have the European arrest warrant regime—in fact, I am saying exactly the opposite.

Rona Mackay: So—just to recap—you are saying that a gap analysis and contingency planning are being done for the event of there being no positive outcome.

David Mundell: There will be contingency planning and, most likely, what is called a technical notice, which will set out what it is envisaged will happen if we do not have the existing arrangements.

Rona Mackay: Thank you.

John Finnie (Highlands and Islands) (Green): I will follow on from the convener's questions about the European arrest warrant. I note that you used the term "third country" and that there have been discussions about bespoke deals. It is clear that you want to be involved with the European arrest warrant. Is that also the case with regard to Europol and Eurojust?

David Mundell: Yes.

John Finnie: According to our papers,

"the Policy Paper recognises that, as a 'third country' after Brexit, many of the arrangements will not apply or be inferior."

That is from your own paper.

David Mundell: We are seeking to reach agreement on the arrest warrant and to have engagement with Europol and Eurojust on the best possible basis. We do not believe that there is any reason why that is not achievable. Those organisations, in particular, have taken into account and recognised the role that the UK—and Scotland as part of that, with our unique civil and criminal justice system—has played.

In some areas—for example, the amount of data that we provide to Europol—we are talking about a completely different domain from arrangements that might be made with other third countries, and we believe that that provides a basis for reaching an agreement on an extended basis.

John Finnie: I accept that that is your view, but your own policy paper says that

"The existing third country agreements with Europol do not provide direct access to Europol's databases and the streamlined exchange of data."

That very significant resource is under threat with the present situation.

David Mundell: It would be under threat if we were suggesting that that was the outcome that we want to achieve. It is not—we want something different from a simple third-country arrangement. For the reasons that I set out in my preceding answer, I think that that is a perfectly practical and credible proposal, given the scale of our existing involvement with Europol.

John Finnie: I have been quoting your paper, secretary of state. I acknowledge and understand that there is the status quo of the arrangements that apply at the moment and there is the bespoke deal that you seek but, quite rightly, your policy paper alludes to the potential of third-country status. To quote your paper again, such a status would "not allow national experts"—which means those in the UK, including those in England and Wales, the Police Service of Northern Ireland, Police Scotland and indeed the Crown Office and

Procurator Fiscal Service—to be “embedded within Europol” and would not

“enable the third country to initiate activity in the same way.”

That would be a very weak situation, would it not?

13:15

David Mundell: That is why we do not want to proceed on that basis, and it is why we want to secure a security partnership that is also to the benefit of the EU. Early indications are that we can make positive progress in reaching such an agreement. It is right to set out the factual situation in regard to third-country status, but we do not want to be in that position. We want to have a bespoke agreement, as you said, which is what we aim to achieve.

John Finnie: You will understand that, as a parliamentary committee, it is our job to scrutinise all the potential outcomes.

David Mundell: Indeed.

John Finnie: I accept that you want that desirable outcome, but what analysis has been made of the practical implications for the exchange of data, for instance, were it not to be secured?

David Mundell: As I have indicated, we are in the process of producing a series of technical notices that set out what would happen in the eventuality of no deal. Data will certainly be covered in that process, and analysis work is certainly going ahead. I am not going to suggest that not reaching an agreement on that would be anything other than suboptimal.

John Finnie: How many personnel from Scotland, whether from the Crown Office and Procurator Fiscal Service or Police Scotland, are embedded in those organisations?

David Mundell: In order to give you the exact number, I will have to write to you, which I am happy to do.

John Finnie: Thank you. Their roles would be helpful, too.

The Convener: It has been suggested that it would be very much in the EU’s interest to have a close security partnership in order to share capabilities and expertise, as happens now. What gives you optimism that it would be in the EU’s best interests?

David Mundell: Co-operation in relation to security matters is clearly in everyone’s interests. Right at the start of this meeting, you referenced the events that the Prime Minister made a statement about yesterday. That is the world that we are living in now, and it is clearly beneficial for

European nations to co-operate in, for example, tackling the threat that Russia poses. That is self-evident at the wider security level.

There is also a change in the nature of the threat with all the issues around cyberattacks and their involvement in attacking the democratic process, for example. Those attacks are not confined to geographic national boundaries.

The case is overwhelming, as it is in relation to individual criminal activity, as seen from the numbers that I provided at the start of the meeting. We have supported the use of the European arrest warrant in more than 10,000 cases in the UK for other EU states. I hope that those states found that to be hugely to their benefit in delivering justice in their countries.

Liam McArthur (Orkney Islands) (LD): Good afternoon, secretary of state. I think that we all accept, having heard it in evidence earlier in the year, the mutual interest there would be in reaching agreement. The concern is about the pathway to getting there.

You suggested that a failure to reach agreement would be suboptimal, which to me seems a rather significant understatement. The difficulty is that although there will be mutual interest, the UK will be outwith the structures that allow the system to operate at present—the Court of Justice is but one example of that. On the engagement with Europol and Eurojust, John Finnie indicated the real and significant difficulties that exist in relation to data and evidence sharing. It is not clear how those are to be surmounted. I know that back in May the European Commission rejected the UK proposal for a bespoke data protection regime. Will you give the committee an understanding of what the pathway looks like and how we will bridge the divide that exists at the moment?

David Mundell: There is an on-going negotiation, as you know. The EU wanted the UK to set out our proposals and that is what we have done, both in the security partnership document and in the subsequent white paper, but ultimately any arrangement that we come to will be determined by the EU member states, not the Commission. Over the summer we have engaged significantly with individual member states. That is part of what gives us confidence that we will be able to reach an agreement on data and other matters. We are in a negotiation, part of which is definitely, as the convener has alluded to, to set out to the other side the benefits to it of reaching an agreement.

I am particularly struck by the proportion of data that the UK is providing. That is why it should not be suggested that it is simply of the same status as some other third countries. There is 40 years of history of data sharing and all the other

arrangements that have been in place. The UK has been at the forefront of many initiatives that Europol and other organisations have pursued on the justice and security front. We are in a different position from third countries, but we have to make our case because this is a negotiation.

Liam McArthur: I am sure that the European Commission will be aware of the points that you have made about the extent of the data sharing that happens at the moment but, nevertheless, it has taken the view that the bespoke proposal put forward by the UK Government is not adequate. Given the discussions that you said are going on in EU capitals, are you suggesting that there is a mood among the member states to reject the Commission's advice about data sharing and plough on with this bespoke proposal?

David Mundell: I am saying that, ultimately, the agreement on this issue and others will be determined by the 27 member states, regardless of whether they are in alignment with the Commission's position. I would far rather that we were in a position where this outcome was also favourable to the Commission. In the negotiations that are on-going with the Secretary of State for Exiting the European Union, other Government officials and the Commission, we are seeking to make our case. Ultimately, whatever agreements we reach with the EU will be signed off by the 27 member states.

Liam McArthur: There has been no refinement of the UK proposal on data sharing since—

David Mundell: There have been detailed discussions with the Commission on that issue.

Rona Mackay: I have a supplementary on the same theme. Your letter states:

"As a responsible Government, we are preparing for all eventualities, including the unlikely scenario in which the current mechanisms we use to cooperate with EU Member States are not available when we exit the EU in March 2019."

On what basis do you say that that scenario is "unlikely"? Is that just wishful thinking?

David Mundell: No. I believe that we will be able to reach agreement with the EU, which is desirable. We have set out our proposition for those negotiations. As I discussed at length with the Finance and Constitution Committee earlier, that is the basis on which I want to proceed with our departure from the EU. I reaffirm a point that I made to that committee: just because contingency arrangements are made for there being no deal—inevitably during a negotiation, a no-deal outcome is possible—the UK Government is not promoting that outcome. It is responsible, because of some of the issues that we have touched on, to have contingency arrangements in place for what I

consider to be the unlikely event of a no-deal outcome emerging.

Rona Mackay: You mentioned a few times that technical notices are being drawn up. When will they be issued?

David Mundell: About 25 notices are already in the public domain. It is my understanding that one will cover civil jurisdiction and judicial matters, and it is due imminently. When that notice is completed, I will send it directly to the committee. As they are published, they come into the public domain. The Prime Minister said yesterday that she anticipates that there might be around 70 notices in total.

Michelle Ballantyne (South Scotland) (Con): Are you aware of any areas in which security co-operation between the UK and EU could improve as a result of a new relationship? Other questions have been on the idea that it will be detrimental, but could we enhance Scotland and Britain's combined security capability?

David Mundell: Our security co-operation has continued to develop over the period and, at all points, we are seeking to improve it. Our view is that whether we are members of the EU is not the issue. The issue is about tackling threats at hand, and we want an outcome that allows us to do that. We can continue to improve that process, whether or not we are in the EU, by getting the sort of agreement that I have referenced in previous answers. For example, we have been in the vanguard of arguing for the sharing of passenger name records—lists of people who have travelled by various means between countries or across Europe. The UK pursued that initiative, so plenty of things that are done can continue to be done whether or not we are a member of the EU.

George Adam (Paisley) (SNP): Good morning, secretary of state—I am sorry, good afternoon; I lose track of time in here. However, I have questions for you on time. Imagine if the clock straight in front of you was a Brexit clock, and it had 204 days on it. No doubt you will be aware that there are 204 days to do everything that you have mentioned today. There are 204 days to get specific new arrangements on the European arrest warrant. I hope that St Mirren win the Scottish premiership, but it is unlikely. In 204 days, do you think that you will be able to get the arrangements in place?

David Mundell: I think that we will be able to meet the three tranches of the process for leaving the EU. We negotiated a withdrawal agreement that, in essence, is about the funding package and the rights of citizens as we leave the EU. However, as we are well aware, there are issues around Northern Ireland.

George Adam: But on justice, secretary of state, do you think that we can do everything that we need to do in 204 days?

David Mundell: I am saying that the second part of that process is to have the implementation period, which would run from March 2019 to the end of December 2020. That is an important period in which to take—

George Adam: But international crime will still happen in 204 days' time.

13:30

David Mundell: Under the implementation period, as is currently the case, everything would remain the same through until 2020. There are one or two exceptions, but the EU and the UK would operate on the same basis as we do now. In that period, the future relationship agreements would be concluded. That is the basis that I am seeking to achieve, and I believe that it is achievable.

George Adam: The Scottish Government produced "Scotland's Place in Europe: Security, Judicial Co-operation and Law Enforcement" as a way of moving forward. My concern is about the real world. When I used to work in the real world, secretary of state, I sold cars.

David Mundell: I am sure that you were very good at it, Mr Adam.

George Adam: Negotiation was a simple process in which I had a price in my head that I wanted the person to pay, and they had one that they wanted to pay. Today, I do not think that you know what price you want or—to use the same analogy—at what price you are planning to sell. The negotiation has been nil. We seem to have a situation here in which you have specific and new arrangements, which might or might not be third-party ones. There is nothing tangible or solid here.

David Mundell: I do not agree. To use an equivalent analogy, in July, we set out our brochure with our model in it. That is the outcome that we seek to achieve. It is what we put on the table, and it is what is currently being discussed with the EU.

George Adam: But there have to be facts.

David Mundell: The clock is ticking, and the timescale means that, in the next few weeks, that will all have to come to a head. It will then be clear whether we have achieved the outcome that we set out. However, I am confident that we can do that.

The Convener: Michelle, have you covered everything that you wanted to cover on the cost benefit area?

Michelle Ballantyne: No. I have one other area to pick up.

One of the key points here is geographical proximity. How close countries are to each other affects the extent to which the level and type of threats that they face are shared. If you agree with that as a statement, perhaps you could go into a bit of detail on how that is measured, how it affects Scotland and how that will then affect the negotiations with the EU.

David Mundell: Clearly, geographical proximity is very significant, and particularly in relation to the movement of criminals and their propensity to carry out similar crimes in similar geographies. That comes back to the benefits—not just for us but for the EU member states—of engaging in co-operation on such matters. For example, we are seeing gangs operating in countries across the EU and coming into the UK. It is to our mutual advantage that we co-operate and work together with EU member states to tackle such issues.

Michelle Ballantyne: So, in effect, it is a two-way relationship, as opposed to how it would be with someone who was a long way away from us. If countries do not work with us, both ends will suffer, which is why, ultimately, they need to come to the table, and will do so.

David Mundell: Obviously, I agree with that analysis. I believe that it is firmly in the interests of EU member states to reach an agreement with the UK, for many of the reasons that we have set out already in this discussion.

Liam McArthur: I referred to the fact that the UK will be outside the structures, a key one of which in this context is the Court of Justice of the European Union. The UK Government's white paper made clear that the court's role in the UK will come to an end. However, the white paper also says that, where there are disputes in areas

"Where the UK ... had agreed to retain a common rulebook ... there should be the option for a referral to the CJEU for an interpretation".

That seems to be somewhat inconsistent with the previously expressed opinion about taking back control over our laws—it certainly does not ring true in that regard. Will you help us to understand how the two things sit together?

David Mundell: I think that they sit together, because any reference to the Court of Justice would be made by our choice; we would have chosen to do that. We would have chosen the arrangements that had been put in place which led to reference seeming to be appropriate or desirable.

We have made clear that the Court of Justice would have no automatic, direct right of involvement in the United Kingdom, but where we

are co-operating with EU member states in relation to frameworks or arrangements that they have set up, it might be appropriate to make such a reference, and the opportunity to do so would be available.

Liam McArthur: How credible is that? You are saying that you would choose to make a reference and would not be required to do so—and I presume that you would not be bound by any findings of the court. It is difficult to see the European Court of Justice or, indeed, European Union member states buying into that sort of model.

David Mundell: If we were to remain part of certain arrangements, there would be on-going matters in relation to which the court would have an expertise—if I may put it in that way—and all parties might consider it appropriate to make a reference to it. Our position has always been clear: there would be no continuing direct role for the Court of Justice—and that is the case; that is the position that we have taken forward into the negotiations—but in areas where, in essence, there was participation on our part in a European institution, there would be the option for a referral.

Liam McArthur: The white paper talks about “a common rulebook”. Something will either be referred to the ECJ or will not be referred to it. That does not sound terribly discretionary; if it is discretionary, the functioning of the common rulebook falls apart. The jurisdiction of the European Court of Justice would have to be agreed to; it would not be up to the UK to decide that a dispute could be settled through reference to the ECJ. Reference would have to be automatic.

David Mundell: But the choice would come further back in the decision-making process in taking forward a provision that could lead to that outcome. A choice would have been made in taking on that outcome, in relation to that aspect of the common rulebook.

Liam McArthur: As I said, the position does not strike me as terribly discretionary. It would need to be agreed up front, as part of the terms of the common rulebook and the financial penalties, obligations or sanctions that were attached to it. That is not a matter of discretion on the part of the UK; that is a matter of our signing up to ECJ involvement, oversight and jurisdiction in the areas that the common rulebook covers.

David Mundell: But that is a step back, as I have just said. The decision to be part of that area of the common rulebook is a decision for the United Kingdom; that is not a requirement.

Rona Mackay: May I briefly return to the no-deal scenario? We know that such a scenario is a distinct possibility and that it would have financial

implications for Scotland—I am thinking about border security, extra policing and so on. What funding would be made available to Scotland in the event of a no-deal scenario?

David Mundell: The Government has guaranteed that EU funding that has previously been committed will continue. In areas in which we are considering contingencies, there is on-going dialogue between the Scottish and UK Governments. The UK Government is responsible for Border Force and for people entering and leaving the United Kingdom. The Scottish Government would need to consider whether it needed to make other arrangements in relation to any aspect of a no-deal scenario.

Rona Mackay: Despite the fact that Scotland did not vote to leave the European Union, we would need to bear the cost of the possible repercussions if there is no deal.

David Mundell: I do not think that it would be the best use of our time to go back through all the arguments about why it was a UK-wide vote.

Rona Mackay: No, but you have just said that we would not receive any extra funding if we needed to put in place other arrangements.

David Mundell: It would need to be clear what those arrangements were. There are certain arrangements whereby the UK Government gives support by funding police and counter-terrorism activities in Scotland, for example. I am not aware that the Scottish Government has identified a specific issue in relation to policing for which it would require additional funding if we left the EU with no deal.

John Finnie: I want to follow on from my colleague Liam McArthur’s questions and ask about the European arrest warrant. I share your view that it is commendable legislation that has had significant effect; indeed, we heard from the Lord Advocate clear examples of the benefit to the Scottish legal system. I accept that you want to retain the European arrest warrant, but you acknowledge that you have discussed contingencies. What would the third party or bespoke equivalent of the European arrest warrant look like? What format would it take?

David Mundell: As I said in the previous discussion, our focus is on getting the sort of agreement that we want. If it emerges that we will not get a deal, we will set out our contingency arrangements and the technical notices that I have referenced. If we get to that point, I would be very happy to revert to you, but our efforts are focused on getting the sort of arrangement that I set out in my earlier evidence.

John Finnie: My colleague George Adam referred to the timeframe, which is relatively short.

I asked my question because there are practical implications. This is not some sort of academic exercise; there are on-going implications regarding existing inquiries and what the ramifications of no deal could be. It is likely that there will need to be transitional arrangements. Can you reference other treaties that we could fall back on if we do not have the European arrest warrant in its current format? You have quoted the numbers. The matter is very important: it is about how our criminal justice system works.

David Mundell: Indeed it is, but there is a host of other very important issues around leaving the EU.

John Finnie: Arresting criminals for whom a warrant has been craved is a very important issue.

David Mundell: It is, but people having jobs and livelihoods is also a very important issue. I am not diminishing your question, but there is a huge number of significant issues relating to leaving the EU, which is why the Government is committed to leaving the EU on an orderly basis with a deal. That is the outcome that we want to achieve, and that is what we are focused on doing. I do not want to leave the EU on a basis that threatens people's jobs or that threatens the prospect of having criminals in the UK or the EU who cannot be arrested. I do not want that outcome, which is why the focus of our efforts is on getting a deal.

13:45

John Finnie: I hear that loud and clear, and I share that ambition. I do not want to rehearse the constitutional arguments or the merits of the outcome of the referendum, but I must ask my question again, because the committee will be speaking to the Cabinet Secretary for Justice and we need to understand the practical implications. I accept your aspiration for the continuation of the European arrest warrant, but what are the fallback positions?

David Mundell: As I have indicated, I will be happy to set out what would happen in the event of a no deal. We will put forward our position in the various technical notices that will be released.

John Finnie: Do you envisage the Hague convention having a role to play?

David Mundell: The Hague convention would certainly have a role to play.

John Finnie: I will move on to family law. In the UK, Scotland and my area, we are blessed in having a rich mix of nationalities and all sorts of different family relationships. Family law is an important aspect that needs to be catered for in the UK's plans to leave the EU. It covers matters such as jurisdiction, recognition and enforcement, and which national court can decide on issues.

Will you give us some background information on the work that has been done on that?

David Mundell: Yes. As with the arrest warrant, we are seeking to agree new and reciprocal agreements on civil judicial co-operation based on our current depth of co-operation, which covers civil, commercial and family law matters. As you have said, the agreement would need to cover which courts would hear family law cases with cross-border issues with other EU countries, which laws would apply and how judgments could be recognised and enforced. We recognise the importance of that.

John Finnie: That is a huge chunk of work.

David Mundell: There is the Hague convention, of course, and we will continue to operate it in areas to which we have signed up. However, we want to reach that sort of agreement, which we are endeavouring to do.

John Finnie: What reassurance—if any—can you give to constituents who might be involved in protracted and, by their very nature, very involved negotiations across different jurisdictions on the status of their cases at this time and in the few months that we have left in the EU?

David Mundell: As I said in response to Mr Adam's question, the scenario that we are working towards is that there will be an implementation period which will operate until 2020 in relation to the continuation of existing arrangements as we leave the EU. That means that there will be an extended period during which a number of those issues will be developed. I say to anybody who is involved in an on-going legal matter across jurisdictions that we want to do nothing that would prejudice their current legal rights, and that is what we will seek to ensure.

John Finnie: Secretary of state, would it be possible for you to come back to the committee on some of the fallback elements that would cover family law, as you said you would do in relation to the European arrest warrant?

David Mundell: Yes, indeed. I might write to the committee. Once we have set those elements out, I will certainly do that.

John Finnie: Can you give an indication of a timeframe for that, as those are live matters for some individuals?

David Mundell: As I indicated earlier in my evidence, we will make a technical notice on civil legal matters available relatively soon. I will let the committee have that as soon as it is available. Indeed, I am very happy to share notices on any other area that we have covered in today's proceedings or that the committee has an interest in.

Liam McArthur: Would it be possible to include the approach that is being taken in relation to commercial law? Obviously, there is a read-across in terms of the Hague convention, but clarity about the UK Government's intentions on how issues relating to commercial law would be covered in those scenarios would be helpful.

David Mundell: Yes. I would be very happy to do that.

The Convener: We had a lengthy session on family law, child law and divorce, and it is fair to say that such law is far from straightforward. We heard evidence that even rules within the EU that it was thought were working well are not working so well. A full analysis of that would be good. It seems that the Hague convention will always be a fallback position for most of that kind of work, and I think that we all take some comfort from that.

David Mundell: As I did for Mr Finnie, I can give you an absolute commitment on adhering to what we have signed up to under the Hague convention.

The Convener: Abduction, divorce, matrimonial and property issues are very real problems for everyone. When we visited Westminster and met the House of Lords committee, it was very exercised about the implications of Brexit for family law. Detailed work that explained to the committee how all of that will come out would be very much appreciated. In the short time that we have available today, we could not begin to look at that area with any success.

I want to press you again before we leave the priorities in the negotiations. It would be helpful to the committee if you explained how the EU currently provides the UK with assets, expertise or capabilities. It seems to me that what we do now will be important to assessing the value that the EU will see in co-operation going forward.

David Mundell: Do you mean in terms of personnel?

The Convener: How do things currently work with the EU in criminal and civil law and in policing?

David Mundell: It would probably be better if I wrote to the committee about that. Ms Mackay asked about Scotland. I would be happy to write to the committee about the UK's overall contribution to the various EU bodies and initiatives.

The Convener: We have a close partnership now. If we examined that more fully or got more details about it, that would be very helpful to the committee.

We will move on to our second theme.

Maurice Corry (West Scotland) (Con): Good afternoon, secretary of state. On discussions with

the devolved Administrations, can you give me some idea of the current level of dialogue between ministers and officials in the Scottish and UK Governments, particularly in relation to policing and criminal and civil justice matters?

David Mundell: There is always on-going dialogue on those matters, and the UK Government works closely with the Scottish Government. Yesterday, the First Minister had a full briefing on issues relating to the identification of the two Russians who were involved in the incident in Salisbury. We want to work closely on those matters with the Scottish Government, Police Scotland and other agencies in Scotland, and it is very important that we do so.

Members will be aware that Mr Michael Russell is the principal point man—if I may use that expression—in the discussions with the United Kingdom Government on the negotiations around leaving the EU. Those discussions operate through the joint ministerial committee for exiting the EU.

In recent months, we have established a ministerial forum as a basis whereby other ministers from the Scottish and Welsh Governments can engage with the UK Government. That forum is headed up by my colleagues Chloe Smith, from the Cabinet Office, and Robin Walker, from DEXEU. As I understand it, that forum has either had or intends to have a specific discussion of justice issues.

Maurice Corry: Has the forum produced some reasonable discussions?

David Mundell: Indeed. Very constructive discussions have taken place in the forum.

Maurice Corry: What sort of things has it been discussing?

David Mundell: It has been discussing some of the issues that we have touched on today and the outcomes that we want to achieve. Rightly, Scottish ministers and the Lord Advocate make clear the distinct nature of Scotland's civil and criminal legal system—as I do. It is important to recognise that in the negotiations and discussions, but a number of other serious issues are under discussion.

The Convener: Michelle Ballantyne has a question on the development of the common frameworks.

Michelle Ballantyne: I did not realise that you had put me down for that—I have been caught on the hop.

I want to explore how the common frameworks in the area of justice are being developed. What areas of justice policy are likely to be covered by common frameworks, and what discussions are

taking place between the UK and Scottish Governments in relation to justice policy post-Brexit? Can you give us some idea of how Scotland's separate justice system will be respected in that system?

David Mundell: Scotland's separate justice system is already respected in the system, and that is not going to change. The area of justice will not be subject to a legislative framework, because of the different legal system that currently operates in Scotland.

Clearly, it is desirable to have consistency across the United Kingdom—for example, in recognising a divorce in an EU member state. It is desirable that the arrangements in Scotland, England and Wales are the same, but it is not essential, and that is the basis on which we have proceeded with our distinct Scottish legal system over many years.

What we hope to achieve in a number of areas is agreement to operate on a similar basis across either Great Britain or the United Kingdom. However, justice is an area in which there will not be a single legislative framework as such. In many cases, we will seek to build on the existing agreements.

Michelle Ballantyne: Fundamentally, you envisage that the current co-operation—which seems, on the whole, to work fairly smoothly—will continue in much the same way.

David Mundell: I envisage building on the existing co-operation.

Michelle Ballantyne: If there is a change to the relationship with the EU in how we co-operate on justice, will you build into that any differences that exist between our legislative systems, or will it be a question of the UK making an arrangement and our having to fit in behind that?

David Mundell: No. Any arrangement on such matters that was reached between the United Kingdom and the EU would be based on agreement within the UK.

Michelle Ballantyne: It would all be done properly. Thank you.

The Convener: The white paper talks about health security. At first glance, I thought that that was nothing to do with justice or security. However, I know that there were issues at Lanarkshire NHS Board when we had the recent cyber attacks. Can you give the committee more information about how health security fits into the area of justice and security?

14:00

David Mundell: You are right—health security is about the protection of public health from

initiatives that would cause widespread public harm. It is about co-operating in relation to the potential threat of some third party seeking to cause damage to public health by releasing nerve agents, toxins or whatever. The reality is that that is as possible in Glasgow as it is in London. The event that we discussed earlier took place in a relatively small city.

Such events could take place anywhere, and we are committed to working with the national health service and NHS Scotland, as well as with Police Scotland and the various anti-terrorism agencies, to ensure that, whether we are inside or outside the EU, we are as well placed as possible to counter them.

The Convener: It gives the committee some comfort that those areas are actively being looked at and are on the agenda.

David Mundell: A group of representatives from the four health services in the UK meets regularly to consider operational issues, and they also look at that sort of issue.

The Convener: Again, that is very heartening.

Michelle Ballantyne: We talk about all the negotiations that are taking place at a political level and about how the 27 member states, the Commission and our Governments feel, but have we had any feedback from the security agencies? They have built up systems and work with each other not just within the EU but across the world. Where is their voice in all of this? Are they giving clear messages about what they expect and hope that countries will do?

David Mundell: They do give clear messages, and they want the maximum co-operation between countries in tackling those issues. We are talking about the European context, but many of the issues are global.

Michelle Ballantyne: Is their voice being listened to by all the member states, by us and by the Commission?

David Mundell: We place significant weight on what our security services say and do. The Prime Minister chairs the National Security Council, which is one of the Government bodies, and I know that she places enormous weight on the advice that she gets from the security services. I am sure that that is the case in other countries.

The Convener: That concludes our lines of questioning, secretary of state. Thank you again for your time. It is much appreciated that we have been able to go into some of the issues in detail. We look forward to the additional information that you have promised the committee.

David Mundell: I will be happy to provide that information when it is available.

The Convener: Our next meeting will be on the morning of Tuesday 11 September, when the committee will hold a similar session with the Scottish Government's new Cabinet Secretary for Justice and the Lord Advocate.

Meeting closed at 14:04.

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