

EXPLANATORY MEMORANDUM TO
THE INTERNATIONAL JOINT INVESTIGATION TEAMS (INTERNATIONAL
AGREEMENTS) (EU EXIT) ORDER 2019

2019 No. 274

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument concerns Joint Investigation Teams (JITs). JITs facilitate coordination of criminal investigations and prosecutions conducted in parallel by two or more countries.
- 2.2 This instrument will ensure that, following its exit from the European Union, the UK can continue lawfully to participate in JITs with EU member states that have (i) not incorporated into domestic law the Second Protocol to the Council of Europe Convention on Mutual Assistance in Criminal Matters 1959, but which have (ii) adopted certain relevant UN Conventions described below, and which this instrument will designate into UK law.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Currently, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union [2000] and the Council Framework Decision on joint investigation teams [2002/465/JHA] together provide the legal bases in EU law on which competent authorities of two or more Member States may set up a JIT.

- 6.2 The 2000 Convention was brought into UK law through the ‘pillar’ system, whilst the 2002 Framework decision has largely been transposed where necessary by:
- part 1 of the Crime (International Cooperation) Act 2003;
 - sections 88 and 89 of the Police Act 1996 (as amended);
 - section 39 of the Police (Scotland) Act 1967;
 - section 90 of the Police and Fire Reform (Scotland) 2012 Act;
 - sections 29 and 66 of the Police (Northern Ireland) Act 1998;
 - section 57 of the Serious Organised Crime and Police Act 2005; and by,
 - the general powers available under section 26 of the Police Act 1996;
 - section 12A of the Police (Scotland) Act 1967;
 - section 8 of the Police (Northern Ireland Act);
 - the data processing framework provided by the Data Protection Act 1998; and further transposed by:
 - the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014.
- 6.3 Following the UK’s exit from the EU, the legal basis for JITs with EU member states will be provided, in most cases, by the Second Protocol to the Council of Europe Convention on Mutual Assistance in Criminal Matters 1959.
- 6.4 Owing to gaps in ratification by 4 EU member states, the legal basis will be provided by specifying in this measure, for the purpose of the s88(7) and s89(5)(c) of the Police Act 1996, the following United Nations’ Conventions (‘the Conventions’):
- United Nations Convention against Transnational Organised Crime 2000;
 - United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988; and,
 - The United Nations Convention against Corruption 2003.
- 6.5 The effect of specifying the Conventions under these sections is that relevant provisions of the Police Act 1996 apply to these JITs with these four countries. This has a range of benefits for JITs formed under the Conventions. For example:
- s88 of the 1996 Act regarding the liability for wrongful acts by constables will also apply to foreign officers operating in the UK;
 - s89 of the 1996 Act relating to assaults on constables will apply to constables acting in a JIT formed under the Conventions; and
 - s16 of the Crime (International Co-operation) Act 2003 will also become applicable, ensuring that statutory search powers of constables are extended to JITs formed under these powers.

7. Policy background

What is being done and why

- 7.1 This instrument is fixing a gap that will emerge in the legislative framework – on which the UK and other EU member states rely to establish Joint Investigation Teams (JITs) – once the UK leaves the EU. JITs facilitate the coordination of criminal investigations and prosecutions conducted in parallel across more than one Member State and have proven to be an efficient and effective international cooperation tool.

Any impairment in the UK's capability to establish and operate JITs would have a material effect on combating serious organised crime.

- 7.2 This measure does not seek to make changes to powers or introduce new powers, but instead specifies alternative international agreements, for the purposes of the Police Act 1996, to ensure that JITs retain the same powers and operational capability that are currently provided by EU legal bases.
- 7.3 Currently member states, including the UK, are able to establish JITs under the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union [2000] and the Council Framework Decision on joint investigation teams [2002/465/JHA].
- 7.4 In the event of the UK leaving the EU without some kind of enduring security cooperation agreement in place, (either immediately, or at the end of an Implementation Period), all but four of the 27 EU member states would be able to collaborate in JITs with the UK, in JIT by virtue of the framework offered by the Second Protocol to the Council of Europe Convention on Mutual Assistance in Criminal Matters 1959.
- 7.5 Italy, Greece, and Luxembourg have not ratified the second Additional Protocol to the 1959 CofE Convention. Slovakia has ratified the protocol but has entered a reservation on JITs relating to Article 20. This means that if the UK leaves the EU without a security cooperation agreement in place (either immediately, or at the end of an Implementation Period) current JITs with these member states (under the 2000 EU MLA Convention or 2002 Framework Decision) would lapse but we could not start a new JIT under the 1959 Convention for these four countries. The UK is currently involved in one JIT with Italy, and three with Slovakia, and more are expected. The powers in this measure under the Police Act 1996 and the Conventions described above would provide an alternative basis for this cooperation.
- 7.6 The Scottish Government has instructed a Scottish Statutory Instrument under section 99(1)(e) of the Police and Fire Reform (Scotland) Act 2012. This will specify the same UN Conventions to designate joint investigation teams for the purposes of provisions under the 2012 Act. No date has yet been identified for laying the SSI before the Scottish Parliament; it will be subject to negative procedure.
- 7.7 Similarly, Northern Ireland is making its own arrangements to pass its own legislation under the Police (Northern Ireland) Act 1998.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it specifies alternative legal bases in the place of an EU Convention that the UK will no longer be party to after EU withdrawal.

9. Consolidation

- 9.1 N/A

10. Consultation outcome

- 10.1 The following departments were consulted in establishing whether the proposed UN Conventions would sufficiently plug the capability gap; Crown Prosecution Service,

Serious Fraud Office, Attorney General's Office, Department for Exiting the European Union, Department for Digital, Media, Culture and Sport, and HM Revenue and Customs. This consultation was informal, and the departments were contacted during the drafting process. They unanimously indicated they were happy with the Home Office approach.

- 10.2 Since this is a policing matter, all devolved administrations were consulted. Please see paragraphs 7.6 and 7.7 for outcomes of consultation with Scotland and Ireland.
- 10.3 Wales, Gibraltar and the Crown Dependencies have been sighted on the Home Office's approach.

11. Guidance

- 11.1 The UK's National Member at Eurojust has engaged the affected countries on the plans to use the alternative legal bases. The UK desk will transfer the legal bases for current JITs and establish new ones under the alternative bases when the SI comes into effect.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument, since it is intended to preserve existing arrangements.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The Government would not expect operation of this measure to be the subject of specific or ongoing review.

15. Contact

- 15.1 Leanne Bailey at the Home Office Telephone: 0207 035 5168 or email: Leanne.Bailey@homeoffice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Neil Parkin at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Nick Hurd MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.