

BREXIT AND THE EAW – WHERE ARE WE NOW?

The proverbial Brexit can has been kicked [a little further down the road](#), meaning that future of the European Arrest Warrant (“EAW”) remains uncertain. This article addresses the alternative positions currently provided for.

The Withdrawal Agreement

The current text of the draft [Withdrawal Agreement](#) (“WA”) has a number of Articles which are specifically relevant to the EAW.

The WA sets out the transition period, which starts on the date of its entry in force and runs until 31 December 2020 (Article 126); though that date seems likely to be pushed back given the delayed timetable.

Article 62(b) provides that where an individual has been arrested on an EAW before the end of the transition period, the [Council Framework Decision 2002/584/JHA](#) on extradition will continue to apply. In that respect, the WA provides for business as usual (in the short term).

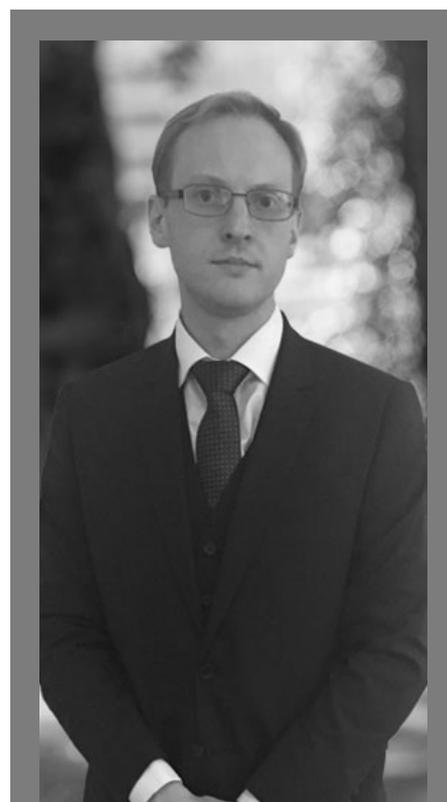
Elsewhere, such as Article 4(4), the WA deals with the continuing role of the Court of Justice of European Union, and the application of [Council Framework Decision 2008/909/JHA](#) dealing with enforcement of a custodial sentence where a person is transferred.

There are, however, some potentially significant changes to the operation of the EAW under the WA. Article 185 allows for Member States who raise “reasons related to fundamental principles of national law of that Member State” to refuse to surrender their own nationals to the United Kingdom; a practice been curtailed by the EAW scheme. In return, the UK may refuse to surrender its nationals to Member States seeking to apply that exception.

No-Deal

Though the House of Commons appears to have [rejected a “no-deal”](#) Brexit as a matter of principle, it still remains the default unless and until something else is agreed. The Government has begun to take anticipatory steps to deal with the significant changes which would occur in that eventuality.

The [Law Enforcement and Security \(Amendment\) \(EU exit\) Regulations 2019](#), which was approved by both Houses on 19 March 2019, is designed, according to the accompanying [explanatory memorandum](#), to ensure that the UK’s legislation “continues to function effectively in the area of security, law enforcement and criminal justice, and regulatory measures in scope of the Regulations should the UK leave the European Union (EU) without an agreement...”





The sheer scope of the Regulations, which comes into force on ‘exit day’, gives an indication of just how much of an impact on cross-border law enforcement leaving without an agreed deal would have on established practices and mechanisms.

[Part 14](#) deals specifically with the EAW scheme. The Regulations re-designate those countries which fall under Part 1 of the Extradition Act 2003 (currently encompassing all the EAW countries) to be Part 2 territories. Existing EAWs, where there has been an arrest, will continue to operate under Part 1. How this position will be considered by the EU is yet to be made clear.

Any new cases will then fall under the purview of 1957 European Convention on Extradition (“ECE”),

a topic previously covered [here](#).

The Future?

The long-term future of extradition between the UK and EU remains uncertain. Even if the Withdrawal Agreement is approved by Parliament, it only provides for a temporary hold-over position.

Unless the UK and EU are able to agree a long-term alternative, then the parties will still default back to reliance on the European Convention on Extradition, an outcome which is not without its own challenges.

It seems likely that the UK will try and negotiate an extradition agreement with the EU, similar to the [agreement](#) between Norway, Iceland and the EU. However, that

began life in 2001, was concluded in 2014, but is yet to actually enter into force. Neither Rome, nor apparently extradition agreements, were built in a day.

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Jonathan also has considerable experience in criminal law and is instructed in criminal matters on behalf of defendants and for the CPS as a Grade 2 panel advocate. Before joining Chambers, he was a Senior Crown Prosecutor for the CPS, where his diligent preparation and robust advocacy meant that he was instructed to act in difficult and serious cases. He gained extensive experience in all types of cases in the Magistrates' and Youth courts, encompassing work from theft to sexual offences. He is also instructed on behalf of various local authorities.