

Extradition between the UK and Ireland is at risk because of Brexit

*Extradition between the UK and Ireland after Brexit will be particularly affected by a No-Deal Brexit. In this post, **Paul Arnell** (Robert Gordon University) and **Gemma Davies** (Northumbria University) bring a closer understanding of the problems on the horizon and ways of mitigating them.*

The UK's departure from the EU means the loss of the European Arrest Warrant (EAW) for the UK. This will have a negative impact on the ability of the UK to extradite wanted persons from all its former EU partners. It was hoped that the UK and EU would reach a deal on criminal justice and security cooperation which would provide for a system of extradition which would closely mirror the terms of the EAW. With less than 50 days until the transition period ends that is looking increasingly unlikely. The consequences of falling back on the European Convention on Extradition 1957 (ECE) are particularly acute for the UK and Ireland.

After the creation of the Irish Free State and the establishment of the Common Travel Area extradition between the UK and Ireland was facilitated through the backing of a warrants system. Whilst this worked well between Great Britain and Ireland this was not the case between the Republic and Northern Ireland. Having its origins in Irish case law, that system of extradition broke down from 1928 to 1965 during which time there were no practically applicable arrangements between the two. New legislative provisions in 1965 formalised extradition, but the arrangement remained a hybrid which incorporated aspects of orthodox international extradition agreements and the previously applicable backing of warrants system.

In 1973 both the UK and Ireland joined what was then the European Community. Whilst integration in the field of police and criminal justice matters was originally a challenge, it was eventually recognised that it must follow as a corollary of free movement. In this vein, the Framework Decision on the European Arrest Warrant was adopted in 2002. Both Ireland and the UK have been part of the EAW since its inception and amended their law in accordance with it. The EAW facilitates a simplified procedure enabling surrender decisions to be made by judicial authorities on the basis of mutual recognition. The benefits of the system are heightened in the Ireland-UK historical and political context. They include the absence of a political offence exception and orthodox double criminality requirement. The EAW contains limited grounds for refusal, and forbids a bar on the extradition of nationals. It has created an effective and efficient process which plays a crucial role in Ireland-UK criminal justice cooperation today.

UK participation in the EAW is not possible after 31 December 2020. However, both the UK and EU have proposed a replacement which closely mirrors the agreement between the EU and Norway/Iceland, which in turn is similar to the EAW. A mutually agreeable deal on extradition is within touching distance, but a few key issues remain. The UK is seeking a proportionality test for incoming requests and a test of trial readiness. Both are tests that the UK has brought into domestic law to deal with concerns about the operation of the EAW. The EU is demanding that the ECJ should have sole jurisdiction to interpret provisions or concepts of Union law. The UK wants no role for the ECJ and instead suggests a political resolution of disputes via a joint committee. These issues are not insurmountable. However, time is now very short. Surrender is merely one part of a proposed comprehensive agreement between the EU and the UK. There are a considerable number of obstacles still standing in the way of the conclusion of an agreement.



In the event of an agreement between the EU and UK not being concluded and ratified by 31 December 2020 the UK and Ireland will fall back on the ECE. This is clearly sub-optimal. The ECE operates through diplomatic channels and therefore extradition entails political approval in the extraditing country. Unlike the EAW, there are no strict time limits and states are not required to extradite their own nationals. Further, under the ECE there are no agreed exceptions to the dual criminality requirement and several safeguards for requested persons in part 1 of the Extradition Act 2003 would no longer be available. An important point affecting the efficiency of a future extradition process is the loss of the Schengen Information System II. Whilst distinct from the EAW, it operates alongside it by providing real-time warrants and alerts. Its loss means Interpol Red Notices using diplomatic channels will be relied upon. Most EU countries have ceased using Interpol *inter se*. Overall, the ECE is out-dated and little-used amongst the Member States. This may lead to UK warrants not being dealt with as a priority and UK prosecution authorities having to rely on informal in-country relationships to a greater extent.

A possible solution to the loss of the EAW in the event of a No Deal is a bilateral Ireland-UK extradition treaty. There is precedent for bilateral agreements on extradition which can closely mirror, or in fact surpass, the EAW in terms of efficiency. Five Nordic countries (not all of which are EU members) have a regional system of extradition termed the 'Nordic Arrest Warrant' (NAW). The NAW mirrors a number of aspects of the EAW and mutual recognition is made explicit. The notable differences are that there are even lower minimum penalties and double criminality is completely abolished under the NAW. Further, procedural time limits are shorter than those within the EAW. It is, therefore, possible for Ireland and the UK to conclude a bilateral extradition agreement with terms that provide for even closer cooperation than the EAW. The drivers for a regional Nordic system of extradition are equally present between the UK and Ireland. Nordic countries have a closely connected history, similarities in their legal systems and languages and removed their borders long before the advent of Schengen.

Lessons must be learnt from Ireland-UK extradition history. The EAW depoliticised extradition in the Irish-UK context and whilst there is political will on both sides for this to continue, falling back on the 1957 Convention forces extradition back into the political space. In the absence of a multilateral agreement, the optimal solution for Ireland and the UK is a bilateral extradition arrangement. Whilst Brexit changes the status of UK citizens, who no longer enjoy EU citizenship, it importantly does not change the fundamental tenet of the Good Friday Agreement. Citizens of Northern Ireland and the Republic of Ireland are to be treated equally, they can choose Irish citizenship, British citizenship, or both. They are free to choose where to live, work and study. The Common Travel Area subsists. The shared history of the UK and Ireland, particularly in relation to their citizens living on the island of Ireland, lends strong justification to a continued close extradition relationship.

This article gives the views of the authors, and not the position of LSE Brexit, nor of the London School of Economics. Image by [Cograng](#), (CC BY-SA 4.0).