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Kingsley  
Napley

**“Extradition, Brexit, Interpol and the General Election”**

**14 January 2020, 9 Bedford Row (Extradition Group)**

**Overview slides**



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## **Overview of chronology**

- 31/01/2020 – “Exit day” / Treaties cease to apply to UK
- 31/01/2020 to 31/12/2020 – Transition period (unless extended)
- From 31/12/2020 – Shift to Part 2 and (?) from SIS II to INTERPOL



## Transition period – EU law and the EAW FD

- Withdrawal Agreement (WA)
  - Art 127: EU law applies to UK in transition period (TP)
  - Art. 62: EAW FD applies if arrest before end of TP
- EU (Withdrawal) Act 2018
  - Repeals ECA 1972 on exit day + provides for retained EU law
- EU (Withdrawal Agreement) Bill 2019/20 (currently before Lords)
  - Will amend 2018 act to preserve ECA 1972 effects during TP
- Impact on Pt 1 cases on exit day / during the TP?



## **Transition period – specific issues (1): sentence transfer**

- No Article 4(6) EAW FD in the UK (but CJEU case-law on it may be relevant)
- Framework Decision 2008/909/JHA applies if judgment received in the TP
- Main substantive principle: encouraging social reintegration
- Practical points to have in mind
  - Take the initiative in the issuing state?
  - Outstanding appeals need to be exhausted
  - Adjournments needed to give it time to happen
- Judicial review of negative NOMS decisions? Funding and facts.



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## **Transition period – specific issues (2): post-Brexit return / settled status**

- EEA Regs (“free movement”) will not be retained long
- Settled status benefits: holder can return within 5 years
- Essential criteria: I have lived here for 5 years, and am suitable
- Exclusion decisions on criminality grounds / proportionality
- Practical issues: evidence, ID documents, appeals (if available!)
- Likely basis for future return if no status: general immigration rules 😞



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## Post-transition period – extradition landscape

- Justice treaty unlikely by end of TP: fall back on 1957 Convention
- Law Enforcement & Security (EU Exit) Regulations 2019/472 (not in force)
  - Re-designation of Cat 1 territories as Cat 2
  - Continuity provision for those arrested pre-end of TP
- Implications of a return to Part 2 for EU territories
  - Dual criminality, no framework list
  - ☹️ - Loss of s 12A, s 21A, s 21B?
  - 😊 - Loss of Article 4A EAW FD?



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## **Brexit and EU databases (SIS II etc.)**

- Schengen Information System II (SIS II)
  - WA provides for retention of UK access for TP + three months
  - Commission Adequacy Decision needed for continued access
- Other key databases
  - European Criminal Records Information System (ECRIS)
  - Europol Information System (suspected criminals and terrorists)
  - Passenger Name Records (passenger info, payment data etc.)
- Precedent for third-country access to SIS II (Switzerland); not for ECRIS!



## Potential increased reliance on INTERPOL

- Extradition (Provisional Arrest) Bill proposal
  - Warrantless arrest in some Pt 2 cases for “serious offences” (>3 years)
  - “Trusted” countries – currently Five Eyes, Liechtenstein, Switzerland
  - Applied to EU (by then Pt 2) countries, could mitigate loss of s 3 power
- Outlook if relying more on INTERPOL, and SIS II gone
  - Law enforcement perspective: not good, potential loss of SIS II is bad
  - Practitioner perspective: remedies for challenging INTERPOL red notice / diffusions clearer than for SIS II alerts. But two layers of problem.





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## **Speakers**

- Ben Joyes, 9BR Extradition (chair)
- Alison Riley, Kingsley Napley
- Jonathan Swain, 9BR Extradition
- Alex Tinsley, 9BR Extradition

## **Next event (March/April 2019)**

- Specialty and requesting state justice
- The role of extradition lawyers in foreign / ECHR litigation
- Speakers from 9BR Extradition, the Brussels bar and more

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