



OFFICIAL REPORT
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Justice Sub-Committee on Policing

Monday 26 October 2020

Session 5



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JUSTICE SUB-COMMITTEE ON POLICING

10th Meeting 2020, Session 5

CONVENER

*John Finnie (Highlands and Islands) (Green)

DEPUTY CONVENER

*Margaret Mitchell (Central Scotland) (Con)

COMMITTEE MEMBERS

*James Kelly (Glasgow) (Lab)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

*Liam McArthur (Orkney Islands) (LD)

*Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Detective Chief Superintendent Patrick Campbell (Police Scotland)

Deputy Chief Constable Will Kerr (Police Scotland)

CLERK TO THE COMMITTEE

Diane Barr

LOCATION

Virtual Meeting

Scottish Parliament

Justice Sub-Committee on Policing

Monday 26 October 2020

[The Convener opened the meeting at 11:00]

Decision on Taking Business in Private

The Convener (John Finnie): Good morning, everyone, and welcome to the Justice Sub-Committee on Policing's 10th meeting in 2020. We have received no apologies.

Agenda item 1 is a decision on whether to take in private agenda item 3, under which we will review the evidence that we have heard today. Are we agreed to take agenda item 3 in private? As no member objects, we agree to take that item in private.

Brexit and Policing

11:00

The Convener: Our main item of business is an evidence session on the impact of the United Kingdom's withdrawal from the European Union on policing in Scotland. I refer members to paper 1, which is a note by the clerk, and paper 2, which is a private paper.

I welcome to the meeting Deputy Chief Constable Will Kerr, local policing, Police Scotland; and Detective Chief Superintendent Patrick Campbell, specialist crime division, Police Scotland. I invite Deputy Chief Constable Kerr to make some brief opening remarks.

Deputy Chief Constable Will Kerr (Police Scotland): Thank you, convener, and good morning to members of the sub-committee. Thank you for the opportunity to appear in front of the sub-committee to give evidence on the important issue of Brexit and policing.

Police Scotland welcomes the scrutiny of our preparations for the UK's exit from the European Union. I said at the start of my evidence to the Justice Committee on 1 October 2019 that there were still a number of unknowns in that space and that those unknowns made us rather institutionally uncomfortable. That remains the case as far as some of the details are concerned, but, obviously, the context has changed significantly over the past seven months with Covid-19, and the issue of concurrency, which I will come to in a moment, has become increasingly important to us.

I do not intend to rehearse all the details in Police Scotland's submission to the sub-committee. Our planning is still taking place on two fronts. The Brexit delivery team is working across the United Kingdom and with international partners to deal with the loss of justice and home affairs measures and the contingency measures, and the Brexit contingency planning team is dealing with civil contingencies and the relationship with partners in that respect.

I hope that some basic context points will help the committee with its questions.

In Scotland, we are in as good a place as we can be. Our relationships with partners are very good, and we have retained, seconded or embedded a detective inspector within Interpol at Lyon and within Europol in the Hague. As I said when I gave evidence previously, our civic infrastructure in Scotland is as good as or slightly better than any that I have experienced in these islands in respect of our structures, our civil contingencies preparation and our testing and exercising regime. The benefits of the single

national service's capacity, resilience and flexibility have significantly added to our ability to prepare in that space. However, irrespective of what the replacements are—I hope that there will be replacements for some of the justice and home affairs measures—some of the important measures will remain slower, less effective and more bureaucratic than what we had before. That is a very important and honest bit of context at the outset.

There is one important caveat. We previously talked about reasonable worst-case scenarios under operation yellowhammer, which is now referred to as D20. A reasonable worst-case scenario is not a prediction, of course; it is a set of the worst plausible risks. However, Covid-19 has undoubtedly narrowed the band of what is considered to be plausible. We have seen that over the past seven months, and I would be very happy to go into that with members.

I will say a wee bit about the command and control measures over the next couple of months. The national co-ordination centre will be set up on 7 December. We have had to expand the provision for the national co-ordination centre, which is a multi-agency arrangement, to take account of some of the risks associated with concurrency, whereby lots of things are happening at once. Given the contextual backdrop of Covid-19, we have had to increase the physical distancing in what is a multi-agency arrangement.

The issue of concurrency has had an impact on our thoughts and preparations for policing next year in two respects; I will be happy to go into the detail of that later. The first respect relates to the cumulative impact on the civic tolerance of the country and its resilience and capacity over what will be a very busy 2021, when there will be lots of things happening at once, against the backdrop of the pandemic and the restrictions that people are facing in their lives. Secondly, 2021 will be an event and protest-rich environment, and the fact that it is becoming harder to differentiate between various causes poses challenges for us in the policing debate.

I am conscious of the time, so I will conclude. The transition period will come to an end on 31 December 2020. Covid-19 will make the policing environment and the general environment in Scotland more challenging, but our civil contingency planning is done on an all-risk basis, even though the context is now very different.

I would like to make a public plea that is similar to the one that I made last year when I appeared in front of the Justice Committee. For obvious reasons, Brexit has, to an extent, come off the public radar over the past seven months, but it still engenders very strong views, which people are perfectly entitled to express, provided that they do

so peacefully and lawfully. However, because people are tired and a bit more impatient as a result of the wide range of restrictions that they have had to face over the course of the past seven months, it is even more important that, collectively and individually, we take responsibility to use temperate language and to behave temperately when we express our views on Brexit and a range of other issues over the course of what will be a very busy 2021. Words and behaviour will continue to matter.

Thank you for giving me the opportunity to make a few opening remarks.

The Convener: Thank you, DCC Kerr. I also thank those organisations that provided us with written evidence, which we always find helpful.

Before we move to questions, as usual, I remind members to indicate who their question is for, and I remind all attendees to wait a moment for their microphone to be activated before they speak.

I will kick things off with a general question for Mr Kerr. I stress the word "general"; a number of highly specific questions will be asked by my colleagues. Will you outline the engagement that has been undertaken with European partners with regard to any future working arrangements? Can you highlight any significant concerns or issues that have been raised?

Deputy Chief Constable Kerr: Yes, of course, convener. With your indulgence, I will ask Detective Chief Superintendent Pat Campbell to provide a few details, to give a flavour of what has been done and a few practical examples that might help the sub-committee.

As I said in my opening comments, we have embedded senior detectives in Interpol and Europol. Scotland has very good bilateral relationships with some of our international and European partners, and that has stood us in good stead in preparations for contingencies or alternatives to the justice and home affairs measures. At this point, I will hand over to DCS Campbell.

Detective Chief Superintendent Patrick Campbell (Police Scotland): Good morning. As DCC Kerr said, engagement has been taking place for the past two years on contingency planning for the loss of the justice and home affairs measures.

We have an excellent relationship with Europol and Interpol—we have a detective inspector from Police Scotland embedded in both organisations. In respect of our UK-wide engagement, we take part in a number of strategic and practical meetings on planning for the eventuality of EU exit. That is split between the two possibilities of a negotiated outcome and a non-negotiated

outcome. A lot of work is being done on the potential loss of the existing tools and the justice and home affairs measures.

Significant engagement continues with all EU states. For example, we recently had enforcement action in southern Spain regarding a Scottish male who was wanted for murder. Through the relationships that we have built up, he has been arrested and is now subject to extradition. As I said, the relationships with our European partners are strong, and we hope to continue them.

The Convener: In general, what areas of concern do you have? As I said, we will have specific questions, and it is good to hear of the sort of co-operation that you have outlined, but are there any areas of concern?

Detective Chief Superintendent Campbell: We are considering 36 justice and home affairs measures from a UK perspective, and we have reduced them to 10 priority areas. Some of the areas in which we are carrying out contingency planning will come as no surprise. They include the loss of the European arrest warrant, which is significant. In the past 12 months, we have executed 70 incoming and outgoing European arrest warrants, which has involved bringing individuals from the European Union back to Scotland to face justice and returning individuals who were resident in Scotland to the EU.

The loss of that is a significant issue and, as I said, contingency planning is being done. We are seeking an agreement with the EU on a bespoke extradition process. You will be aware of the UK Government's Extradition (Provisional Arrest) Bill, which has been going through both houses of the UK Parliament and which will give us a power of arrest in respect of an Interpol red notice. We are building up those contingencies with UK partners.

Another area is the loss of access to the Schengen information system II, which is basically an information exchange between the UK and EU states. That is a significant loss and, again, we are carrying out contingency planning on that. However, making better use of Interpol notices and diffusions will result in slower and more bureaucratic processes. Whatever we have, it will be suboptimal.

Some other areas to highlight are Eurojust and Europol—as I said, we have a representative over there and there is quick information exchange—and getting enforcement action on the ground in Europe when we require it.

A lot of bilateral work is going on to engage with EU states through the UK framework. We are carrying out contingency planning and considering our best options moving forward.

Shona Robison (Dundee City East) (SNP): My question is probably directed to Mr Campbell, who started to talk about the European arrest warrant. I want to pick up on that in a bit more detail. You described the arrangements that are being put in place as “suboptimal”. It would be helpful to hear a little more detail of the bespoke extradition process that you are working on. How will that be suboptimal compared to the European arrest warrant system that is in place at the moment? In broad terms, what will be missing from the European arrest warrant process in anything that replaces it?

Detective Chief Superintendent Campbell: Contingency plans are already in place around the loss of the European arrest warrant and reverting to the 1957 European Convention on Extradition, which involves a slower and more bureaucratic process for extraditing individuals to the UK. On your point about the differences, even with the Extradition (Provisional Arrest) Bill, which is going through just now and which will give us a power of arrest, we are likely to see longer, slower and more bureaucratic extradition processes as we enter 2021.

Shona Robison: What does that mean for criminal justice and its processes? To be blunt, will you be less likely to be able to arrest people quickly? We know that that has been done speedily—during the past few months and over the past couple of years, there have been examples of arrests being made very quickly. Are you saying that, under the new arrangements, that will be less likely to happen? Have you worked out what the average timescale for arrests might be under those arrangements? Have you gone into that granular detail yet?

11:15

Detective Chief Superintendent Campbell: We have not gone into that detail at this stage. Obviously, the negotiations are on-going and, as I said, the bespoke expedition process will, I hope, fill the gap resulting from our losing the European arrest warrant.

I will give an example of timescales. The person I mentioned was arrested for murder on 3 October and will be returned to Scotland on 11 November. Therefore, in four or five weeks, we will have had an individual arrested in southern Spain and brought back to face justice in Scotland. The timescale is likely to extend as we move towards the bespoke model, but it is really difficult to work out what that will be at this stage, because the negotiations are on-going.

Shona Robison: Over the next few months, as you work through the granular detail of what the new timescales will look like in comparison with

the European arrest warrant timescales, it would be helpful if you could furnish the sub-committee with some of that information. Would that be okay?

Detective Chief Superintendent Campbell: I have absolutely no issues with doing that.

Shona Robison: Thank you. That is all from me, convener.

The Convener: The next series of questions will be from Rona Mackay.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I will come to Mr Campbell first. You mentioned the 10 priority areas and the loss of the EAW. Do you have concerns about your ability to put in place alternative arrangements within the timescale that is involved? Will the loss of the EAW and the Europol operation leave a big gap in tackling international crime?

Detective Chief Superintendent Campbell: On the work with the UK Government and UK law enforcement, the negotiations are on-going because we are still in the transition period. However, you are quite right to say that the outcome is unclear even at this late stage.

The work that we have done over the past two years to build in contingency planning around the loss of the measures that you have mentioned will provide us with a framework in which to continue that engagement. As I said, what we move to might be more cumbersome and bureaucratic, but the framework that we are developing will provide us with the capability and capacity to continue.

The loss of the EAW is significant. We successfully utilise that tool day to day with our European partners. As I have touched on, the reversion to the Council of Europe convention and the greater use of Interpol through the notices and the diffusion instruments that can be utilised will provide us with the capacity to arrest individuals in the EU. However, again, our concern from a law enforcement perspective is that that might lead to the development of slower, more bureaucratic processes.

On Europol, we have daily engagement with our colleagues in UK law enforcement and with EU law enforcement through the Europol gateway. We still have a presence in Europol at this stage, and it is crucial that we maintain the relationships as we move towards 31 December.

Rona Mackay: My next question is to Mr Kerr, who I think wants to come in anyway. You mentioned a detective inspector being embedded in the European institutions. Can you give us an idea of how many staff will be affected? What will happen to the staff who are involved in Europol and the European arrest warrant operation?

Deputy Chief Constable Kerr: I was just going to come in to support what Patrick Campbell was saying with a wee bit of practical flavour on the loss of some of those key measures. The European arrest warrant is a fast and efficient process. DCS Campbell talked about being able to get somebody on to our territory from southern Spain within a matter of five weeks. Times were different when the 1957 convention was enacted and, if we have to revert to it, it will not be as fast or efficient. As has been covered in the media in the past few weeks, since 2011 more than 800 people who have been subject to trial in Scotland were arrested and brought back to this country under the European arrest warrant.

Just to give a wee bit of flavour, SIS II is about sharing real-time data. Crime in 2020 has a very fluid dynamic both in real time and in the cyber environment. Those real-time alerts give a significant amount of benefit and expedition to police investigations; there are well over 60 million nominal based alerts in that system.

The Interpol system is very good, but it is just not as good. As you will know, Interpol has 197 member states. Either a red notice will be put out to all member states or there will be a diffusion, which is more geographically limited, but putting something out to 197 member states will not be as good as having a system that is run centrally and to which we all have access.

There will be a limited amount of movement of staff. We hope to keep both embedded inspectors in Interpol in Lyon and we also hope to keep our embedded detective inspector in Europol in The Hague. We have invested significantly and effectively tripled the number of officers that we have working in the international unit. Scotland should take account of some of the loss of embedded staff if that happens and make sure that we have capacity at our prime campus at Gartcosh so that we can rebalance.

As Patrick Campbell outlined, our bilateral relationships are good, but things are just not going to be as good or fast as they were before.

The Convener: Our next series of questions is from the deputy convener, Margaret Mitchell.

Margaret Mitchell (Central Scotland) (Con): I will ask my question of Mr Kerr first and perhaps Mr Campbell can then take over.

Can you confirm that it is 31 October as opposed to 31 December when Police Scotland's representation at Europol ceases and it will have to apply for re-entry? If re-entry to Europol is not possible, what will that mean in practical terms and how will Police Scotland seek to replicate the work covered by Europol with other partners?

Deputy Chief Constable Kerr: I will leave DCS Campbell to give you a bit more practical flavour on how that will work, the timeframes and what the alternative arrangements will mean. He can perhaps take you through a case study that will bring it to life a wee bit.

Detective Chief Superintendent Campbell: Depending on whether we have a negotiated outcome or a non-negotiated outcome, we will have to remove our detective inspector from The Hague and Europol on 31 December, not 31 October. Again, depending on whether we have a negotiated outcome or a non-negotiated outcome, and on what happens after, we might have to remove our representative from Europol for a period of time. We are looking at contingency planning for maintaining his presence in The Hague because of the relationships that he has built up. We are looking at continuing engagement with the other EU states through bilateral channels.

The other aspect is that, moving forward, the UK might be seen as a third country and have third-country status. Third countries such as the United States and Canada are present in The Hague, so there will be the option for us to attend thereafter under third-country status. That would reduce our power in Europol, but we would be able to maintain our presence.

Margaret Mitchell: My next questions are about the Schengen information system, which has already been touched on. The system is obviously very important in exchanging member states' police data and in sharing law enforcement alerts in real time. The UK seeks a continued agreement with the EU, but the EU has said that it is not legally possible for non-Schengen third countries to co-operate through that mechanism. I understand that a Swedish-type initiative is being proposed by the EU, but that has been deemed as not equivalent and not a suitable alternative. A Schengen-building measure has been proposed, so it is unclear why the EU considers there to be a legal barrier to full Schengen agreement.

Again, I will address my questions to Mr Kerr, who will no doubt pass over to Mr Campbell when he wants. There are three things that I want to establish. Will you outline the importance of the SIS? Does Police Scotland consider the Swedish-type system to be a suitable alternative. If not, will you explain why? Will it be possible for Police Scotland to replicate the advantages of SIS II by other means?

Deputy Chief Constable Kerr: The "II" in SIS II relates to its being the second generation, because there has been iterative development of the processes. It is a single system that holds all member states' data and all the alerts, and there is a single point of access for us. It is an expedient,

real-time alert system that is massively beneficial to policing.

I will give the short answer to the deputy convener's three questions, and then I will hand over to DCS Campbell to give a more practical flavour. The SIS is incredibly important and is used daily to benefit our ability to police Scotland and keep the people of Scotland safe. On the Swedish alternative, I will ask Pat Campbell to talk through what we would need as a replacement to provide balance.

The third question was about whether the advantages of the system could be replicated. The short answer is no; we simply could not replicate in full—certainly not in the short term—a system that holds all the current member states' data and nominal alerts. We could not retain and keep up to date such a system in Scotland, because we would not have access to the single system that is updated daily by member states. It is not just about the capacity of the system and how expedient it is; it is about the fact that the real-time alerts are updated daily. The currency of the system is every bit as important as anything else.

I hope that that gives a flavour of how important the system is. I will hand over to DCS Campbell to give a bit more flavour.

Detective Chief Superintendent Campbell: As the DCC said, the Schengen information system is a Europe-wide database that enables the participating Schengen member states to share real-time information. It is important for border control and law enforcement co-operation. As the DCC said, the benefit is the sharing of fast-time information, which is used day to day by Police Scotland. The UK is one of the major contributors to the Schengen information system.

In relation to the fallback and contingency planning, we are looking at the route back into Interpol and at utilising the framework of notices and diffusions. However, as the DCC quite rightly pointed out, the model that is being proposed will be slower and will involve reduced connectivity across EU states.

The draft text from the EU made it very clear that it would not be legally possible for non-Schengen third countries to co-operate with the EU through this mechanism. There is no legal precedent for that. There are a number of areas that are being looked at at this time.

The challenge here is about replacing something that we use daily to get quick information for front-line policing. What we are moving towards is a far slower and more bureaucratic process.

11:30

Margaret Mitchell: That is helpful, but I wonder whether I can press you a little further on that. Obviously, it will be for the legality to be pressed out, but I think that there is some dubiety that that is actually the case. It seems to me that it would be mutually advantageous to both the EU and the UK to share those real-time alerts.

The UK did not join in with the Schengen information system until 2015. Before that, as you said, there was Interpol, which exchanged information and warnings with other EU member states. Will you explain how Police Scotland used Interpol before 2015? Would replicating that be helpful if the worst-case scenario comes into being?

Detective Chief Superintendent Campbell: Interpol is a key law enforcement partner, as it was before the UK became an integral member of the Schengen information system. We will continue to use Interpol, and we will use it now more than ever. That is one of the reasons why Mr Kerr and the police executive endorsed the placing of a Police Scotland full-time representative in Interpol, which has worked really well over the past 18 months in building our relationship with Interpol.

We have also moved a number of our alerts that are valid on the Schengen information system through to the Interpol network. The fall-back and contingency planning is continuing to ensure that the alerts that we have on the Schengen information system are transferred over to the Interpol network in order to allow us to have some capability and capacity as we head towards 2021.

The Convener: I have a question for Mr Campbell about some of the measures that are in place that involve data exchange between European counterparts, such as the Prüm framework—I hope that I pronounced that correctly—for DNA and fingerprints, and the measures for passenger name records. Will you outline how often Police Scotland uses those measures? How important will it be for continued access to be secured?

Detective Chief Superintendent Campbell: As you said, the Prüm framework concerns the exchange of biometric data—DNA and fingerprint data—between EU states, and we use that daily. We have had some excellent results in relation to crimes ranging from homicide to serious sexual crimes, and vice versa for EU states in relation to DNA and fingerprint hits for crimes that have been committed elsewhere. It works very well, and we continue to use it. We are purging various crime scene stains on to the various EU databases to ensure that we have full coverage as we move towards 31 December. The relationship through

Prüm is excellent and there is an appetite to continue that exchange of biometric data as we move into 2021.

The Convener: Our next set of questions comes from Liam McArthur.

Liam McArthur (Orkney Islands) (LD): Good morning. DCC Kerr, in both your written evidence and your introductory remarks, you mentioned work that is being done on civil contingency preparations in various areas, based on reasonable worst-case scenarios. Will you talk in a bit more detail about the areas where such preparations are being made, and perhaps draw out those that are causing you and your colleagues the most concern?

Deputy Chief Constable Kerr: Yes, I am happy to talk about that in more detail. The reasonable worst-case scenario, which we now call D20 but which was referred to as yellowhammer in the past, was recently shared with us. We have had discussions with the Scottish Government. The infrastructure that exists within Scotland to operationalise the risk mitigation templates and preparedness templates at a macro-strategic level is the strategic preparedness partnership, chaired at times by the Deputy First Minister. Under that, there is a set of sub-tiers, all the way down to 32 local resilience fora at local government level across Scotland.

Since we got the latest outline of the reasonable worst-case scenario, those preparedness checklists have been shared with the 32 resilience fora and are being updated by them. That will lead to further testing exercises at the end of November.

I can give you a sense of the sort of areas that we are particularly concerned about and are spending a lot of time thinking about. There are four in particular: maritime and fisheries; protests and demonstrations; the justice and home affairs measures that we just spent some time talking about; and travel and freight, with regard to people's ability to enter and exit Scotland, as part of the wider UK arrangement.

In the past couple of months, a significant amount of work has been done on freight and lorry movement, led by Transport Scotland, with a particular focus on overflow arrangements. The plan is called operation overflow and will utilise Castle Kennedy airfield close to Cairnryan in Dumfries and Galloway. We want to work out where we can deal with any stacking issue safely and in a Covid-compliant way. That is important, because the operating context and environment has changed fundamentally from what it was seven or eight months ago.

As part of the arrangements around the Scottish strategic resilience partnership and the EU exit

group, we have created what is called a concurrency working group, which is trying to get a sense of how all the challenges might compound, if they all happen at the same time. Obviously, we hope that they will not all happen at the same time and that we will not also have to deal with a flu pandemic as we enter 2021 and the winter weather worsens. Next year is going to be busy anyway, with a range of issues arising against a backdrop of constitutional, economic and on-going operational issues. All those things will compound as the year continues, so we are looking, on an all-risks basis, to see how we can minimise the impact of those issues on the people of Scotland and minimise disruption. However, particularly if there is a non-negotiated outcome at the end of December, there will inevitably be some disruption.

Liam McArthur: That is helpful. I want to drill down on some of those points. You mentioned maritime issues. One of the risks that has been associated with Brexit, and particularly a no-deal Brexit, is that of illegal fishing, and other concerns have been raised about the potential for smuggling, illegal immigration and port closures, which you perhaps alluded to when you mentioned the work around the transfer of freight. Could you talk a bit more about the role that Police Scotland will play in relation to some of those issues?

Deputy Chief Constable Kerr: We talked about that when I appeared before the Justice Committee. In relation to how we can police, in the broadest sense, some of the fisheries-related challenges, I said that

“we are trying to balance aspiration with realism.”—[*Official Report, Justice Committee*, 1 October 2019; c 39.]

I note that fisheries was one of the three principal sticking points in the meeting with EU leaders that ended on 15 October without a deal being signed. There needs to be a bit of realism about what can practically be done offshore and what we can do by way of gathering evidence onshore. Obviously, the issue relates to activity outwith the exclusive economic zone, which is set at 12 nautical miles. However, even in terms of our preparation, it is unrealistic for Police Scotland to consider boarding fishing vessels 14 or 15 miles out in the North Sea in the middle of January. Realistically, that is just not going to happen.

Therefore, we are looking at contingencies and protocols to allow evidence to be gathered if there have been breaches and to ensure that we can start to address some of those onshore and, if necessary, engage with the Crown to see what offences have been committed. There will be a range of such tensions, which will apply not only to whether fishing has taken place within the 12 nautical mile area. There will be tensions in the ports among members of the fishing community

who are based in Scotland and those who are based further afield.

We are very cognisant of the issue and are doing a significant amount of contingency planning on it. We have invested more—an additional 60 officers—in our border policing command, which polices ports and airports across Scotland, to make sure that we have that additional capacity.

In the second part of your question, you asked about serious and organised crime, which is an area that we remain concerned about. It is clear that Police Scotland has a locus—indeed, has primacy—in dealing with the exploitation of our borders by serious and organised crime gangs, whether that relates to the common travel area or any other aspect of our borders or ports. In the past, serious and organised crime gangs have continued to try to exploit our borders by moving a range of commodities, including drugs. Increasingly, they have sought to move people. We are building up a significant intelligence profile on that, and the intelligence unit that has been set up, which is associated with Brexit, has continued to work closely with partners in an attempt to mitigate the points of vulnerability as much as we can.

Liam McArthur: I have a brief follow-up question on your point about the practical difficulties of enforcement in the marine environment. What discussions have you had with fisheries protection colleagues in Marine Scotland about the role that they would play? There is a risk that they will get drawn into such disputes as well, with the result that they will face many of the same difficulties that Police Scotland will face.

Deputy Chief Constable Kerr: Such conversations have been taking place with Marine Scotland and some of the other agencies involved for a number of months. Again, it is a case of balancing the uncertainty about what might happen with what the worst plausible risk is in a reasonable worst-case scenario, and working in an interagency way to plan for that. Good, structured, detailed planning is being done with a range of agencies.

Frankly, it is partly a case of having to suck it and see, and of waiting to find out what is likely to happen. There will be a range of variables, including the political tone at the time when the transition period ends, which will undoubtedly have an impact on the behaviour of the people involved. That is why I said at the beginning of the meeting that words and behaviour matter. Whatever sector we work in and whatever role in society we have, there is a responsibility on all of us to continue to use temperate language so that we do not up the tension unnecessarily in those areas. We know that we are talking about people's livelihoods, which are extremely important, but we

do not want the tension, whether offshore or onshore, to turn into behaviour that results in our having to officially and formally intervene.

Liam McArthur: Thank you.

Fulton MacGregor (Coatbridge and Chryston) (SNP): One of the issues that we have heard most about in the media is the potential impact of Brexit on the border between Ireland and Northern Ireland. Have any discussions taken place about the possibility of Police Scotland providing mutual aid to colleagues in Northern Ireland in the event that that is required?

Deputy Chief Constable Kerr: You are right—there is daily contact with our colleagues in the Police Service of Northern Ireland and other colleagues to discuss the on-going issues that fall out of the Northern Ireland protocol and the displacement issues that will arise.

Next year, as we exit the transition period, is also the centenary of the partition of the island of Ireland, so there might also be displacement of other issues into the west coast of Scotland. We are in daily contact with our colleagues in Northern Ireland.

11:45

You raised the issue of mutual aid. There have been discussions across the United Kingdom about the requirements for importing officers into Scotland or Police Scotland exporting our officers to support any other part of Great Britain, which includes arrangements for exporting officers to Northern Ireland. The arrangements for mutual aid are an operational decision for the chief constable but, ultimately and always, we must keep the people of Scotland safe, so the chief constable will not make any decisions that undermine our capacity or resilience to deal with the issues that exist in Scotland. However, we can reasonably assume that the hybrid arrangements that are set out in the Northern Ireland protocol will lead to some issues at ports on the west coast of Scotland. Therefore, we are in daily contact with colleagues in the PSNI and other colleagues in Northern Ireland. As you would expect, we will continue to plan for those issues.

Fulton MacGregor: You have also talked about the flexible response unit, which has been introduced on a trial basis. If required, would that unit have a role in those mutual aid arrangements? Can you outline the core purpose of the unit at present and what else it could be utilised for?

Deputy Chief Constable Kerr: I will give you a bit of the flavour of the flexible response unit. We set it up in—[Inaudible.]—and stood it down again after the first couple of false starts that were

related to the UK's exit from the European Union. Since it was formally stood up again on 5 August last year, it has been deployed more than 23,600 times. The vast majority of those deployments by Police Scotland have been related not to Brexit but to a range of other public order or large-scale event management issues, such as Extinction Rebellion protests in various parts of the country—including the 12 arrests that we made on Friday as a result of the protests in Grangemouth. Officers have gone to various parts of the country to assist local policing with capacity and resilience, to deal with issues connected with parades or the recent Black Lives Matter protests, for example. That public order unit gives us capacity and resilience and allows the single national police service to flex our resources, when necessary, any part of the country and has proved to be immensely beneficial, and we will probably retain it up to and through the summer of next year.

Could some of those officers be deployed elsewhere under mutual aid arrangements? They might be, simply because the flexible response unit includes public order trained officers, and it would have to be public order trained officers who were deployed elsewhere.

The unit started off with about 300 officers and we are now reducing the numbers; there are just over 260 at the moment and, over the next six weeks, our intent is to reduce the numbers to about 225. The officers have been based in five hubs that cover every part of the country, but we want to return the 50 officers who were abstracted from local and divisional policing in the north of the country to local policing there, because most of the operational deployments for the FRU have been in the central belt and we do not think that it is reasonable or fair to continue to abstract those 50 officers from the north to continually be deployed in the central belt. However, more than 1,000 officers in Police Scotland are trained in Northern Ireland-related public order tactics; we can deploy any of them on a voluntary basis to Northern Ireland, should that become necessary, but I hope that it will not.

Fulton MacGregor: Thank you for that.

James Kelly (Glasgow) (Lab): I will explore with DC Kerr the issue of protests and demonstrations. Obviously, the requirement to observe the guidelines around Covid in order to keep everyone safe has to be balanced with people's right to express a point of view. If, for example, someone put a notice on Facebook saying that they intended to have a Brexit-related protest on Glasgow green, how would Police Scotland handle that?

Deputy Chief Constable Kerr: You are right that there is always a practical balance to be reached in such matters. Articles 10 and 11 of the

European convention on human rights, and particularly the right to freedom of assembly under article 11, are very important and are embedded in domestic law. Respect for human rights is a central tenet of all our policing operations that are conducted in Scotland. Of course, that has to be balanced with safety and broader public health considerations, given the current pandemic.

As you will be aware, we have faced the sort of environment that you mention a number of times over the past few months. During the summer, we had a range of protests in George Square, some of which related to BLM concerns and some of which related to a range of other issues. At times, it is difficult to differentiate the causes that people are protesting about.

You asked what we would do if somebody posted a notification of a protest on Facebook. Our response would be context specific and would depend on how many people were there. We would engage and send out our protest liaison officers to speak to an organiser of the event. Well in advance of the event, we would try to ascertain the number of people involved and the extent to which they would be complying with the FACTS guidance and advice on social distancing, and we would then make a judgment.

If 300 people were protesting and were concentrated in a particular geographic location such as George Square, and if we had a choice between making sure that their rights under the European convention were respected and facilitated and dealing with possible breaches of the social distancing rules, we would have to make a decision about whether it was proportionate to move in and potentially have to use force to try to move people out, which would undermine the whole public health imperative.

Operational commanders make balanced judgments about such matters on a daily basis, and we always defer to the greater public need to protect people and try to minimise recourse to the use of force and people getting hurt. However, as I said, there is collective responsibility. Anybody who organises such an event has to start by taking a close look at not just the aim of the event but their personal responsibility to ensure that they do not do anything that would create a risk to public health or a risk to anybody in the vicinity. We would ask organisers to start from that position, and we would police accordingly after that.

James Kelly: You referred to the fact that, during the summer, a number of protests and demonstrations were held centrally in Glasgow, around George Square. You will be aware that I raised concerns about the policing of one event. I do not want to go back over that, but what lessons have you learned from the policing of demonstrations and protests during the summer,

and how will you use those lessons to more effectively police anything that comes up in relation to Brexit?

Deputy Chief Constable Kerr: We constantly learn lessons about how we police events. We take an event and context-specific approach, but we ensure that we have operational debriefs after all such events to see whether we could have done anything differently or better. Ultimately, it is about collective responsibility. There is a responsibility not just on the police service in responding reactively to an event, but on those who organise and take part in it.

As I said in my opening comments, in 2021, we will have an event-rich and potentially protest-rich environment. Even in George Square, it is sometimes difficult for the police to differentiate between people who are there for different purposes or with different grievances. They are perfectly and legally entitled to express their views about those matters, provided that they do so peacefully and lawfully, but that is a difficult dynamic. It might involve separating out 300 or 400 people who represent three, four or sometimes up to 10 or a dozen groups, and they might not all engage with the protest liaison officers. Police resources will be out trying to find out why people are there, how long they will be there for, what they intend to do and how they intend to do it. That dynamic and fluid environment is sometimes a challenge to police.

The central tenet of your question was about whether we constantly challenge ourselves and learn from individual events and whether we have operational debriefs to see whether we could do something differently or better the next time round. That is a standard part of police operational practice and will continue into next year.

James Kelly: Okay. Thanks for that. I have no further questions, convener.

The Convener: I have no indications of further questions, so I will ask Mr Kerr a question. Earlier, I alluded to the evidence that we have received from various quarters, for which we are very grateful. On Friday, we received a letter from the UK Minister of State for Crime, Policing and the Fire Service, Kit Malthouse MP. He said:

"In the event that it is not possible to reach an agreement, the UK would no longer use or participate in EU law enforcement and criminal justice tools and mechanisms following the end of the Transition Period. The UK has well-developed and well-rehearsed plans in place."

Were you consulted on those "well-developed and well-rehearsed plans"? Indeed, are you sighted on those plans?

Deputy Chief Constable Kerr: One of the questions that was posed to me when I appeared in front of the Justice Committee on 1 October last

year was about information sharing with Police Scotland. I think that I said then that we were more informed than consulted in relation to such issues. The position has moved on in the past 12 months, in that we are in docked in with some of the broader UK planning arrangements.

You asked whether we were consulted on or fully involved in the plans. The plans are still being led by the UK Government in London, which has primacy in that respect. We continue to respond to announcements, including the letter from Mr Malthouse, in a way that is best for Scotland. Irrespective of what happens, we are constantly asserting the different legal and constitutional arrangements in Scotland so that whatever is settled at the UK Government level has to be translated in a way that is practical and deliverable and reflects the legal and constitutional differences in the country.

That is a long way of saying that we are involved, although probably not to the extent that we would like to be. However, we are constantly reflecting the differences in Scotland and ensuring that whatever we do operationally reflects those differences and serves the people of Scotland in the best possible and most practical way.

The Convener: That is a politician's answer. I need to press you on the issue. Like all our evidence, that letter is available online for anyone to see. Is Police Scotland sighted on what we are told are "well-developed and well-rehearsed plans"?

Deputy Chief Constable Kerr: The difficulty is that I am not sure what plans Mr Malthouse was referring to, so it is impossible to give a yes or no answer on whether we are sighted on them. On whether we are sighted on well-rehearsed and well-developed plans generally, the more general answer would probably be no rather than yes. We are docked into a governance architecture that creates those plans. Sometimes we are told at a relatively late stage, but it is impossible for me to give you a straight yes or no answer, because I am not quite sure what plans Mr Malthouse was referring to.

The Convener: Okay. I thank Mr Kerr and Mr Campbell for providing evidence today. It has been very helpful.

That concludes the public part of the meeting. Our next meeting will be on Monday, 16 November, when we will take evidence from John Scott QC and Professor Susan McVie on policing during the coronavirus pandemic. In the meantime, any follow-up scrutiny issues will be dealt with by correspondence, which will be published on our website.

As previously agreed, we now move into private session.

11:58

Meeting continued in private until 12:14.

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