



THE GOVERNMENT RESPONSE TO THE SECOND REPORT FROM THE
SELECT COMMITTEE ON EXTRADITION LAW SESSION 2014-15 HL PAPER 126:

Extradition: UK law and practice

Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty

July 2015

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Conclusions and Recommendations -Human Rights Bar and Assurances

1. *It is right that the human rights bar is set at a high level. Accusations of human rights breaches are serious and the courts should be as sure as possible that they can be substantiated. (Paragraph 60)*
2. *We are content that the courts' interpretation of the human rights bar is suitably responsive, where necessary, to the wide variety of circumstances presented in extradition cases. This provides a real protection to Requested People without interfering unduly with the extradition process. The changes in the application of Article 8 since HH are a welcome confirmation of this. (Paragraph 61)*
3. *Assurances are only used where serious fears of human rights breaches have been demonstrated. We therefore believe that assurances should always be handled carefully and subjected to rigorous scrutiny, particularly to ensure that they are properly and precisely drafted, and comply fully with the Othman criteria. The importance of ensuring that they are genuine and effective cannot be overestimated. They must provide Requested People with real protection from human rights abuse. (Paragraph 88)*
4. *We believe the arrangements in place for monitoring assurances are flawed. It is clear that there can be no confidence that assurances are not being breached, or that they can offer an effective remedy in the event of a breach. (Paragraph 89)*
5. *It is questionable, in our view, whether the UK can be as certain as it should be that it is meeting its human rights obligations. (Paragraph 90)*
6. *We welcome the Government's review of the monitoring of assurances as we are concerned that the current arrangements via consular services fall well below what is necessary. (Paragraph 91)*
7. *We urge the Government to complete its review of the monitoring of assurances as a matter of urgency. Given the interest both Houses of Parliament have taken in the UK's extradition law and the importance of this issue, the Government should present the outcomes of this review to both Houses for debate. (Recommendation 1) (Paragraph 92)*
8. *We recommend the Government make arrangements for the details of assurances to be collated and published regularly to improve the transparency of the process, not least so that the international community and the authorities in a Requested Person's home state can have greater information about when assurances have been required. (Recommendation 2) (Paragraph 93)*
9. *We recommend that greater consideration be given to including in assurances details of how they will be monitored. The Government and CPS should be particularly astute to request such details when they are seeking assurances. (Recommendation 3) (Paragraph 94)*

Government Response

The Government agrees with the House of Lords Select Committee on Extradition Law (the Committee) that the courts are best placed to consider human rights issues in the extradition process, and that the courts explore such issues fully and subject them to rigorous scrutiny.

The Government welcomes the Committee's efforts to understand how assurances are followed up post-extradition and how the current system might be improved. As the Home Secretary noted in her evidence to the Committee, the Government is conducting a review of this matter, and the analysis undertaken and recommendations made by the Committee will be helpful in informing that review. The Government will write to Committee members to inform them when the review is complete and place a copy of it in the Library. It is hoped that the review will be completed by the autumn.

Conclusions and Recommendations- Proportionality

10. *The operation of the EAW, in particular the absence of an effective proportionality check by the Issuing State, means the Government was right to introduce the proportionality bar into domestic legislation. (Paragraph 126)*

11. *We see no reason why the proportionality bar should not be extended to conviction cases given the number of EAWs received for trivial matters; the Government should therefore legislate accordingly. In order for the bar to be effective the National Crime Agency must be resourced accordingly and we also call on the Government to ensure that adequate resources are in place. (Recommendation 4) (Paragraph 127)*

12. *We hope that over time improved practice will develop throughout the EU making the proportionality bar practically redundant. (Paragraph 128)*

13. *We do not believe there to be a similar systemic risk of disproportionate requests to justify a proportionality bar for Part 2 countries. (Paragraph 129)*

Government Response

The Government welcomes the Committee's view that it was right to introduce the proportionality bar into domestic legislation. The Government is confident that the proportionality bar is working effectively, especially when considered alongside other reforms made by the Conservative-led coalition, such as the clarification around the requirement for dual criminality. These reforms, which took effect on 21 July 2014, provide better protections to British citizens and others who are subject to extradition proceedings and are already proving to be very effective. For example, the National Crime Agency (NCA) has refused to certify a total of 196 European Arrest Warrants (EAW) on proportionality and other discretionary grounds. In addition, the EAW frees up police and court time to deal with more important matters as there is an overall saving to the public purse of over £2.5m, given that EAWs cost on average £13k to execute.

Domestic legislation already provides for a proportionality test in conviction cases, under Section 65 of the Extradition Act 2003 (the 2003 Act). It is only where the conduct is punishable under the law of an EU Member State with imprisonment for a term of four months or greater that an individual may be surrendered. For that reason the Government sees no reason to extend the proportionality provisions in accusation cases to conviction cases.

The Government would welcome any steps taken by other Member States to make the proportionality bar redundant. For example, Poland has now amended its domestic law to allow for a consideration of proportionality at the point that an EAW is issued. This is an issue where the Conservative-led coalition had made a number of representations to Poland, and the Government is pleased that this change has now been made. In this regard, it is also worth noting that the second generation Schengen Information System (SIS II) includes a requirement to consider proportionality before EAW alerts are circulated on the system. The Government would expect other Member States to take that obligation seriously. The European Commission's EAW Handbook is being revised at the moment and the Government has called for the elements relating to proportionality to be strengthened.

The Government considers that the NCA is adequately resourced to cope with the current level of demand placed upon the organisation as a result of the EAW regime.

Conclusions and Recommendations- Forum

14. *In our view, the CPS's criterion of "where most of the criminality or most of the loss or harm occurred" is likely to continue to produce unpredictable outcomes. This is unavoidable... The current formulation provides the necessary discretion to the prosecutors to reach sensible conclusions. (Paragraph 138)*

15. *Further commentary on the prosecutors' guidelines for cases of concurrent jurisdiction and their implementation may help to avoid ill-founded criticism. Similarly, providing complete and full information to Requested People about the rationale behind the decision to seek extradition in cases of concurrent jurisdiction may be helpful. We recommend the Government consider what additional information could be provided and issue the necessary guidance to the CPS. (Recommendation 5) (Paragraph 139)*

16. *The forum bar is still a new element to extradition law. It is too soon to come to a view on its effectiveness. (Paragraph 167)*

17. *It may be that a wider 'interests of justice' test ought to be allowed in the forum bar but, on the basis of the evidence we have heard, that is far from certain. With only a small number of cases having gone to appeal, it is too soon to conclude that the bar is too restrictive. (Paragraph 168)*

18. *We conclude that having a process whereby prosecutors' decisions can be directly scrutinised in open court is a valuable addition to the 2003 Act and has potential to make this part of the process more transparent. This may be a useful addition to the law given our conclusions in paragraphs 138 and 139. (Paragraph 169)*

19. *We are content that the provisions concerning the prosecutors' certificate do not undermine the bar. The forum bar should not prevent extradition where a prosecution in the UK would not be possible. The CPS's approach to the certificate appears to us to be a proportionate use of the power to ensure that this does not happen. (Paragraph 170)*

20. *We do not consider that there should be (nor under the EAW scheme could there be) an absolute bar to extradition merely because it is sought in respect of a UK national whose criminal activity was performed entirely in this country. (Paragraph 171)*

21. *We recommend that where a person is normally resident in the UK the courts should be particularly astute to ensure that:*

- (a) no other less draconian measures are available to progress the case to a just outcome;*
 - (b) the forum bar has been fully explored in court;*
 - (c) all relevant Article 8 arguments have been fully evaluated to ensure extradition is not disproportionate; and*
 - (d) due consideration has been given to the possibility of obtaining assurances as to:
 - (i) the prospects of pre-trial bail; and*
 - (ii) the transfer back to the UK of at least part of any eventual sentences.**
- (Recommendation 6) (Paragraph 173)*

Government Response

The Government is confident that the introduction of the forum bar by the Conservative-led coalition has improved transparency in cases of concurrent jurisdiction by ensuring that the courts consider fully where "most of the criminality or most of the loss or harm occurred". This can only increase confidence in extradition proceedings.

The Government disagrees with the Committee's conclusion that it is too soon to make a substantial judgement as to the effectiveness of the forum bar, or whether any further "interests of justice test" would better balance the rights of the individual against the

rights of the prosecutor. The judgment in *USA V Domminich Shaw (2014)*, which was provided to the Committee as evidence, is a clear example that the forum bar is operating as it was envisaged. The Government welcomes this and is pleased this important reform is operating effectively.

The Government welcomes the Committee's analysis and conclusions of the role of the Crown Prosecution Service (CPS) in forum bar cases, both in terms of the effectiveness of the prosecutor's certificate and of the degree to which prosecutors' decisions can be scrutinised in open court. The issuance of any additional information for requested persons or prosecutors in relation to cases of concurrent jurisdiction is a matter for the CPS to consider.

The Government notes the Committee's recommendation that the courts be particularly astute to the consideration of assurances, specifically as to the possibilities of bail post-extradition and of serving part of any sentence back in the UK. Clearly this is a matter for the courts to consider.

Conclusions and Recommendations- *Extradition and Other Areas of Law*

22. *It is not right that a person facing extradition is unable to present sensitive material in order to resist extradition without prejudice to others. (Paragraph 189)c*

23. *We recommend that the Government bring forward proposals to amend the 2003 Act to provide for an independent counsel procedure in order to enable sensitive material to be used in extradition hearings. (Recommendation 7) (Paragraph 190)*

Government Response

The Government had already taken note of the Supreme Court judgement of *VB v Rwanda (2014)* in respect of the difficulties in allowing sensitive materials to be heard in closed extradition hearings. The Government recognises the challenges in this area and notes the evidence before the Committee which suggested that the Supreme Court ruling “*made it clear that legislation would be needed*”. The Government notes the Committee’s recommendation for possible solutions in this area, in particular, the suggestion that an independent counsel procedure be introduced. The Committee’s deliberations have been helpful in providing a foundation for further consideration of this issue by the Government.

24. *The Committee has not heard sufficient evidence to comment usefully on how extradition law ought to interact with proceedings in the Family Court, child abduction cases and people trafficking law. However, clearly these are areas where further investigation is necessary. We recommend that the Government commission a review into these matters. (Recommendation 8) (Paragraph 199)*

Government Response

The Government will give further consideration to how extradition law ought to interact with proceedings in the Family Court, child abduction cases and people trafficking law.

Conclusions and Recommendations- Legal Advice, Legal Aid and Expert Evidence

25. *We recommend that a ticketing system be introduced to manage access to the duty rota in order to ensure proper expertise is available from the earliest point in proceedings to help the Requested Person and the courts. The Government should make the necessary arrangements to require this. (Recommendation 9) (Paragraph 208)*

Government response

The Legal Aid Agency (LAA) does not believe that the cost of introducing an accreditation scheme for extradition work is proportionate to the level of concerns reported to the Committee. Given that no accreditation scheme currently exists for extradition, costs would be incurred in the development of a scheme and defence solicitors would have to pay for training and examination.

26. *It is not acceptable that individuals are kept in any unnecessary pre-trial detention, from either their own perspective or that of the state. Delays to the extradition process are contrary to the interests of justice and place an additional burden on the taxpayer. (Paragraph 239)*

27. *We regret the fact that the district judges at Westminster Magistrates' Court have found it necessary to insert a three month delay into the system. In the light of the Lord Chancellor's comments and the concern expressed by the European Commission, we hope that the Court will keep this automatic delay under review, that the Government will take the necessary steps to eliminate it and that it will therefore be removed at the earliest opportunity. (Paragraph 240)*

Government response

The Government shares concerns about the adverse impact of an automatic three month delay and is committed to working with all criminal justice partners in addressing the relevant issues for this. However, the Government does not agree that factors solely connected to the provision of legal aid could justify an automatic three month delay in extradition cases, given that delays may be caused by various factors unconnected with legal aid.

Whilst the Government accepts that some legal aid applications can be more complex than others, where the solicitor completes and returns the application promptly, it can be processed swiftly. When this happens, there is no reason why the case should not proceed in a timely manner. Closer collaboration and exchange of information between the LAA and the District Judges should help to support this process.

The implementation of the LAA's new online application process - the 'e-Form' - will help to address some of the more common causes for delay following submission of the application for legal aid by the solicitor. For example, hard copy applications or those submitted by e-mail have to be returned if incomplete, whereas the 'e-form' can only be submitted once all relevant fields have been completed. In addition to this, in May 2015, the LAA also introduced a new electronic flag for online extradition applications so they can be identified and processed more swiftly.

28. *We believe the high-level cost-benefit analysis provided to the Baker Review is neither a sufficient nor a credible response to the concerns raised about means testing for legal aid. The Government should conduct and publish a full and detailed cost-benefit analysis. In our view, unless a cost-benefit analysis very clearly favours retaining means testing, the interests of justice should take priority. (Recommendation 10) (Paragraph 242)*

29. *This more detailed cost-benefit analysis should include consideration of the savings that could be made by matters being resolved by lawyers in the Issuing State. (Recommendation 11) (Paragraph 243)*

30. *Again, if the cost-benefit is balanced, the interests of justice ought to take priority. (Recommendation 12) (Paragraph 244)*

Government response

The Government has no plans to undertake a more detailed cost-benefit analysis and rejects any assertion that the means testing of criminal legal aid is fundamentally inconsistent with the timely progress of extradition hearings at City of Westminster Magistrates' Court.

The Government is confident that where the legal aid application is completed and returned to the LAA promptly, it can be processed swiftly, allowing cases to proceed without delay. Ongoing and closer collaboration between the LAA and the District Judges can help to support this process. At the same time, operational enhancements, in particular the 'e-Form', are expected to deliver further efficiencies and so help to combat delays that can arise in some cases.

31. *The Government should, as a matter of urgency, pursue solutions, such as the e-form, to make the process of applying for legal aid work more efficiently and effectively. (Recommendation 13) (Paragraph 245)*

32. *From the submissions we have received we have been persuaded that it is possible for the necessary expert evidence to be obtained on legal aid. (Paragraph 252)*

Government response

The LAA continues to roll out the 'e-Form' nationally and it is now available across the whole of England and Wales. The 'e-Form' system is quicker, minimises the likelihood of rejected applications and is, therefore, more efficient for all users. Decisions can be communicated back to the defence quicker, thus limiting any delays in waiting for the outcome of the application. At the end of May 2015, approximately 70% of applications where the 'e-Form' was available were submitted online and the LAA has seen steady growth in this percentage month on month since the 'e-Form' was introduced. Numbers are, however, slightly lower in London (in the two London tranches the usage of the e-Form is 52% and 63%). Nonetheless, as with other areas, use of e-Forms is increasing. The LAA continues to work with solicitors to encourage its use more widely and is planning to mandate its use from January 2016 under the new Crime Contracts.

Conclusions and Recommendations- *Right to Appeal and the Role of the Home Secretary*

33. *We support in principle the introduction of a leave requirement for appeals but the Government should not bring these provisions into effect until there is confidence that the problems with access to legal aid and specialist legal advice have been resolved. (Recommendation 14) (Paragraph 274)*

34. *We support the changes that have already been made to the Home Secretary's responsibilities. Extradition should, to the greatest possible extent, be a judicial procedure. (Paragraph 289)*

35. *We are content that the courts are able to deal with late appeals in the Home Secretary's place. (Paragraph 290)*

Government Response

The Government welcomes the Committee's support for the changes that have already been made to the Home Secretary's responsibilities, and agrees that the courts are able to deal satisfactorily with late appeals.

The Government also welcomes the Committee's support for the introduction of an appeals filter in extradition cases, which came into force on 15 April 2015. Anecdotal evidence suggests that since the introduction of the appeals filter the number of applications for leave to appeal has reduced by a third which, we believe, demonstrates that the filter is reducing the burden on the courts and CPS by removing unmeritorious appeals from the system. This was the clear intention in introducing this reform.

The Government does not agree that the introduction of the appeals filter without any further changes to the legal aid system creates a serious risk to those subject to extradition from being able to make full use of the legal proceedings open to them. Where an individual has been granted legal aid in extradition proceedings the representation order covers advice to the individual regarding any subsequent appeal. This can include, as deemed necessary by the lawyer, advice on the merits of making, as well as renewing, an application for leave to appeal, and completion of the necessary paperwork to support this. For criminal proceedings before the High Court, including any oral hearing to determine the application for leave to appeal, the court itself has the power to grant legal aid to the individual concerned so they can be represented at the hearing. The decision to grant an individual legal aid for criminal proceedings at the High Court is not subject to means testing.

Conclusions and Recommendations- Changes to Practice

36. *The inherent risk of distress caused by removal from one's place of residence persuades us that there is scope in some cases to make greater use of existing legislation and to improve practices in order to lessen the impact of extradition. (Paragraph 312)*

37. *Changes in practice should include: providing better information to Requested People about the process; making greater use of video evidence; making greater use of temporary transfer to the Issuing State pre-extradition and pre-trial release on bail in the UK; and increasing the use of transfer of sentences when appropriate. (Paragraph 313)*

38. *We recommend the Government take the necessary steps, such as issuing guidance to the courts and seeking agreements with other countries, to make these changes. Where reciprocal commitments from the UK are required to achieve agreement, these should be given. (Recommendation 15) (Paragraph 314)*

Government Response

The Government agrees that, where appropriate, greater use should be made of alternatives to extradition and notes that a number of significant changes were made to UK legislation in this regard. We believe that these reforms should be given more time to effect change in practice before any further changes to domestic practice is considered.

The Government is pleased by the impact that the proportionality bar is having on UK extradition practice, one year after the provision has come into force. In particular the number of EAWs that have been refused to be certified by the NCA indicates that the bar is operating as it should. The Government is also satisfied that a significant saving has already been made to the public purse and to police and court resources, and that both the NCA and the courts are giving full consideration to whether the alleged conduct and likely sentence a person will receive if extradited and convicted is sufficiently serious to make the person's extradition proportionate.

The Government also recognised and has addressed concerns relating to pre-trial detention. The changes made in the Anti-social Behaviour Crime and Policing Act 2014 (2014 Act) now make clear that where there are reasonable grounds for believing that a decision to charge and try the person have not been made, the judge must discharge the case. The exceptions would be where the issuing State can prove that the decision has actually been made, or that the person's presence is required in the issuing State for the decision to be made. Since the 'charge and try' bar was introduced last year the courts have already discharged cases under this provision where the issuing State has not provided evidence of trial-readiness. The Government is confident that this demonstrates that the bar is preventing the extradition of those who might otherwise face long periods of time in pre-trial detention.

Furthermore, the 2003 Act is now much clearer as regards the existing requirement for dual criminality, setting out that in cases where all or part of the conduct occurred in the UK and the conduct is not criminalised here, the EAW must be refused for that conduct. The Government has also lifted the requirement that individuals lose their right to speciality protection when they consent to extradition.

The Government also implemented the European Supervision Order (ESO), which offers further protections for those subject to extradition. Now, where people are extradited, if there is an unforeseen event that means trial is delayed, the possibility exists for them to be bailed back to the UK.

The Government is also seeking to make better use of the terms of the Prisoner Transfer Framework Decision as an alternative to the EAW. This will avoid British citizens being extradited to serve sentences abroad when they consent to serve them in the UK. Where this would be possible the Government will, where appropriate, engage directly with the other Member State on this matter.

The Government considers that current extradition arrangements provide those subject to extradition with a sufficient level of information to inform them of their rights and entitlements. This information includes a description of the extradition process and written information on the person's rights and entitlements whilst in police custody, such as the right to speak to an independent lawyer, free of charge whilst in custody; the right to have someone told that the person has been arrested; and the right to consult the various codes of practice covering police powers and procedures in respect of extradition proceedings, and more generally.

The Government will continue to engage other States through existing channels to explore whether provisions such as videoconferencing and temporary transfer could be made better use of and to push for other appropriate changes in practice.

Conclusions and Recommendations- *European Arrest Warrant*

39. *The Government and the European Commission should work to establish further guidelines on the execution of EAWs to ensure that they are conducted in the least hostile manner possible. (Recommendation 16) (Paragraph 315)*

40. *We believe that the EAW provides an improved system of extradition between Member States and we support the UK having opted back in to it. (Paragraph 362)*

41. *We believe the Government should be working towards a model whereby the EAW is an instrument of last resort, used in the event that other mutual assistance and flanking measures are inadequate. We ask the Government to set out its plans for implementation of the measures already adopted as a matter of priority, and to review and re-evaluate those mutual assistance and criminal procedural rights measures which it has not yet joined. (Recommendation 17) (Paragraph 364)*

Government Response

It is clear that the reformed EAW that the UK opted back into in December 2014 now offers better protections to British Citizens and others who are subject to extradition proceedings, and that rejoining it was the right decision in terms of public protection.

The Government agrees that the aim should be for the EAW to be used as an instrument of last resort, used only in the event that other flanking measures prove inadequate. As already noted the Commission-issued EAW handbook is currently being revised and the Government is pushing for the aforementioned principle to be the basis of that revision.

The Government believes that a faster and more effective system of mutual legal assistance (MLA) will be beneficial in ensuring that extradition is not sought at the investigative stage. That is one reason why the Conservative-led coalition decided to opt in to the European Investigation Order (EIO) Directive, which will simplify and expedite MLA between EU Member States, whilst respecting civil liberties and individual rights. In particular it is noteworthy that under Article 24 there is a specific clause that provides for hearing suspects or accused persons by video conference, and Recital 26 of the Directive makes clear that this, and other investigative measures, should be considered as an alternative to an EAW. The EIO will start operating from May 2017 and the Government is currently considering how best to implement this measure.

Additionally, the ESO means that where people are extradited, if there is an unforeseen event which causes a trial to be delayed, the possibility exists for them to be bailed back to the UK. Furthermore, the Framework Decision on the Mutual Recognition of Financial Penalties enables the UK to enforce financial penalties transferred to it by other Member States, again reducing the likelihood of an EAW being issued to enforce fines. As already noted, as concerns British citizens the Government will also seek to make better use of the terms of the Prisoner Transfer Framework Decision as an alternative to the EAW.

The Government has no current intention to opt in to the criminal procedural rights 'roadmap'. We are confident that the UK's arrangements to uphold a person's procedural rights are more robust than what is being proposed at the EU level. The Government does not accept that EU common rules are needed to guarantee procedural rights in the UK given those rights are already firmly established in existing UK laws.

Conclusions and Recommendations- Part 2 Countries

42. *We are satisfied that extradition requests from countries of concern are dealt with effectively by the courts, and that the statutory bars provide the necessary protection to Requested Persons. In our view, this is the appropriate way of dealing with these concerns. (Paragraph 393)*

43. *We urge the Government to conclude and publish the findings of the review of Part 2 designations at the earliest opportunity. (Recommendation 18) (Paragraph 394)*

44. *Although it would be impractical to attempt to remove the Part 2 designation from a signatory to the European Convention on Extradition, the Government should still consider these countries in its review. No doubt such consideration would help to inform the FCO's 'country of concern' reports. Such information may be useful when considering human rights arguments put in relation to those countries. (Recommendation 19) (Paragraph 395)*

45. *The Committee is not persuaded by the view that a prima facie case requirement ought to be re-introduced into UK extradition law. In our view this would be a retrograde step, which would result in more drawn out procedures, with little material benefit in the light of the existing safeguards, including the common law abuse of process jurisdiction. (Paragraph 396)*

Government Response

The Government agrees that extradition requests from countries of concern are dealt with effectively by the courts, and that the statutory bars provide the necessary protection to those subject to extradition. The Government also agrees that the prima facie case requirement should not be reintroduced as a general requirement of UK extradition law.

The first part of the Government's two part review into designations was undertaken in 2014 and the changes identified as necessary in this part of the review came into force on 15 April 2015. The findings of this part of the review identified a number of new countries which required designation into Part 2 of the 2003 Act as well as identifying a number of countries where the requirement to provide prima facie evidence could be removed. The statutory instrument was debated in both Houses of Parliament by way of an affirmative order. The Order sets out the changes in full and the accompanying explanatory note explains the rationale for making such changes based on the findings of the internal review. In summary the Order:

- designates into Part 2 of the 2003 Act the Philippines, Kosovo, the British Overseas Territories and the Dutch and Danish overseas territories;
- amends the designation for Serbia and Montenegro, as they are now separate territories;
- removes the requirement for *prima facie* evidence to be provided by Monaco, San Marino and the Dutch and Danish overseas territories, as they are parties to the 1957 European Convention on Extradition (ECE);
- removes Monaco and San Marino from the list of territories which are afforded a longer than normal period (65 days) in which to provide a full extradition request to a judge, as they are parties to the ECE;
- adds the British Overseas Territories, Saint Helena, Ascension and Tristan de Cunha to the list of territories afforded 65 days in which to provide a full extradition request to a judge, in view of their limited geographical accessibility.

The Home Secretary has committed to concluding the second part of the review in the first session of this Parliament. Should the outcome involve changing designations in Part 2 of the 2003 Act, Parliament will be afforded the opportunity to debate these changes by way of an affirmative order in both Houses. Should no further changes to designations be required, the Home Secretary will write to the Committee explaining the rationale for reaching such a conclusion.

Conclusions and Recommendations- UK/US Extradition

46. *Simply comparing the numbers of people extradited to and from the US is not a reliable method of assessing the operation of the treaty, and does not prove the hypothesis that the treaty is unbalanced. There may be many legitimate factors that underpin the figures. Without much more detailed research the statistics do not allow for sound conclusions. The principle of comity does not require symmetrical justice systems; the important principle is that extradition cannot and does not go ahead where any of the statutory bars are found to apply. (Paragraph 403)*

47. *We conclude that the evidentiary tests in our extradition arrangements with the US are different. However, whether this difference has any practical effect is debatable. The view that experience to date demonstrates that they are "functionally" the same is persuasive. (Paragraph 412)*

48. *Much of the evidence we received about aspects of the US justice system is concerning. Some of the accounts we received from those who had been extradited to the US were, in places, quite moving. The risks of such experiences are inherent to extradition to any foreign jurisdiction, although we are concerned that some conditions and procedures in the US may not always be worthy of the tacit approval that extradition implies. (Paragraph 440)*

49. *The ECtHR has considered whether these concerns ought to prevent extradition to the US. It has found that extradition to the US does not constitute a human rights breach because of these concerns. The ECHR is, correctly, the UK's baseline for considering whether the justice systems of other countries makes extradition human rights compliant. We do not, therefore, propose any changes in our legal arrangements with the US. (Paragraph 441)*

50. *It is clear from the evidence that, rightly or wrongly, a sentiment remains that pre-trial conditions in the US risk being excessively harsh. This is particularly the case for those assessed in the UK as presenting a low risk of either being violent or absconding, but who are nevertheless subjected to the use of force on flights or detention in high security facilities, and for non-US residents unable to provide a suitable bail addresses. (Paragraph 443)*

51. *We urge the Government to make representations to the US authorities to agree the treatment of those extradited from the UK, with particular regard to transfer, pre-trial detention and bail. (Recommendation 20) (Paragraph 444)*

52. *We do not consider the US to be a special case. The Government ought also to make similar representations to any extradition partner whose conditions do not breach the ECHR but might be considered excessively harsh. (Recommendation 21) (Paragraph 445)*

53. *The outcome of these representations should be formalised into a Memorandum of Understanding in order to clarify the positions of each country in relation to the standards of treatment expected when a person is extradited. (Recommendation 22) (Paragraph 446)*

54. *We do not take the view that the US's interpretation of jurisdiction is inappropriate. The US is clearly more active in prosecuting cross-border crimes than many other countries but this does not mean its interpretation is excessive. (Paragraph 448)*

Government Response

The Government agrees with the conclusions of the Committee that a comparison of the numbers of people extradited to and from the US is not a reliable method of assessing the operation of the treaty. The Government is confident that our extradition relations with the US are working well and agrees that further legal changes to our current arrangements with the US are unnecessary at this point. We also agree with the Committee that our relations with the US should not be considered to be "a special case".

The Government notes that the Committee consider that the European Convention on Human Rights is the correct baseline for considering whether conditions in another country should bar extradition. It also notes the Committee's findings elsewhere that extradition "should, to the greatest extent possible, be a judicial procedure" and that "the statutory bars provide the necessary protection to Requested Persons".

Within that context, the Government does not consider that it would be helpful to have two potentially competing standards as regards the level of treatment that can reasonably be expected by an individual following extradition. The Government does not believe that it would be well placed to consider what would be seen as "excessively harsh" and believes that taking this approach would lead to further litigation and delays in the extradition system. This is something the Conservative-led coalition's reforms sought to avoid, and not something this Government would support.

Equally, the Government believes that it is for the court to determine whether an individual's rights will be sufficiently respected upon extradition. Experience has shown that the courts tend to consider issues on a case-by-case basis, and as such we do not consider that agreeing a 'one size fits all' Memorandum of Understanding with any country would be helpful as concerns assurances. It would not bind the courts and, in all likelihood, would only make it more difficult to obtain the individual assurances that would still be required for certain cases. As such, whilst the Government understands and sympathises with the intention behind this recommendation, it does not support it.

The Government notes the Committee's recommendation that further representations be made on behalf of the Secretary of State with regards the treatment of those extradited to the US, particularly in the areas of pre-trial detention, transfer and bail. In terms of representations, the limited degree of consideration which the Secretary of State is required to give to 'Part 2' cases does not give rise to many assurances of this nature being dealt with by the Secretary of State. Indeed, the majority are dealt with by the courts. For example, assurances of this nature were sought by the courts in *H v the United States Government* (28 April 2015). Not only does the Government consider that it is right that this is so, but both the Baker Review and the Committee agreed.

However, certain assurances have been sought in the past by the Government, for example as to medical treatment in the context of a person's health. Where this is appropriate, we would be open to sending representations asking for certain assurances.

The Conservative-led coalition introduced the forum bar to address concerns about concurrent jurisdiction in extradition cases, and we believe that the increased transparency this has brought about has improved the extradition process.

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