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Rt. Hon. Sir Scott Baker
Extradition Review Panel
c/o Head of Judicial Co-operation Unit
5th floor, Fry Building,
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London
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30 December 2010

REVIEW OF EXTRADITION

Thank you for your letter of 3 November inviting representations in relation to the UK's extradition arrangements.

Although extradition policy is of course a reserved matter under the terms of the Scotland Act 1998, extradition cases involving Scottish jurisdiction are dealt with by the Crown Office and Procurator Fiscal Service (COPFS). Extradition cases not involving the European Arrest Warrant require the consent of Scottish Ministers. The Scottish Government therefore welcomes the opportunity to contribute to the review and would very much wish to continue dialogue with the Expert Panel on this in 2011.

In terms of our initial response to the points identified in your letter, we would like to make the following points:

1. We share concerns that some countries appear to operate the EAW without sufficient regard to proportionality. We would observe that this is an issue which has the potential to expand with the implementation of the Schengen Information System.
2. We have not had direct experience of issues of imbalance arising as a result of the terms of (non-EAW) extradition treaties. In practice, these arrangements appear to offer a marked improvement on the pre-2003 Act regime.
3. We have concerns about the proposal that an extradition request should be declined where a court or Minister decides that proceedings should instead be conducted in the UK. This interferes with the fundamental discretion of our independent prosecutors to prosecute. They, and they alone, decide whether criminal proceedings should be commenced. We would not wish our prosecutors to be compelled to institute proceedings even though they have already made the professional assessment that proceedings should not, or indeed can not, be raised.

4. We would welcome a further opportunity to contribute to the review before it reaches its conclusions. A particular point that we would like to discuss would be consideration of the aspects of the EAW Framework Decision that have yet to be adopted by the UK. This includes provisions in Article 25 on transit.

I understand that COPFS officials intend to respond to you separately. I hope that this information is helpful and stand ready to offer any further assistance to the Panel in relations to extradition as it affects Scotland.

Iain Hockenhill