



The Government Response to
Sir Scott Baker's Review of the
United Kingdom's Extradition Arrangements

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

October 2012



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EXTRADITION REVIEW

Secretary of State for the Home Department (Theresa May):

I am today announcing to Parliament the Government's response to the recommendations of the Review of the United Kingdom's Extradition Arrangements, presented to me by Sir Scott Baker on 30 September 2011. I have read with great interest the findings of the review and am now in a position to announce the Government's response.

The panel was chaired by Sir Scott Baker, who is a former Judge in the Court of Appeal; David Perry QC, who is a barrister highly experienced in representing both requesting Governments and the subjects of extradition requests; and Anand Doobay who is a partner in a law firm specialising in defending such individuals and is the author of a respected work of reference on extradition. The panel were asked to assess five issues which had proven to be most contentious in recent years, namely:

- the operation of the European arrest warrant, including the way in which the optional safeguards contained in the European Union Framework Decision on the European arrest warrant have been transposed into the law of the United Kingdom;
- whether the forum bars to extradition should be brought into force;
- whether the United States/United Kingdom Extradition Treaty is unbalanced;
- whether requesting States should be required to provide prima facie evidence; and
- the breadth of the Home Secretary's discretion in an extradition case.

I am extremely grateful to Sir Scott, Mr Perry and Mr Doobay for the professional and thorough way in which they went about their work. Nobody who has read their report can be anything but extremely impressed by the depth and clarity of its analysis.

In reaching my conclusions, I have balanced the views of the review panel with those of a large number of Members of Parliament, civil liberties groups and professional experts in the field, and have carefully considered the findings of both the Joint Committee on Human Rights and the Home Affairs Select Committee, who have also produced reports on the UK's extradition arrangements

THE RT HON THERESA MAY MP
HOME SECRETARY

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Conclusion/recommendation 1

The European Arrest Warrant operates broadly satisfactorily; apart from the problem of proportionality the scheme has worked reasonably well.

Government response

The European Arrest Warrant (EAW) has had some success in streamlining the extradition process within the EU. The review highlighted many of the benefits of the EAW and concluded that the system works reasonably well, but the panel also recognised a number of issues. The Government is concerned in particular about the disproportionate use of the EAW for trivial offences and believes there are issues around the lengthy pre-trial detention of some British citizens overseas. These concerns were echoed by Sir Scott Baker; we know these concerns are shared by other Member States.

The Government will take the opportunity of the 2014 JHA opt-out decision to work with the European Commission, and with other Member States, to reform the European Arrest Warrant so that it provides the protections that our citizens demand.

Conclusion/recommendation 2

The Forum Bar should not be implemented

Government response

On whether the forum bars to extradition should be brought into force, the Government agrees with the views expressed by many Parliamentarians and proposes that we do not accept the recommendation of the Baker review.

Instead, for the reasons given by the Home Affairs Select Committee, the Government has decided to seek to legislate afresh for a forum bar which will better balance the safeguards for defendants and delays to the extradition process which were predicted by Sir Scott Baker.

In parallel, the Director of Public Prosecutions will independently publish draft prosecutors' guidance for cases of concurrent jurisdiction shortly, and a bi-lateral protocol governing the approach of investigators and prosecutors in the UK and the US is being updated alongside this guidance.

The combination of these measures will meet the commitment of the Prime Minister, following his visit to the United States in March. They will mean that decisions in cross-border cases are both challengeable and fair.

Conclusion/recommendation 3

The United States/United Kingdom Extradition Treaty is balanced

Government response

The Government agrees with the Baker review that the Treaty is not unbalanced. It is our clear view that the Government should not renegotiate the US-UK Extradition Treaty or introduce the concept of probable cause (the standard by which a US police officer has the grounds to obtain an arrest warrant), into UK law, which the Home Affairs Select Committee has proposed.

Conclusion/recommendation 4

The prima facie evidential test should not be reintroduced

Government response

The panel concluded that the *prima facie* evidence requirement should not be reintroduced for those category 2 territories designated as not required to demonstrate a *prima facie* evidential case when submitting an extradition request to the UK. The panel considered that within existing provisions the courts were able to subject requests to sufficient scrutiny to identify and address injustice or oppression.

The Government's view is that we should accept the panel's recommendation and will review periodically designations for category 2 territories, taking into account adverse extradition decisions in either the UK or in the European Court of Human Rights.

Further, the panel found that the introduction of *prima facie* evidence was not necessary in European Arrest Warrant cases.

Conclusion/recommendation 5

The breadth of the Home Secretary's statutory discretion should remain unchanged and the courts should consider human rights issues that arise after the end of statutory proceedings.

Government response

The Government agrees with the panel's conclusion that the issues which the Home Secretary is currently required to consider under the Extradition Act,

including the death penalty and speciality, are properly matters for the Secretary of State.

The Government also agrees with the panel's recommendation that where a supervening event occurs after the end of the extradition process (i.e. raising human rights considerations), these should be for the High Court rather than the Home Secretary.

Other recommendations

Time limit for notice of appeal

The time limit for the giving of a notice of appeal for part 1 cases should be 14 days rather than 7 days.

Government response

See response given to conclusion/recommendation 1 relating to the operation of the European Arrest Warrant.

Permission to appeal

Appeals under parts 1 and 2 of the 2003 Act should only be allowed to proceed if permission to appeal is granted by either the extradition judge or by the court which would consider the appeal.

Government response

The Government agrees with the panel *in principle* but considers that further analysis is needed on whether any gain in disposing of cases at the permission stage would be outweighed by the cost of holding extra hearings in cases where permission was granted before making a final decision.

Delay before the European Court of Human Rights

The Government should make robust representations to the European Court of Human Rights regarding the delay in reaching decisions on extradition cases.

Government response

The effect of Rule 39 interim measures was noted at the recent High-Level Conference on the Future of the European Court of Human Rights on 19-20 April 2012. The Conference invited the Committee of Ministers to assess both whether there has been a significant reduction in their numbers and whether applications in which interim measures are applied are now dealt with speedily, and to propose any necessary action. The United Kingdom will participate fully in this work.

Legal Aid

The Government should give urgent and careful consideration to the reintroduction of non means-tested legal aid for extradition proceedings.

Government response

The Ministry of Justice has carefully considered the position but does not consider that the business case to reintroduce non-means tested legal aid for extradition proceedings has been made out. However, the Legal Services Commission and HM Courts and Tribunals Service, are looking at ways to improve the operational effectiveness of the existing scheme.

Legal Training

A scheme of training should be introduced for lawyers wishing to engage in legal aid work.

Government response

The Government considers this is a matter for the legal profession working in collaboration with the judiciary.

Regional Extradition Courts

No additional extradition courts are needed at present but this should be kept under review.

Government response

The Government agrees with this recommendation.

Asylum

The 2003 Act should be amended so that extradition cannot take place until an asylum claim made in respect of the requesting state has been determined.

Government response

We accept this recommendation and will implement it when a suitable legislative vehicle arises.



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