



THE GOVERNMENT RESPONSE TO THE
TWENTIETH REPORT FROM THE
HOME AFFAIRS COMMITTEE
SESSION 2010-12 HC 644

The US-UK Extradition Treaty

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

October 2012



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Conclusion/recommendation 1

The Committee can see no legitimate reason for the Home Secretary's refusal to publish the evidence to the Baker review. The secrecy surrounding the evidence is as frustrating as it is inexplicable and it is not helping to improve low public confidence in this matter. The Committee recommends that the Home Secretary publish it immediately.

Government response

The material is being published on the Home Office website and copies will be placed in the House Library, as the Home Secretary promised in her letter of 29 March.

Conclusion/recommendation 2

Concern about the operation of the current extradition arrangements between the USA and the UK should not be allowed to obscure the fundamental point that it is firmly in our national interest to have effective, fair and balanced extradition arrangements with the United States and our other international partners. Criminals must not be allowed to evade British justice by fleeing the country; nor should the UK become a safe haven for those who have committed crimes in other territories. The development of the internet and the rise of international terrorism and organised crime mean that extradition is now more important than ever in the fight against crime. While the Committee has serious misgivings about some aspects of the current arrangements, we are firmly convinced that an effective extradition agreement with the USA is appropriate and clearly in our national interest.

Government response

The Government shares the Committee's views about the importance of effective extradition arrangements with the United States and other international partners. No one should be able to escape justice by sheltering behind a national border. The Government however accepts that our extradition arrangements with the United States need to be improved.

For the reasons given by the 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 Committee accepts that there is a body of respectable legal opinion which suggests that there is little or no distinction in practice between the "probable cause" and "reasonable suspicion" tests. Nevertheless, the imbalance in the wording of the Treaty, which sets a test for extradition from the US but not from the UK, has created the widespread impression of unfairness within the public consciousness and, at a more practical level, gives US citizens the right to a hearing to establish "probable cause" that is denied to UK citizens. It is clear that the US Constitution requires that the Treaty include the "probable cause" test for extradition from the USA to the UK. The Committee can see no reason why an identical safeguard should not be granted to those whose extradition is sought in the opposite direction and we believe it would be in the interests of justice for the Treaty explicitly to offer the same protection to people whose extradition is sought from either country. We cannot imagine that the United States Government would not object to British citizens enjoying the same legal safeguards as US citizens. The Committee therefore recommends that the Government seek to re-negotiate the US-UK Extradition Treaty to specify that the information requirements be the same in both jurisdictions.

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

Extradition imposes a significant burden on the accused, who might have to spend many months or years living in a foreign country, often in prison, away from their home, family, friends and job. It would be fundamentally unjust to submit an innocent person to such an ordeal, even if they were subsequently acquitted at trial. The Committee does not therefore believe that extradition should take place without some case being made against the requested person and we recommend that the Government seek urgently to re-negotiate the Treaty in order to introduce an evidence test, while balancing issues such as delay and cost.

Government response

By this recommendation, we have assumed that the Committee are referring to the re-introduction of the *prima facie* evidence requirement for the US. The Government's view is that the courts are, within existing provisions, able to subject requests to sufficient scrutiny to identify and address injustice or oppression. This was the view taken by Sir Scott Baker. We therefore reject this recommendation.

Conclusion/recommendation 5

The fundamental principles of human rights, democracy and the rule of law require that justice is seen to be done in public. The Committee believes that it would be in the interests of justice for decisions about forum in cases where there is concurrent jurisdiction to be taken by a judge in open court, where the defendant will have the opportunity to put his case, rather than in private by prosecutors. Indeed, Parliament has already legislated for that to happen. The Committee therefore recommends that the Government introduce a "forum bar" as soon as possible.

Government response

See response to recommendation 2.

Conclusion/recommendation 6

In the light of the five month delay to the Baker report, we welcome the Prime Minister's announcement that UK and US teams will look further at the extradition arrangements but, given widespread public concern regarding the issue and continuing extraditions during this period, we urge the government to act with greater urgency.

Government response

See responses to recommendations 2 and 3.



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