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The *Extradition Bill*

Bill 2 of 2002-03

This paper is concerned with the *Extradition Bill*, which is due to be considered on second reading on Monday 9 December 2002.

The Bill is designed to replace the present extradition arrangements with a new streamlined system which would have simplified appeal procedures. It proposes the introduction of a new scheme for extradition to territories which will be designated as category 1 territories. This to be based on the European arrest warrant, and will not include some of the safeguards which have hitherto been considered necessary.

This paper considers some of the provisions of the Bill, focusing particularly on the provisions in Part 1, for extradition to category 1 territories.

Sally Broadbridge

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Summary of main points

The *Extradition Bill* is designed to introduce fundamental reform of the law of extradition, which provides for the return of persons accused or convicted of serious offences, from the United Kingdom to other jurisdictions and vice versa. It is the result of the Government's review of extradition and consultation on draft legislation, alongside EU proposals for mutual recognition and enforcement of arrest warrants The United Kingdom's extradition partners would be divided into two categories. It is likely that category 1 territories would initially comprise EU Member States. They have already agreed a framework decision for the introduction of the European arrest warrant, on which the streamlined category 1 procedures are based.

This paper outlines the background to the reforms and how the proposals have been developed. It goes on to discuss some of the provisions of the Extradition Bill, with particular emphasis on those in Part 1, which implements the framework decision. It describes the new procedures, beginning with the receipt and execution of the arrest warrant, through the court hearings which may involve a number of stages, to a single line of appeal. It draws attention to particular issues which have given rise to some human rights and other concerns.

The paper then describes other provisions of the Bill, dealing with police powers, and the proposed power to repeal the existing legislation by Order in Council. Finally, it refers to the legislative position in Scotland.

The Bill extends (with minor exceptions) to the whole of the United Kingdom, with power to extend it to cover the Channel Islands and the Isle of Man.

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I Introduction

A. What is extradition

Extradition is the process by which an individual is handed over from one jurisdiction to another to face trial or serve a term of imprisonment. The foundations of UK extradition law were laid in nineteenth century legislation which distinguished between the Empire (where courts originally administered justice in the name of the Crown according to laws passed in Westminster) and foreign states. The two were not consolidated until the *Extradition Act* 1870 and the *Fugitive Offenders Act* 1967 were both repealed by the *Extradition Act* 1989. The 1989 Act remains the domestic legal framework for extradition, both from and to the UK, of persons accused or convicted of serious criminal offences. It lays down the procedures to be followed and the powers which may be exercised when there are "extradition arrangements" between the UK and another state, under which extradition procedures are available as between the UK and that state. The extradition arrangements may be

- "general extradition arrangements" made with one or more states and relating to the operation of extradition procedures under Part III of the Act, or
- "special extradition arrangements" made with a state with which there are no general extradition arrangements, relating to the operation of those procedures in particular cases.

Those provisions do not apply to extradition between the Irish Republic and the UK, which is governed by special arrangements under the *Backing of Warrants (Republic of Ireland) Act* 1965

B. Extradition arrangements

The UK has general extradition arrangements with more than 100 countries. Some are bilateral, for example, with Iraq, Thailand and the United States. Extradition between most European countries and the UK is governed by the 1957 *European Convention on Extradition* ("ECE"), to which the UK acceded in 1991. The ECE is framed in general terms and is quite short. But it is subject to a large number of formal reservations. For example, a number of states refuse to extradite their own nationals. The full text, chart of signatories and up to date lists of declarations, reservations and other communications are available on-line on the Council of Europe's website.[1] The UK has also ratified two EU extradition Conventions which supplement the ECE as between Member States which have ratified them. The 1995 *Convention on Simplified Extradition Procedures* sets out streamlined procedures for cases where the fugitive and the requested state consent to extradition, and the 1996 *Convention Relating to Extradition* relaxes some of the conditions for extradition.[2] These were given effect to by The *European Union*

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1 http://conventions.coe.int/Treaty/EN/WhatYouWant.asp?NT=024

2 e.g. by abolishing the "political offence" exception: see below

Extradition Regulations 2002 [3] made under powers conferred by the *Anti-terrorism Crime and Security Act* 2001. Extradition arrangements between the Commonwealth and the UK are for the most part contained in reciprocal legislation based on the *Scheme Relating to the Rendition of Fugitive Offenders within the Commonwealth.*[4]

C. Glossary

Extradition law is undoubtedly complex and has at least its fair share of specialist terminology. Some of this is used to describe rules and protections which will no longer apply, to all or some extradition procedures. It may therefore be helpful to provide, at the outset, a very simple explanation of some of the concepts, without attempting to give any details of their application in the current law or the complications to which they have sometimes given rise.

1. Double (or dual) criminality

The effect of the double criminality rule is that states may refuse to extradite fugitives for conduct which would not be criminal if it took place within their own jurisdictions. The conduct must be criminal in both the requested and the requesting state. This ensures that a person's liberty is not restricted as a consequence of conduct not recognised as criminal by the requested state, and a state is not required to extradite categories of offenders for which it, in return, would never have occasion to request extradition.

2. The speciality (or specialty) rule

This rule forbids the detention or trial of an extradited person, when surrendered to the requesting state, for any offence committed prior to his surrender, other than that for which he was extradited. Re-extradition to a third state is also generally prohibited (at least without the consent of the original requested state) since that would defeat the purpose of the rule.

3. Political offences

Another practice is that the requested state may decline to extradite for an offence committed for political reasons. In some states "political offence" has been given a special meaning. The UK has a very substantial body of case law. Improper motives on the part of the requesting state automatically makes the offence one of a political character. Political motives on the part of the offender do not make an offence one "of a political character". In *Cheng v Governor of Pentonville Prison*[5] Lord Diplock said:

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[3] (SI2002/419) which came into force on 20 March 2002

[4] Cmnd 308

[5] [1973] AC 931

> ..the question is not simply whether it is political qua 'act', but whether it is political qua 'offence'.
> Criminal jurisdiction is territorial. A crime is an offence against the state within whose territory the prohibited act has been committed. To the trial and punishment of a criminal offence there are two parties only: the offender and that state … even apart from authority, I would hold that prima facie an act committed in a foreign state was not an "offence of a political character' unless the purpose sought to be achieved by the offender in committing it were to change the government of the state in which it was committed, or to induce it to change its policy or to escape from the jurisdiction of a government whose political policies the offender disapproved but despaired of altering so long as he was there.

A bank robbery committed to raise funds for a political party would not constitute a political offence, but

> If the accused had killed a dictator in the hope of changing the government of his country, his object would be sufficiently immediate to justify the epithet 'political' … Political as descriptive of an object to be achieved must, in my view, be confined to the object of overthrowing or changing the government of a state or inducing it to change its policy or escaping from its territory the better so to do.[6]

4. Double jeopardy

The rule against double jeopardy means that following a valid conviction or acquittal, a person cannot be subject again to trial for the same offence.

5. The prima facie rule

The rule that a state requesting an extradition must establish that the suspect has a prima facie case to answer.

D. Review of extradition

The UK signature to the two EU Conventions in the 1990s made it necessary for the UK to prepare legislation to implement them. That was one of the catalysts for review of extradition law, which was begun in 1997, but halted in 1998 for the duration of the Pinochet[7] case. When the review was restarted in March 2000, the approach was more radical. The introduction to *The Law on Extradition: A Review*, published for consultation in March 2001, explained:

> of particular significance to this review, was the way in which the [Pinochet] case threw into high relief many of the problems of UK extradition law, most notably

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6 p 944

7 For a summary of the Pinochet proceedings see http://www.homeoffice.gov.uk/oicd/jcu/pinochet.htm

> the lengthy delays which can occur in complex, contested extradition cases. Much of the 17 months of the Pinochet case was taken up in court proceedings. In this respect, the case was not unusual: the inordinate length of time it can take for a person to be extradited, even to another EU member state, and the multiple avenues for appeal, form a major motivator for radical reform.[8]

Some of the organisations which responded to the consultation found the focus on the Pinochet case unconvincing. For instance, the human rights organisation, Liberty, commented:

> We note that the Pinochet case is given as a reason why change is needed. We question whether this is a sound premise. That was a unique case which is not representative of the vast number of extradition cases. The delays which occurred were not the fault of the extradition process per se, but occurred for other reasons which could easily have been avoided, e.g. the involvement of Amnesty International and Lord Hoffmann. The case did emphasise the need to ensure that those charged with international crimes should not escape unpunished, and also that the extradition process should be primarily a judicial one, with only one opportunity for political intervention by the Home Secretary- rather than on up to three occasions as at present- to ensure that defendants are not extradited to unsuitable countries or in inappropriate circumstances.[9]

The Law Society added:

> the review cites the case of Pinochet as an example of complexity and delay with the implication that the new proposed procedures would allow the extradition process to have takenplace more quickly and led to extradition, to popular approval. But in fact the legal issues raised by that case would have still arisen under the new proposals and would still have been taken as preliminary points before any extradition hearing. There is no evidence that the hearing in Pinochet would have been fixed any earlier due to availability of court time and finding a suitably qualified district judge.[10]

Announcing publication of the Review, Jack Straw, the then Home Secretary said:

> The consultation document makes far-reaching proposals in relation to all aspects of current extradition law and practice. The greatest changes are proposed in respect of the United Kingdom's procedures for dealing with extradition requests received from member states of the European Union and Schengen states. Our present procedures for dealing with extradition requests from these states contain cumbersome controls and outdated requirements, some of them derived from 19th

[8] para 8

[9] Liberty response to the Review of Extradition, para 4, on the Home Office website at http://www.homeoffice.gov.uk/oicd/jcu/consultation_responses.pdf

[10] Law Society response to the Review of Extradition, para 2, on the Home Office website at http://www.homeoffice.gov.uk/oicd/jcu/consultation_responses.pdf

> century extradition legislation. Such procedures are no longer necessary, nor do they provide an efficient means to deal with the growing difficulties caused by organised and international crime. For these extradition partners a simple backing of warrants procedure is proposed. This would replace the current multi-staged system in which all extradition requests are examined by both the Secretary of State and the courts, with a single, streamlined hearing before a district judge (Sheriff in Scotland). The documentation required to support an extradition request would also be significantly simplified, to reduce the current burdens placed on our European partners in their efforts to bring fugitives to justice. The proposals retain a statutory right of appeal in order to ensure that fugitives' rights are protected, but also propose that the grounds for appeal be tightened to eliminate time-consuming delays where fugitives appeal on grounds which are not relevant, or are more properly for consideration by the court of trial.
>
> The simplified requirements of a backing of warrants scheme would put the mutual recognition principle into practice in the field of extradition. Mutual recognition may be defined as the judicial decisions of one jurisdiction being recognised as valid in another, with the minimum of formality.
>
> The review recognises that while major reforms are required to our extradition procedures in respect of our closest neighbours, there is also a clear operational need to reform the procedures for dealing with requests from our extradition partners outside the European Union. Here a final decision in the case by the Secretary of State would be retained, but there would be a significant reduction in the present duplication of my role and that of the courts in deciding cases, with the aim of making extradition quicker and simpler, while protecting fugitives' fundamental human rights. [11]

The Review proposed four tiers, between which countries could migrate if their extradition status changed –

> The tiers would be progressive, starting with a simple fast-track procedure for EU member states (tier one) and becoming more rigorous through tier two (ECE/main Commonwealth countries and possibly leading bi-lateral treaty partners), tier three (Commonwealth and bi-lateral treaty partners not in tier two and the Hong Kong Special Administrative Region (HKSAR)) to tier four, which would cover countries with which we do not have general extradition arrangements. [12]

Tier one would be a backing of warrants scheme for extradition requests from EU and Schengen Member States, which would be extendable to new EU Member States and other extradition partners. Tiers two and three would both be based on current extradition arrangements, with improvements, the distinction being that under tier three arrangements, the requesting state would need to make a prima facie case. Tier four

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[11] HC Deb 12 Mar 2001, Col. 499W

[12] *The Law on Extradition: A Review* Chapter 2 para 1

would provide a framework based on existing provisions for considering extradition requests with which the UK has no general extradition arrangements.

Fifteen responses to that consultation have been published on the Home Office website, with a short summary of them. They were from:

- The National Criminal Intelligence Service
- Designated Judges at Bow Street Magistrates Court
- Liberty
- Fair Trials Abroad
- Justice
- Greater London Magistrates Court Authority
- Crown Prosecution Service
- Law Society of Scotland
- Law Society
- Criminal Bar Association
- National Crime Squad
- Lieutenant Governor of Guernsey
- Criminal Sub-Committee of HM Circuit Judges
- Law Reform Committee of the Bar Council
- Sheriff of Lothian and the Borders

E. The emergence of the European Arrest Warrant

One of the questions for consultation in the Home Office Review was whether or not the UK should insist on reciprocity before entering into the simplified, backing of warrants scheme for Tier One. Meanwhile, in moves toward mutual recognition in criminal matters, the EU strategy for the beginning of the new millennium included a recommendation that consideration should be given to the long term possibility of the creation of a single European legal area for extradition. One of the programme of measures to implement the principle of mutual recognition had the aim of facilitating "the enforcement of arrest warrants in connection with criminal proceedings" and was:

> Seek means of establishing at least for the most serious offences in Article 29 of the Treaty on European Union, handing-over arrangements based on recognition and immediate enforcement of the arrest warrant issued by the requesting judicial authority. Those arrangements should, *inter alia*, spell out the conditions under which an arrest warrant would be a sufficient basis for the individual to be handed over by the competent requested authorities, with a view to creating a single judicial area for extradition.[13]

Although that measure was not specifically targetted at terrorism, it gained prominence after the events of 11 September 2001. On 19 September 2001, the Commission proposed

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[13] OJ C 12/10 15.1.2001

two Framework decisions, one to establish a common definition of terrorist acts and fix levels of sanctions reflecting their seriousness, and the other:

> a proposal to replace the traditional extradition procedures by a system of surrendering persons sought between judicial authorities on the basis of a European arrest warrant. This proposal proceeds from the principle of mutual recognition of judgments established by the Tampere European Council as the cornerstone of judicial cooperation. The underlying idea is that where the judicial authority in one Member State asks for the surrender of a person sought for an offence incurring at least four months' imprisonment, either having been convicted or still being prosecuted, the decision must be recognised and executed throughout the EU. To simplify and accelerate procedures as far as can be, a time-limit of three months is proposed. The principle of double criminal liability and the exception in favour of nationals are abolished.

The first revised version was issued on 27 September[14], and later versions were sent out on 31 October[15] and 1 December 2001[16]. The Justice, Home Affairs and Civil Protection Council met on 16 November and discussed amendments to the proposal.

> The Council continued its discussions on the proposed Framework Decision concerning a European arrest warrant, focussing on the key issues still unresolved, namely the scope of the European arrest warrant and the judicial appeals process.
> (…)
> Regarding the scope of the arrest warrant, a very broad consensus emerged during the Ministers' deliberations – with continuing reservations at this stage from two delegations, spelt out in the discussion 1 - on the list of offences giving rise to surrender of persons sought on the basis of a European arrest warrant under the terms to be defined in the Framework Decision (providing inter alia for surrender without verification of double criminality). This arrangement would apply to thirty different offences, the large majority of which feature in the Annex to the EUROPOL Convention.
> The Council will continue also to examine one delegation's suggestion that a benchmark for sentencing (proposal: four years) be incorporated in the arrangement to facilitate surrender without verification of double criminality for listed offences not yet harmonised. Regarding the appeals process, the Council noted broad consensus on the different execution of time limits applicable with regard to surrender, namely:
>
> > - in cases where the person sought consents to his surrender, the final decision on the execution of the European arrest warrant should be taken 10 days after consent has been given;

14 EC Document 12102/1/2001
15 EC Document 13425/2001
16 EC Document 14867/1/2001

> - in other cases, the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the person sought;
> - in specific cases where the arrest warrant cannot be executed within the time limits laid down in the above paragraphs, the executing judicial authority shall immediately inform the issuing judicial authority, stating the reasons for non-execution within the time limits. In this case, the time limits can be extended for another 30 days. Moreover, the project provides for the possibility for the authorities of the issuing State to obtain, on arrest of the person sought, the possibility either of hearing his testimony in the State of execution or of obtaining his temporary transfer. Two delegations expressed scrutiny reservations on this point.

On 6 December the Council examined a draft Framework Decision on the European arrest warrant and the surrender procedures between Member States, on the basis of a Presidency overall compromise proposal.

The Council's press notice of 15 December 2002 heralded that extradition would no longer be necessary between EU member states.[17]

> Following that examination, the Presidency was able to record the agreement of 14 delegations on its compromise. One delegation was unable to support the proposal. The main features of the compromise are as follows:
> • The arrest warrant is broad in scope. In particular, it gives rise to surrender in respect of 32 listed offences (see list in the Annex, p. 19), without verification of the double criminality of the act and provided that the offences are punishable in the issuing Member State by a custodial sentence of a maximum of at least 3 years.
> • A territoriality clause making it optional to execute an arrest warrant in respect of offences committed in the executing State or acts which took place in a third State but which are not recognised as offences by the executing State.
> • A retroactivity clause making it possible for a Member State to process requests submitted prior to the adoption of the Framework Decision under existing instruments relating to extradition.

The European Parliament Committee on Citizens' Freedoms and Rights, Justice & Home Affairs produced a report on 14 November 2001[18] and the European Parliament debated the proposal on 29 November 2001. A second report[19] was tabled on 8 January 2002. The draft was approved in plenary session of the European Parliament on 6 February 2002. Proposed amendments, including one seeking to insert a European Habeas Corpus clause, were rejected. The Parliament called on the Council to notify Parliament should it intend

[17] "Extradition will no longer be necessary between EU member states", 14 December 2002.
[18] EP Doc A5/397/2001
[19] EP Doc A5/3/2002, http://www2.europarl.eu.int/omk/OM-Europarl?PROG=REPORT&L=EN&PUBREF=-//EP//TEXT+REPORT+A5-2002-0003+0+DOC+SGML+V0//EN&LEVEL=2&NAV=S

to depart from the text approved by Parliament and asked to be consulted again if the Council intended to amend its draft substantially. The Council agreed the framework decision without debate on 13 June 2002.[20]

Some Member States made statements on the adoption of the framework decision. France, Italy and Austria made statements to the effect that requests made relating to acts committed before particular dates would continue to be dealt with in accordance with existing extradition systems. Belgium, Denmark, Ireland, Finland and Sweden made statements to allow persons to revoke their consent to surrender and/or express renunciation of the speciality rule.

F. How to implement the Framework Decision in the UK

When the *Anti-terrorism, Crime and Security Bill* was introduced on 12 November 2001, *clause 109* contained a power for authorised ministers to make provision by regulation,

> (a) for the purpose of implementing any obligation of the United Kingdom created or arising by or under the third pillar (whether before or after the passing of this Act), or enabling any such obligation to be implemented,
> (b) for the purpose of enabling any rights enjoyed or to be enjoyed by the United Kingdom under or by virtue of the third pillar to be exercised, or
> (c) for the purpose of dealing with matters arising out of or related to any such obligation or rights

and defined "The third pillar" as:

> (a) Title VI of the Treaty on European Union signed at Maastricht on 7th February 1992, together with the other provisions of the Treaty so far as they relate to that Title,
> (b) the Protocol integrating the Schengen acquis into the framework of the European Union, so far as it relates to that Title, and (c) agreements referred to in Article 24 of the Treaty, so far as they cover matters falling under that Title.

There was some anticipation that the Government might seek to incorporate the Framework Decision on the European Arrest Warrant into domestic law by means of such secondary legislation. However, during the Bill's short passage the clause (which became section 111) was amended so that the power could not be exercised after 1 July 2002 and was limited to implementation of a specific list of measures adopted under Title VI of the Treaty. The measures are: the 1995 and 1996 European Conventions on Extradition; three

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[20] the full text is available electronically via the Home Office website at http://www.homeoffice.gov.uk/extraditionbill/pdf's/eaw.pdf. it is also available on the Europa website at http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002F0584&model=guichett, which includes the statements made by certain Member States on the adoption of the Framework Decision

Framework Decisions on combating terrorism, on joint investigation teams and on the freezing of property and evidence; and the 2000 Convention on Mutual Assistance in Criminal Matters together with its Protocol. These were all included in the European Union's anti-terrorism "road-map", a list of measures identified for urgent agreement and implementation after 11 September. The provisions of the two extradition conventions have been implemented by The *European Union Extradition Regulations* 2002 and the *European Union Extradition (Amendment) Regulations*[21] 2002.

On 14 February 2002, the Home Secretary and Justice Ministers from Spain, Portugal, France, Belgium and Luxembourg made a declaration of commitment to early implementation:

> The Declaration will ensure that as soon as the Warrant has been passed into national law, these countries will use the Arrest Warrant to extradite suspects. The aim is to have this legislation underway in the UK by Spring 2003[22].
>
> The European Arrest Warrant will speed up extradition within the EU but it will also be a very different system from the current system since there will be a minimal role for Ministers. The process will be that a judicial authority in another EU Member State will issue the Warrant which will be transmitted to an appropriate judicial authority in this country. The fugitive will be arrested (by the UK police) and either remanded in custody or granted bail. There will then be an extradition hearing before a District Judge with the fugitive having a right of appeal to the High Court. If the Courts agree to execute the warrant, the fugitive will be surrendered to the executing state. All of this will happen within 90 days[23].

Subsequent press reports suggested why the aim might not be met:

> The Home Secretary has had to break a promise he made to Europe only a fortnight ago after shelving plans for new extradition legislation. The warrant - under which EU citizens can be arrested and returned for trial anywhere in the Union for 32 crimes ranging from terrorism to "xenophobia" - was to be included in an Extradition Bill. But ministers announced this week that this has been postponed until the next session of parliament because too much legislation has piled up at Westminster.
> Even if the Bill were introduced at the earliest point of the next session beginning in November, it is unlikely to become law before the summer of 2003.
> A Home Office spokesman said Mr Blunkett was unaware at the time that the Bill would have to be dropped from this session's timetable[24].

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21 SI 2002/419 and SI 2002/1662. The Amendment Regulations were necessitated by defects in the first Regulations.

22 *Blunkett committed to early implementation of European arrest warrant*: Home Office news release 14 Feb 2002

23 notes for editors

24 *Blunkett breaks EU promise*: Daily Telegraph 2 March 2002

G. Draft legislation

Although there had apparently been broad agreement with the four tier approach, the draft *Extradition Bill* published for consultation in June 2002, proposed two categories of territories. The 169-clause draft Bill was described as "a substantially complete version of a Bill to be introduced when Parliamentary time allows". A Home Office Press Notice provided the following summary of its contents:

> The proposals outlined today comprise two broad categories. EU member states fall under category one territories, other extradition partners fall under category two territories. The majority of extraditions from the UK are to EU member states.
>
> Proposals for category one territories include:
>
> - A streamlined system, based on the introduction of the European arrest warrant, which removes duplication and delay, will reduce the time from an average of 18 months to three months and will cut costs over time.
> - An extradition hearing before a District Judge within 21 days of arrest, the right of appeal to the High Court, and in limited circumstances the right of appeal to the House of Lords.
> - The removal of Ministerial decision-making except in rare circumstances - extradition to EU partners is a matter for the courts, not for politicians.
> - EU member states will no longer be able to refuse the surrender of a fugitive simply because they are one of their own nationals.
> - Extradition will not take place where it would breach a fugitive's rights to a fair trial as set out in the European Convention on Human Rights.
>
> Proposals for category two territories include:
>
> - A streamlined system, removing the unnecessary and wasteful duplication of hearings and appeals that plague the current system.
> - A simplification of the rules governing the authentication of foreign documents, for instance faxed documents will be accepted as valid.
> - The retention of safeguards for fugitives, such as the principles of dual criminality and speciality.
> - The Home Secretary will maintain a reduced role in the appeal process as an additional safeguard for difficult cases.
> - A single point of appeal at the end of a case instead of an appeal against the Judge's decision, followed by a later appeal against the Home Secretary's decision.

> - No extradition will occur from the UK where the request is believed to be made for the purpose of punishing a person on account of his race, religion or political opinion.[25]

The consultation period closed on 30 September 2002. The Joint Committee on Human Rights reported on the draft Bill in July 2002.[26] Eight individual responses, from:

- The Council of Her Majesty's Circuit Judges
- The Metropolitan Police
- Justice
- The National Crime Squad
- The Liberal Democrat Party
- Leolin Price QC
- The Law Society
- Liberty

are at http://www.homeoffice.gov.uk/extraditionbill/documents.htm. on the Home Office website.

This paper does not provide a summary of those responses, but it does make reference to individual comments in some instances where they may explain why provisions of the Bill as introduced do differ from the draft, and in other instances where there has been no modification so that the comments may be taken to apply to the Bill as introduced.

H. The *Extradition Bill*

The *Extradition Bill* was introduced on 14 November 2002[27]. Explanatory Notes to the Bill were published on the same day and are available electronically.[28] The Home Office website has pages dedicated to the *Extradition Bill*, with links to most of the relevant documentary material, including papers published for consultation and consultation responses.[29] There is also a transposition table, to show how the Bill is implementing the framework decision.

According to a Home Office press notice announcing the introduction of the Bill:

> Home Office Minister Bob Ainsworth said:

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25 "Proposals For A Modern Extradition System Published", Home Office Press Notice 174/2002, 27 June 2002

26 http://www.publications.parliament.uk/pa/jt200102/jtselect/jtrights/158/158.pdf

27 HC Deb 14 Nov 2002 Col 163

28 http://www.publications.parliament.uk/pa/cm200203/cmbills/002/en/0300002x--.htm

29 http://www.homeoffice.gov.uk/extraditionbill/main_provisions.htm

"Extradition requests to the UK have trebled since the 1970s. Doing nothing is not an option, our creaking extradition laws are in need of radical overhaul.

"British victims of crime, where the suspect has fled overseas, currently have to wait up to a year for that person to be extradited back to the UK to face British justice – causing untold upset and frustration to victims and their families. And it can take anything up to six years to extradite someone back to an EU member state.

"The Extradition Bill will deliver swifter justice by removing the unnecessary delays and duplication that afflict our archaic and costly extradition laws – contested extradition cases cost the British taxpayer an average of £125,000.

"The Bill also safeguards the rights of fugitives. Extradition hearings will take place in court, before a British Judge and with the right of appeal. We're retaining the principle that fugitives will only stand trial for the crime they were extradited for. No-one will be extradited from the UK if there is a real risk that they won't get a fair trial or if it would be unjust to extradite because of their physical or mental condition.

"Modernised and simplified extradition procedures represent a significant step in tackling organised and serious crime. It is simply not good enough in this day and age to rely on 19th century mechanisms to fight 21st century international crime."

The proposals outlined today comprise two broad categories. EU member states will be category one territories, other extradition partners will be category two territories. Over half of extraditions from the UK are to EU member states.

Proposals for category one territories include:

A streamlined system, based on the introduction of the European arrest warrant, which removes duplication and delay, will reduce the time to an average of three months and will reduce costs over time.
Arrest within the UK carried out by British law enforcement personnel, an extradition hearing before a British District Judge within 21 days of arrest, the right of appeal to the High Court, and in limited circumstances the right of appeal to the House of Lords.
The removal of Ministerial decision-making except in rare circumstances - extradition to EU partners is a matter for the courts, not for politicians.
EU member states will no longer be able to refuse the surrender of a fugitive simply because they are one of their own nationals.
Extradition will not take place where there is a real risk it would breach a fugitive's rights to a fair trial as set out in the European Convention on Human Rights or where it would be unjust to extradite due to their physical and mental condition.
No extradition will occur from the UK where the request is believed to be made for the purpose of punishing a person on account of his race, religion or political opinion.
Proposals for category two territories include:

> A streamlined system, removing the unnecessary and wasteful duplication of hearings and appeals that plague the current system.
> Cutting unnecessary bureaucracy that can cause delay; eg the rules on authenticating foreign documents will be simplified so that faxed documents will be accepted as valid.
> The Home Secretary will maintain a reduced role in the process as an additional safeguard.
> A single point of appeal at the end of a case instead of an appeal against the Judge's decision, followed by a later appeal against the Home Secretary's decision.
> No extradition will occur from the UK where the request is believed to be made for the purpose of punishing a person on account of his race, religion or political opinion.
>
> Commenting on the legislation, Bob Ainsworth said:
>
> "This Extradition Bill strikes the right balance between the self-evident need for reform and modernisation whilst building in safeguards for fugitives. Our focus is, quite rightly, on delivering justice for the victims of serious crime by ensuring fugitives stand trial for the crimes they're accused of as soon as possible, and in the country they allegedly committed the crime in.
>
> "We're streamlining our own cumbersome extradition process by reducing the opportunities for deliberate exploitation of the system, which does occur and at the expense of the British taxpayer. But we're also protecting the rights of suspects."

It also stated that:

> The key improvements between the draft Extradition Bill and the Extradition Bill are the inclusion of an additional safeguard barring extradition where the suspect's physical or mental condition renders this unjust or oppressive and the inclusion in part one of the bar to extradition where this is based on the suspect's religion, race or political belief.[30]

I. Parliamentary scrutiny before second reading

As the Bill is the end result of two consultation exercises as well as the negotiations leading to the framework decision, some of its provisions have already received a substantial amount of parliamentary scrutiny. Provisions have been considered at various stages by the Lords Select Committee on European Union, the European Scrutiny Committee, the European Standing Committee, the Joint Committee on Human Rights and the Home Affairs Committee.

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[30] "Extradition Bill published - delivering swifter justice for the victims of crime", Home Office Press Notice 303/2002, 14 Nov 2002

1. The framework decision

The European Scrutiny Committee considered the proposal for the framework decision on 17 October, 14, 21 and 28 November and 12 December 2001 and 9 January 2002. Following consideration by European Standing Committee B on 3 and 10 December 2001 the proposal was recommended for debate on the Floor of the House. A motion to approve the proposal took place on 11 December[31], which was agreed to by 333 votes to 146 in a deferred division on 12 December 2001[32].

The committees' reports are available on the Parliamentary Intranet.[33] Some of the concerns they expressed are indicated below.

a. Select Committee on European Union

The Lords Select Committee on European Union (subcommittee A) expressed reservations in a letter dated 12 November 2001 from the Lord Brabazon of Tara to Bob Ainsworth, Parliamentary Under Secretary of State at the Home Office:

> As you explained at the meeting there have, following discussion in the Council Working Group, been substantial changes to the proposal, notably the introduction of a "positive list" of named offences to which the new procedure would apply. As regards those offences the principle of dual criminality would not apply. We note that the latest text (the Presidency text - Doc 13425/01) indicates that Member States are divided on whether a positive list is a better approach and records that the UK is against the list in principle (you explained that the Government now considers the positive list to be "a very real step forward"). The positive list would go some way towards mitigating the effect of the loss of the dual criminality rule because it would only contain offences recognised as such in all Member States. We await a translation of the list, but a glance at the French text raises questions as to whether there are EU definitions and/or common understanding of the meaning and content of all the offences listed; for example, "racism and xenophobia". It would also be helpful to have an explanation of the purpose and effect of the words, telles qu'elles sont definies par le droit de l'Etat d'emission, added to the new Article 2(2) apparently at the request of the UK.

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[31] HC Deb 11.12.01 c.811

[32] HC Deb 12.12.01. c.978-82.

[33] Lords Select Committee on European Union Sixth Report: http://pubs1.tso.parliament.uk/pa/ld200102/ldselect/ldeucom/34/3402.htm: European Scrutiny Committee: 8th Report:http://www.publications.parliament.uk/pa/cm200102/cmselect/cmeuleg/152viii/15202.htm
10th Report:http://www.publications.parliament.uk/pa/cm200102/cmselect/cmeuleg/152x/15207.htm
17th Report: http://www.publications.parliament.uk/pa/cm200102/cmselect/cmeuleg/152xvii/15201.htm
Proceedings of the European Standing Committee (B),3 December 2001
http://pubs1.tso.parliament.uk/pa/cm200102/cmstand/eurob/st011203/11203s01.htm:10 December 2001
http://pubs1.tso.parliament.uk/pa/cm200102/cmstand/eurob/st011210/11210s01.htm

Our understanding is that the positive list would provide some control over the scope of the warrant, provided that the offences listed in Article 2(2) are sufficiently clearly defined at EU level or otherwise readily identifiable and generally accepted. While the positive list does not restrict the scope of application of the new regime it is complemented by the ability of Member States to maintain the principle of dual criminality in respect of offences which are not in the list and where some of the conduct takes place in the executing State (Article 2(3)). A further safeguard is provided by Article 2(4) which permits the executing state to apply dual criminality in relation to offences concerning abortion, euthanasia, 'morals and sexuality' and freedom of expression and association. As the discussion at our meeting revealed, the Committee is particularly concerned to ensure that any removal or diminution of the dual criminality rule is justifiable and that alternate safeguards, where necessary, are adequate. We await the English text and a fuller explanation.

The speciality rule

The Committee notes that grounds for refusing execution (formerly contained in Articles 27 to 34) do not contain any protection akin to the rule of speciality, which is an important safeguard against the abuse or circumvention of other protective principles and procedures. I regret to say that we found the Government's evidence confusing as to what extent and when exactly the speciality rule would survive. The Decision provides (Article 22(1), formerly Article 41) that the arrested person may be tried, convicted and imprisoned for offences other than those for which he was extradited. The only remnant of speciality rule appears in Article 2 (3) and (4) (offences not on the positive list and offences relating to abortion, euthanasia, 'morals and sexuality' and freedom of expression and association). In these cases, any proceedings for other offences will require the consent of the competent authority of the executing State. This is a significant but limited protection for the individual. It would be useful if you would provide clarification of when the speciality rule would remain applicable. The Committee would need to be persuaded that the new procedure generally contains sufficient safeguards to justify abandoning the protection given by the speciality rule.

Bail

You will recall that at our meeting we raised with you the question of the availability of bail for the individual who is the subject of the warrant. Article 14.1 bis of the Commission's text appeared to contemplate a presumption in favour of ordering detention, with release on bail being allowed only if the detainee can show that there is reason to believe that the conditions set out in that paragraph are met. This approach carries a risk that the reversal of the burden might be found to be incompatible with Article 5 ECHR. We asked whether the Decision should be amended to include a presumption in favour of bail. You said that the question of bail was to be dealt with in the new Article 12, which would refer back to national law. In your letter of 6 November to Jimmy Hood you say that there should be no presumption either way. We would be grateful if you could clarify whether that is consistent with the approach of the Bail Act 1976. Our interest is not, however, limited to the availability of bail in UK proceedings.

A UK citizen, or indeed an EU citizen or third country national, may be the subject of a warrant in another Member State. He or she is equally deserving of protection. In our view, there is a strong argument that the Decision should contain a presumption in favour of bail.

Rights of appeal

The new procedure would be subject to a strict timetable. The new text imposes an even tighter regime than the Commission's original proposal. Under the presidency text, the maximum time within which a warrant is to be executed has been reduced from 90 days to 30. What is the effect of an appeal to the courts? Would the Decision block an application for habeas corpus? It seems that this might be the case if (new) Article 17(4) is accepted - under this provision, notwithstanding an appeal was taking place in the executing State, a person would have to be sent to the requesting State whose responsibility it would be to return him or her if the appeal was successful[34].

b. European Scrutiny Committee

In its Seventeenth Report, the European Scrutiny Committee expressed its continuing concerns on what they anticipated must be the "near-final" form of the framework decision, under the following headings:

- Definition of 'judicial authority'
- European Convention on Human Rights
- Dual criminality and the absence of definition of offences
- Absence of any guarantee of retrial for a person convicted in absentia
- The processes of the Council

They concluded: -

> We think it regrettable that the term 'judicial authority' is not defined, given its central importance to the scheme of mutual recognition and enforcement established by the Framework Decision. However, we welcome the Minister's acceptance of the principle that a warrant which is not a 'court decision' within the meaning of Article 1 will not be recognised in this country[35].
>
> We consider that the text in paragraph 12 of the preamble and the provisions of Article 1(3) are unsatisfactory alternatives to a clear reference in the body of the Framework Decision to the requirements of the European Convention on Human Rights. We agree with the House of Lords Select Committee on the European Union that the right of the executing authority to refuse to surrender a person on ECHR grounds should be expressly stated in the body of the Decision. We note that recent draft proposals for Framework Decisions have contained an express

[34] The letter is annexed to the Sixth Report of the Select Committee (12 November 2001) at http://pubs1.tso.parliament.uk/pa/ld200102/ldselect/ldeucom/34/3402.htm

[35] para 7

provision to the effect that they are without prejudice to the ECHR and we recommend that the UK press for the inclusion of such provisions as a matter of course[36].

We consider that the safeguard of dual criminality has been too lightly discarded, and that the listing of offences by description in Article 2(2) will give rise to practical difficulties which have not been fully thought through. On the other hand, we do not consider that these difficulties are such as to make it necessary to embark on a harmonisation at EU level of all the offences listed in Article 2(2)[37].

We consider it very unsatisfactory that such a significant change in the proposal [JHA Council redraft of 6-7 December no longer contained an explicit reference to a retrial if a person is absent from an original trial] should be made at such a late stage within the Council and with the Minister being unable to explain how it came about. This is a further example of the lack of transparency in the way in which the Council deals with instruments affecting individual liberties and is a major cause for concern.

Whilst we welcome the Minister's assurance that the Extradition Bill will make it clear that a person tried in absentia will not be surrendered unless he is guaranteed a retrial, we have some doubts as to whether this would be consistent with the Framework Decision as adopted. As is apparent from the Minister's description of the negotiating history, the Council had before it this option, but chose to reject it in favour of the lesser guarantee of a right of appeal or to lodge an opposition[38].

The presentation of radically changed texts in the last days of a Presidency, with calls for their immediate adoption, does not appear to us to be an appropriate way of determining changes at EU level to the criminal law. This is compounded by rules which prevent public and open discussion of what takes place in the Council, so that it becomes impossible for responsible Ministers to explain why particular changes were made. The legislative process should be open and transparent and not one of secret bargaining. We intend to return to this subject as part of our inquiry into democracy and accountability in the EU and the role of national parliaments[39].

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[36] para 12
[37] para 20
[38] paras 28,29
[39] para 32

2. The Bill

a. The Joint Committee on Human Rights

The Committee reported on the draft Bill in July 2002.[40] They are likely to report, before the Christmas Recess, on the Bill as introduced. Their conclusions on the draft were:

> 29. We conclude that the draft Bill gives rise to serious concerns on human rights grounds in the following respects—
>
> — the lack of clarity on the face of the draft Bill as to the relationship between its proposals and the provisions of the Extradition Act 1989, and the possibility of amending or repealing protections in that Act by Order in Council (paragraph 3);
>
> — the lack of express provision for mental or physical capacity to be a bar to extradition (paragraph 6);
>
> — the potential for removing the rule under which a person may not be extradited to a country to face trial or punishment for a political offence, and possibility of achieving that result by Order in Council subject only to the negative resolution procedure (paragraph 22);
>
> — the possible weaknesses in the arrangements which the draft Bill contemplates for accepting assurances from requesting States about compliance with Convention rights on their territory concerning both the range of rights in respect of which assurances could be sought and accepted (particularly the right to be free of torture and forms of inhuman or degrading treatment or punishment unrelated to the death penalty) and the means whereby the reliability of such assurances would be assessed (paragraphs 27-28).
>
> We draw these matters to the Government's attention, and hope that they will be considered when a Bill is being prepared on the basis of the current consultation.

b. The Human Rights Committee

On 5 December 2002, the Home Affairs Committee published their Report on the *Extradition Bill*, in which they examined the details of the Government’s proposals.[41] Although they welcomed some of the changes made by the Government following consultation, they had serious concerns about some of the Bill’s provisions. Their summary of conclusions and recommendations is reproduced below:

> **Part 1 of the Bill**

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[40] Joint Committee on Human Rights, Twentieth Report 2001-02, July 2002: http://www.publications.parliament.uk/pa/jt200102/jtselect/jtrights/158/15802.htm

[41] Extradition Bill, First Report of Session 2002-03, November 2002: http://www.publications.parliament.uk/pa/cm200203/cmselect/cmhaff/138/138.pdf

1. We recommend that, in order to provide some safeguard against clear abuses of the new procedure introduced under the framework decision, the Home Secretary give consideration to the following proposal: that in each case the district judge should look at the terms of the offence specified in the European Arrest Warrant and make a statement as to whether dual criminality applies. In cases where the alleged offence is not a crime in the UK a separate decision about whether to extradite should then be made by the Home Secretary, who is responsible to Parliament (paragraph 31).

2. We recommend that Clause 1(1) be amended to specify that only those countries that are signatories to the framework decision may be designated territories for the purposes of Part 1 of the Bill, and that Clause 68(1) be amended to specify that only those countries with which the UK has general extradition arrangements may be designated territories for the purposes of Part 2 of the Bill (paragraph 41).

3. If the previous recommendation is not accepted, then Clause 205 should be amended to provide that Orders in Council made under Clauses 1(1) and 68(1) may not be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House (paragraph 43).

4. We do not accept that Parliament should be constrained by the precedent of the Extradition Act 1989 from requiring an appropriate degree of parliamentary scrutiny for delegated legislation that may have the effect of removing significant safeguards for individuals subject to extradition requests (paragraph 43).

5. In relation to the dual criminality requirement, we can see no justification for eroding the basic level of protection provided by the framework decision, by removing the protection in relation to offences carrying a maximum penalty of 12 months or more where the framework decision requires the UK to do so only in relation to offences with a maximum penalty of at least three years, and we are dismayed that the Home Office is seeking to do so (paragraph 51).

6. We recommend that the three-year limit specified in the framework decision should be retained in UK domestic law (paragraph 51).

7. We consider it highly undesirable that Parliament should have no say in regard to future changes to the 32 categories of offence listed in the framework decision. We therefore recommend that the list of offences be imported directly into the Bill. Clause 65(3) should be amended to refer, not as at present to "the list of conduct set out in article 2.2 of the European framework decision", but rather to "the list of conduct set out in a specified schedule to the Bill" (paragraph 55).

8. We further recommend that the Bill should delegate a power to amend this list only in so far as is necessary to reflect any extensions or amendments made to article 2.2 of the framework decision by the EU Justice and Home Affairs Council (paragraph 56).

9. The Bill should also provide that any statutory instrument made under this delegated power should be subject to the affirmative resolution procedure (paragraph 56).

10. We agree with the European Scrutiny Committee that the European Arrest Warrant should be able to be issued only by a judicial authority exercising recognisably judicial functions in an independent manner. We consider that this requirement should apply to all Part 1 warrants. We therefore recommend that Clause 2(5) be amended to provide that the UK judicial authority may not issue a Clause 2 certificate unless it believes that the Part 1 warrant was issued by such a judicial authority (paragraph 63).

11. We recommend that Part 1 of the Bill be amended to specify the information that must be provided on the face of a Part 1 warrant, including a European Arrest Warrant (paragraph 68).

12. We strongly urge the Government to re-consider its intention to give notification, under article 27.1 of the framework decision, that it may be presumed to have consented to another EU member state taking proceedings against a suspect, where the other member state has also given such notification under article 27.1. We recommend that Clause 53 be deleted from the Bill (paragraph 75).

Part 2 of the Bill

13. We consider that the power delegated by Clause 83(6) is too broadly defined. As currently drafted, Clause 83(6) would allow any territory whatsoever to be designated as exempt from the prima facie case requirement (paragraph 82).

14. We recommend that the power delegated by clause 83(6) should be specifically limited to a power to make Orders in Council to exempt from the prima facie case requirement only:

- those European states that are signatories to the European Convention on Extradition but that are not EU members

- any other state with which the UK has a bilateral agreement which requires that state, in making an extradition request, to meet evidential requirements equivalent to those set out in the Convention (paragraph 82).

- We recommend that Clause 83(3) be deleted from the Bill, so that a summary of a statement will not be admissible evidence for the purposes of Clause 83(2) (paragraph 86).

- We are concerned that Clause 134(3) appears to undermine the rigorous evidential standards that we consider should be required to establish the existence of a prima facie case. We draw Clause 134 to the attention of the House (paragraph 87).

Parts 1 and 2 of the Bill

19. We consider that there is no justification for extending Part 1 of the Bill to include countries that maintain the death penalty (paragraph 92).

20. We recommend that Clause 1(1) be amended to specify that any country which provides for the death penalty as a form of punishment is prohibited from being designated a territory for the purposes of Part 1 of the Bill. If this is done, then Clause 15 can be deleted from the Bill as otiose (paragraph 92).

21. We recommend that clause 15 be amended to require that, if the judge receives a written assurance that a death sentence will not be imposed or carried out, then the judge must send the assurance to the Secretary of State for him or her to determine whether the assurance can be considered adequate (paragraph 96).

22. We endorse the comments of the Joint Committee on Human Rights on the adequacy of written assurances that the death sentence will either not be imposed or, if imposed, will not be carried out. We urge the Government to give an indication of how it proposes that the adequacy of a written assurance that a death sentence will not be imposed or carried out should be assessed (paragraph 99).

23. We consider that Clauses 3(3) and 5(2) should explicitly limit the scope of the Secretary of State's delegated power by defining who may constitute an "appropriate person". Clearly, officers of HM Customs and Excise could be so specified; the House should consider whether there are any other categories of officer whom it may be appropriate to specify (paragraph 104).

24. We recommend that Clauses 4(2) and 71(2) be amended. We consider that, if it is not possible for the arresting officer to be in possession of the warrant at the time of the arrest, then the officer (or some other appropriate officer) should be required to show the warrant to the arrested person as soon as practicable after the arrest. We can see no justification for placing the onus on the arrested person to ask to see the warrant, rather than on the appropriate law enforcement officials (paragraph 106).

25. We recommend that the Bill be amended to require the judge before whom the arrested person is initially brought to inform the person of the European Arrest Warrant and of its contents (paragraph 109).

26. We consider that the requirements of article 11.1 of the framework decision, that an arrested person must be informed of the possibility of consenting to surrender to the issuing judicial authority, would appear to be satisfied if the judge is required to give only that information specified in paragraphs (a) and (c) of Clause 8(3) and paragraphs (a) and (c) of Clause 71(7). We recommend that the Bill is amended accordingly (paragraph 112).

27. We recommend that, where an arrested person consents to be extradited, the judge or, in some Part 2 cases, the Secretary of State, should be required to satisfy him or herself that:

- the arrested person has been offered access to free legal advice before giving consent to being extradited
- access to such legal advice was made available to the person, and
- the person has understood the implications of giving consent to extradition (paragraph 114).

The Bill as a whole

28. We recommend that Clause 202 should be deleted and that the repeal of the 1989 and 1965 Acts should be provided for on the face of the Bill itself. We do not consider that such a provision repealing the 1989 and 1965 Acts would be incompatible with the need for these Acts to continue to apply to any extradition requests made prior to the Bill coming into force. We consider that appropriate provisions can be drafted to allow for this eventuality without needing to delegate to the Government the power to repeal the Acts (paragraph 116).

29. We recommend that central statistics on extraditions to and from the Republic of Ireland should henceforward be maintained (paragraph 8).[42]

The Home Affairs Committee's Report also summarises how three issues with the draft Bill have subsequently been resolved. These were:

- Detaining suspect for up to seven days following withdrawal of warrant or arrest
- Lack of bar to extradition for political offences and extradition requests motivated by race, religion, nationality or political opinion
- Mental and physical health as a bar to extradition

II Part 1 of the Bill: extradition to category 1 territories

A. What are category 1 territories?

Part 1 deals with extradition from the UK to category 1 territories. Category 1 territories are to be those so designated by Order in Council, under *clause 1*. There is no list in the Bill of territories which would be the initial category 1 territories, nor any guidance or

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[42] Extradition Bill, First Report of Session 2002-03, November 2002: http://www.publications.parliament.uk/pa/cm200203/cmselect/cmhaff/138/138.pdf

restriction on which territories may be so designated, except that *clause 205 (3)* specifies that –

> A territory may be designated by being named in an Order in Council under this Act or by falling within a description set out in such an Order.

Accordingly a territory designated as category 1 would not necessarily have any connection with Europe, nor is it a condition that such territory should have entered into a reciprocal agreement so that parallel provision would apply to extradition sought by the UK from that territory.

The *Explanatory Notes* suggest that the Bill will adopt the Framework Decision on the European Arrest Warrant creating a fast track arrangement with EU Member States and Gibraltar.[43]

Jim Wallace MSP moving a Sewel Motion on the Bill on 21 November 2002 told the Scottish Parliament that the Bill implemented the framework decision on the European Arrest Warrant to create a fast track process with member states of the European Union as well as Norway, Iceland and Gibraltar, which would all comprise the category 1 countries.[44]

Concerns have been expressed about the risks inherent in conferring category 1 status too widely. For example, the human rights organisation, Liberty said:

> 9. The Eurowarrant is based upon the presumption that EU countries all have fair systems of justice which should remove the need for any other country to scrutinise the fairness of extradition to such a country. This presumption is seriously open to question. In the 13 years since the Extradition Act 1989 was enacted, UK courts have intervened to refuse extradition following habeas corpus or judicial review proceedings in a significant number of EU cases, and the Home Secretary has refused to extradite in a significant number of other cases where extradition would have plainly been wrong and unjust.3 The Eurowarrant proposals would seriously increase the risk of injustice in such cases by removing the power of the High Court and Secretary of State to scrutinise the merits in an individual case. Moreover, in R (Ramda) v. Secretary of State, 27th June 2002, the High Court said that it was no answer for the Secretary of State to invoke France's status as a signatory to the Convention (and hence that the defendant could always apply to the Strasbourg court) as a complete answer to complaints about the fairness of his trial.

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[43] *Explanatory Notes*, Bill 2-EN, para 13
http://www.publications.parliament.uk/pa/cm200203/cmbills/002/en/0300002x--.htm

[44] See post, Part V of this paper, and Scottish Parliament Official Report, 21 Nov 2002, available at:
http://www.scottish.parliament.uk/official_report/session-02/sor1121-02.htm#Col15606

> 10. Although at present a small number of countries would be involved, there is no guarantee that other countries would not also be added to Category 1 so that extradition without close scrutiny would be possible to countries with under-developed legal systems. The proposed expansion of the EU to include countries which formed part of the Soviet Bloc little more than a decade ago demonstrates the potential danger. The European Convention on Extradition provides a good example of the dangers inherent in such an approach. The Convention has been signed by countries with appalling human rights records whose judiciaries in many cases are neither independent nor impartial. Whilst they may also have signed the ECHR, this is no guarantee that in an individual case the accused will receive his Convention rights.[45]

B. The first step: receipt of a Part 1 warrant

The initiating procedure is set out in *clause 2*, and begins with the receipt by a "designated authority" of a "Part 1 warrant". A Part 1 warrant is defined as an arrest warrant which is issued by "an authority" of a Part 1 territory and contains a statement to the effect either that the person sought has committed an offence in that territory and the warrant is issued for the purpose of prosecution, or that he is unlawfully at large after having been convicted and the warrant is issued for the purpose of sentencing or serving of a custodial sentence. There is no requirement at this stage for anyone to be satisfied that the alleged offence is an extraditable offence.

While the "designated authority" (at the UK end) is to be designated by Order in Council, there is no definition of "an authority of a category 1 territory". But the designated authority's power to issue a certificate (without which the warrant cannot be executed) is exercisable only "if it believes that the authority which issued the warrant has the function of issuing arrest warrants in the category 1 territory", and the certificate *must* certify that the authority which issued the warrant *has* that function in that territory.

C. The second step: arrest

If the designated authority does issue a certificate, *clause 3* provides that:

> (2) The warrant may—
> (a) be executed in any part of the United Kingdom;
> (b) be executed by a constable or by an appropriate person;
> (c) be executed even if neither the warrant nor a copy of it is in the possession of the person executing it at the time of the arrest.

[45] http://www.homeoffice.gov.uk/extraditionbill/responses/liberty.pdf

D. Arrest without warrant

There is also power, under *clause 5(1)*, for a constable or "an appropriate person" to arrest a person without a warrant if he has reason to believe:

> (a) that a Part 1 warrant has been or will be issued in respect of the person by an authority of a category 1 territory, and
> (b) that the authority has the function of issuing arrest warrants in the category 1 territory.

1. Concerns about arrest without warrant and "appropriate person"

When powers are given to "a constable", the word refers to holders of the office of constable, which will include all police officers, not merely to police officers holding the rank of constable. It will include ordinary police officers, special constables and also other bodies, such as the British Transport Police, provided they are acting within their jurisdiction. Police officers would therefore have power to make arrests both under Part 1 warrant and where they had "reason to believe" that a warrant had been or would be issued.

The Home Secretary may, by order, confer equivalent powers, either to make an arrest under a warrant, or to make a provisional arrest, on "an appropriate person", who would be a person of a description specified in the order. It does not necessarily follow that those designated as appropriate to make provisional arrests (under *clause 5(2)*) would be the same as those designated to make arrests under warrants (under *clause 3(3)*).

Concerns have been expressed, especially in the contexts of provisional arrests, and arrests made under warrants which are not in the possession of the arresting authority, at the possibility that these powers could be conferred on "appropriate" persons not generally recognised as having power to arrest, and who might be "likely to meet mistrust, disbelief, suspicion and non-co-operation on the part of the person to be arrested."[46]

Concerns were also expressed, in the consultation on the draft Bill, about the limited obligations imposed in the event of a person being arrested without being shown the warrant. *Clause 3(3)* of the draft Bill provided:

> A copy of the warrant must be shown to the person arrested as soon as practicable after his arrest if-

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[46] Memorandum by Leolin Price CBE QC, in response to the consultation on the draft Bill, October 2002, at http://www.homeoffice.gov.uk/extraditionbill/responses/memorandum.pdf

> (a) neither the warrant nor a copy of it was in the possession of the person executing it at the time of the arrest, and
> (b) the person arrested so requests.

Clause 4(2) would provide:

> (2) If neither the warrant nor a copy of it was shown to the person at the time of his arrest and he asks to be shown the warrant, the warrant or a copy of it must be shown to him as soon as practicable after his request.

If the subsection is not complied with, the person must be taken to be discharged.

No substantive change appears to have been made to this provision after consultation on the draft Bill. In the consultation, the Law Society among others pointed out that the suspect might not know of his right to see the document. They said:

> There can be no rationale for not routinely showing and providing a copy of the arrest warrant to the suspect and his legal representative at the earliest opportunity. The warrant contains not merely the authorisation to arrest but also the statement of the details of the alleged offence and the requesting country.
>
> We note that clause 60(4)(c) does impose a positive obligation to provide copies of the extradition request and certificate for Category 2 requests. This obligation is felt to be so fundamental that the judge is obliged to order the arrested person's discharge if it has not been done. We query why there is no such corresponding obligation for category 1 requests.[47]

E. The third step: the initial hearing

1. Time for the initial hearing

The person arrested must be brought before "the appropriate judge" if arrested under a warrant, *(clause 4(2))* as soon as practicable, or within 48 hours in case of provisional arrest (*clause 6(3)*). Again, if these requirements are not complied with, the person must be taken to be discharged. The Law Society thought that:

> Given the speed and efficiency of modern communication and given that it is now unusual to have law enforcement offices are unstaffed, we query whether 48 hours is too long a period to be able routinely to detain a suspect on a provisional warrant. It may be that a shorter time frame with a right to apply for an extension in exceptional circumstances may be more appropriate.[48]

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[47] http://www.homeoffice.gov.uk/extraditionbill/responses/law_society.pdf
[48] ibid

Conversely, the Metropolitan Police thought that 48 hours was not long enough. They said that the timescale would not allow for circumstances where, for instance, a prisoner was hospitalized or a vehicle broke down during the transfer process. They suggested, as a more workable solution, that there should be a requirement to produce a copy of the certified warrant to the prisoner within 48 hours, and bring him to court as soon as reasonably practicable. They also suggested that clarification should be given as to who would have the authority to discharge the person.[49]

2. Identification

At the initial hearing, governed by *clauses 7* and *8*, the judge has to decide whether the person brought before him is the person in respect of whom the warrant was issued (*clause7(2)*). There is still no need for any consideration of whether the warrant relates to an extraditable offence.

The human rights organization, Justice, commented that there was no specification on the evidential standard required on identity, or where the burden of proof lay. They said:

> The draft appears to create the role of investigating magistrate which is unknown to UK law. In the interests of procedural rigour, JUSTICE believes that the Act should state whether the burden of proof is persuasive or legal and outline the standards of evidence acceptable along with identifying the party which must produce such evidence.[50]

If the judge decides in the negative, he must order the person's discharge (*clause7(3)*).

3. Consent

If the judge decides in the affirmative, he must fix a date for the extradition hearing no later than 21 days from the arrest, remand the person either in custody or on bail, and give the person "the required information about consent" (*clause8(1)*). This is:

> (a) that the person may consent to his extradition to the category 1 territory in which the Part 1 warrant was issued;
> (b) an explanation of the effect of consent and the procedure that will apply if he gives consent;
> (c) that consent must be given before the judge and is irrevocable.

The Law Society was worried about the judge having that role. They commented:

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49 http://www.homeoffice.gov.uk/extraditionbill/responses/mps.pdf

50 http://www.homeoffice.gov.uk/extraditionbill/responses/justice.pdf

There are two problems with the mandatory direction that the judge must give the person the required information about consent.

- The first of those is that it is not, and never has been, the judge's role to give a defendant legal advice about his case and the difficulty, particularly in extradition where the person concerned may not speak English and may be relying on an interpreter, is that however carefully the judge phrases the information he is conveying, it may be mistaken by the defendant for advice or direction. It is likely that judges would be reluctant to put themselves in that position. Similarly, court clerks are neither qualified to give such advice nor would it be appropriate for them to do so.
- The second problem that arises is that on the first hearing it is often the case that the Crown Prosecution Service are not represented, particularly in a provisional warrant case. The defendant is arrested by an officer and brought directly to court. A prosecuting lawyer may want to establish if and when the requesting country is going to make a formal request and indeed there may be some issues in relation to dual criminality or the nature of the charges generally. There may also be a question of assurance and undertaking in death penalty cases which the CPS would wish to explore before any progress is made in the case. Accordingly, not only might the CPS not be attending on the first appearance but indeed even if they are they may not be ready for any decision to be made in relation to waiver. Any advice given by a defending lawyer must be informed advice based on information disclosed to him. The prosecution are often not in a position to provide the necessary disclosure at such an early stage in a case and, accordingly, although the general provisions of waiver can easily be summarised, it may be premature to formally advise a prisoner, particularly where there may be a language difficulty.
- The Committee is also concerned that safeguards are in place to ensure any consent is meaningful. The suspect is brought before the judge as soon as is practicable. This could result in a suspect being arrested and brought before a judge, be given the information and then give consent in a state of confusion, without having had time to receive and reflect on meaningful advice. Alternatively, we do not wish for a situation where consent is not accepted and as a result the suspect spends longer in custody than necessary. Accordingly, we suggest that consent cannot be accepted unless the judge is satisfied that the suspect has had an opportunity to consider and reflect on advice.[51]

Justice urged the government to make provision that the judge, before whom consent was given, should be satisfied that:

(i) the person before him has been informed of their right to free legal advice and has understood that information, and

[51] http://www.homeoffice.gov.uk/extraditionbill/responses/law_society.pdf

> (ii) that access to such legal advice was made available to them before consent is deemed to have been given.

4. Bail

Clause 191 would amend the *Bail Act 1976* so that extradition proceedings under the Bill would in future be governed by the bail provisions which apply in other criminal justice proceedings, including an extension of the presumption in favour of bail in extradition proceedings where a person is accused of an offence (but not in conviction cases).

This extension was applauded by Justice, who suggested, however, that amendments to the presumption of bail, proposed in the White Paper *Justice for All,* rather weakened the positive move.[52]

5. Extension of time for extradition hearing

Justice was also concerned that the judge would have power, under what is now *clause 8(5)*, to fix a later date for the extradition hearing on the application of any party (without any need for representations from the other party or possibility of review), if he believed that there were exceptional circumstances. Justice believed that the Act should contain clear procedures for applications to extend time limits. The right to make representations was crucial when a decision was made impacting on a person's right to liberty: all hearings should be *inter partes* (ie with both parties present), and the decision should be subject to review. Liberty made comments on the Bill's provisions for time limits, as follows:

> 14. The Bill envisages strict time limits for the hearing of committal proceedings and any High Court proceedings (see e.g. Clauses 6(1), 6(4), and 26(1)). The power to extend the date of the hearing more than 21 days after arrest is only to be done in exceptional circumstances. The right to adequate time and facilities for the preparation of a defence is inherent in article 5(4) (as it is in article 6, albeit article 6 does not apply directly to extradition hearings) and it is therefore important that this provision not be construed in such a way as to rob the defendant of his right to defend himself. For example, legal aid often takes time to arrange. Whilst the CPS often appear through counsel, the authorities at Bow Street magistrates court frequently refuse to extend legal aid to cover counsel for the defence, meaning that the application has to be renewed before the district judge. Also, where an appeal to the High Court is necessary, counsel have to write an advice to that effect which needs to be analysed by the Legal Services Commission. The Bill therefore makes no apparent allowance that the legal aid authorities act slowly and often remain unmoved by the fact that hearings are

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[52] "Justice for All", July 2002, Cm 5563, http://www.cjsonline.org.uk/library/pdf/CJS_whitepaper.pdf, but see now Part 2 of the *Criminal Justice Bill*, and Library Research Paper 02/72

[53] http://www.homeoffice.gov.uk/extraditionbill/responses/justice.pdf

> imminent. Secondly, paragraph 17(1) requires the district judge to decide Convention issues. This may require the defence to gather and present evidence (see e.g. Ramda where evidence was uncovered in France that a codefendant had been severely beaten in police custody).
>
> 15. We are therefore concerned about how the time limits are to be operated. We take the view that the word 'exceptional' cannot be too narrowly construed.[54]

F. The fourth step: the extradition hearing

1. The initial stage: extradition offences

The extradition hearing has potentially several stages. The judge is directed to consider particular questions, with an obligation to discharge the person if the answer is in the negative but otherwise to go on to consider the next question. First, the judge must decide whether the offence specified in the Part 1 warrant is an extradition offence, and if he decides that it is not, he must order the person's discharge (*clause 10*).

2. Information for the judge to consider

As Justice pointed out in consultation on the draft Bill, there is no specification of the information needed in the warrant in order for the judge to come to his decision.[55] They, and Liberty, argued that the warrant should have to contain sufficient information to allow the judge to decide whether the offence amounted to an extradition offence:

> In the interests of legal certainty the Act must explicitly state the details required on the warrant to allow the judge to reach a reasoned decision. In particular, the details of the offence must include sufficient detail of the legal basis of the offence and the specifics of the conduct alleged in order for the judge to establish a reasoned connection between the offence or type of offence and the conduct. So, for example, assault occasioning actual bodily harm whe re the assault involved hitting someone with a lap - top computer could not reasonably come under the heading of "computer related crime" included in the framework list as the computer is merely an incidental element of the offence.
> (…)
> In the absence of sufficient information to come to a reasoned decision on this point, it is difficult to see how the judge can ensure that such decisions and subsequent detention do not amount to a breach of article 5 of the ECHR on the grounds of arbitrariness.[56]

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[54] http://www.homeoffice.gov.uk/extraditionbill/responses/liberty.pdf,
[55] http://www.homeoffice.gov.uk/extraditionbill/responses/justice.pdf
[56] http://www.homeoffice.gov.uk/extraditionbill/responses/liberty.pdf, paras 17- 18

Liberty also pointed out that the need for European states to prove a *prima facie* case was removed in 1990 under the *Extradition Act 1989*. Stanbrook relates, in *Extradition Law and Practice*:[57]

> In 1990 the accession of the United Kingdom to the 1957 Convention on Extradition marked the end of an era. By accepting some concepts of Continental law, reserving its position on others, dropping its traditional insistence on the prima facie rule and eschewing federalist ideas like 'L'Espace Europeenne', the United Kingdom has found itself on a legal course parallel with that set politically in 1993 by the Treaty of Maastricht.
> (…)
> The dropping of the prima facie rule was not achieved without misgivings. The Criminal Bar Association, the Law Society and the National Council for Civil Liberties all strenuously objected. The Home Secretary, Douglas Hurd MP, wrote to Ivor Stanbrook MP on 12 November 1987: 'Our present extradition law dates from 1870. It reflects a very different sort of world from that in which we now live. Serious crime has a sizeable, and growing, international dimension… The revolution in international travel and communications has not been adequately reflected in the provisions of our law … Britain is among the easiest countries in which criminals may take refuge because of our uniquely demanding extradition laws'.

3. What are extradition offences

Clauses 63 and *64* would give the definitions of what are to be extradition offences, in the contexts respectively of a person accused of an offence or alleged to be unlawfully at large after conviction, and of a person alleged to be unlawfully at large after conviction and sentence. *Subsections (2)* to *(6)* of *clause 63* provide five different sets of conditions: an offence can be an extradition offence by satisfying all the conditions in any of them. Two sets of conditions apply to conduct in the category 1 territory where the person is accused of committing the offence, two apply to conduct outside that territory and specifically where no part of it occurred in the UK and on applies to conduct. The five sets of conditions in *clause 63* are discussed in turn below. The roughly parallel sets of conditions in *clause 64* are referred to, in less detail, after discussion of *clause 63*.

a. The first set of conditions: the framework decision list of offences

These are set out in *clause 63 (2)*:

> (a) the conduct occurs in the category 1 territory;
>
> (b) a certificate issued by an appropriate authority of the category 1 territory shows that the conduct falls within the European framework list;

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[57] 2nd edn, 2000

(c) the certificate shows that the conduct is punishable under the law of the category 1 territory with imprisonment or another form of detention for a term of 12 months or a greater punishment.

The "European framework list" is defined by *clause 65(3)* as:

the list of conduct set out in article 2.2 of the European framework decision

which is in turn defined by *clause 198(6)* as:

the framework decision of the Council of the European Union made on 13 June 2002 on the European arrest warrant and the surrender procedures between member states (2002/584/JHA)

Article 2 of the framework decision provides:

Scope of the European arrest warrant
1. A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least twelve months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.
2. The following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 3 years and as they are defined by the law of the issuing Member State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant:

- participation in a criminal organisation,
- terrorism,
- trafficking in human beings,
- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities'financial interests,
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- organised or armed robbery,

- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage.

> 3. The Council may decide at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty on European Union (TEU), to add other categories of offence to the list contained in paragraph 2.The Council shall examine, in the light of the report submitted by the Commission pursuant to Article 34(3), whether the list should be extended or amended.
>
> 4. For offences other than those covered by paragraph 2, surrender may be subject to the condition that the acts for which the European arrest warrant has been issued constitute an offence under the law of the executing Member State, whatever the constituent elements or however it is described.

Although the Council may amend the list, it may be that normal principles of statutory construction that would not affect the definition contained in the *Extradition Act*. Thus if the framework decision were amended, the list as incorporated in the Act would still be that contained in article 2.2 as it now reads, unless the Act itself were correspondingly amended.[58]

This is one of the provisions of the Bill which has attracted most controversy, for three principal reasons. Firstly, the provision would allow extradition without any requirement to show double criminality, i.e. that the extradition offence in the requesting territory would also have been a UK criminal offence if it had been committed in the UK. Secondly, it would do so on the basis of a certificate from the requesting state showing that the conduct fell within the list, which is in very broad terms. Thirdly, like all the other sets of conditions in *clause 63* (relating to a person accused of an offence) an offence will qualify if it is punishable in the category 1 territory with a custodial sentence of twelve months or more. Article 2 of the framework decision requires the new provisions to apply to offences punishable by a custodial sentence of three years. Several

[58] see *Statutory Interpretation*, Bennion, 1985, p.281

commentators have asked why *clause 63* has been drafted to take away more protection than is required by article 2.[59]

The Joint Committee on Human Rights did not consider that this would engage any convention right, as the double criminality requirement stemmed from treaties, rather than being a general principle of international or Community law such as might give rise to an individual right in the law of the UK.[60]

Others have been concerned both about the abolition of the dual criminality requirement and the nature of the list of conduct where the rule would not apply. In moving that the House take note of the European Union Committee report on the European arrest warrant, Lord Scott of Foscote said:

> In relation to some of the specified offences, where there is broad harmonisation and correspondence of the offence across the Union, there is, in my opinion, no real problem—I refer, for example, to murder, kidnapping and robbery. There is no need to insist on dual criminality in regard to crimes of that character. But for others there is no harmonisation and the description of the specified offence is broad. The question whether the charge against the individual who is sought to be extradited falls within the specified offence is to be answered by the law of the country that is seeking extradition. The specified offences include offences such as racism and xenophobia. Another broad description is swindling. Those are very broad descriptions of offences. We do not know what specific offences other member states might have that they would say, under their law, fitted the description in question.
>
> Indeed, "racism and xenophobia" has very recently received a definition in yet another proposed framework decision, which the sub-committee of which I am chairman currently has under scrutiny. That framework decision is intended to require member states to introduce crimes of racism and xenophobia which will be common across the Union. It is therefore necessary to define racism and xenophobia. It is defined as,
>
>> "the belief in race, colour, descent, religion or belief, national or ethnic origin as a factor determining aversion to individuals or groups".
>
> That is contained in Article 3. Article 4 sets out the offences for which the laws of each member state must provide. It defines racism and xenophobia offences as including,
>
>> "public dissemination or distribution of tracts, pictures or other material containing expressions of racism or xenophobia".

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[59] eg Liberty at http://www.homeoffice.gov.uk/extraditionbill/responses/liberty.pdf

[60] Joint Committee on Human Rights, Twentieth Report, 22 July 2002, para 7, http://www.publications.parliament.uk/pa/jt200102/jtselect/jtrights/158/15802.htm

> So distribution of, for example, literature containing expressions of belief in race, colour, national origin and so on as a factor determining aversion to individuals or groups would be a criminal offence, and extradition of a person accused of the offence could be sought under the European arrest warrant. The offence in question would almost certainly cover the distribution of Biggles. It would probably cover the distribution of the Old Testament as well. I do not know what the Government's reaction to that proposal will be—I imagine that it will be a mixture of horror and laughter. But my point for this evening is that if any member state creates offences on those lines—those lines are proposed by the Commission—and prescribes three years' imprisonment as a possible penalty, we in this country would be expected to extradite the accused under a European arrest warrant. I suggest that those categories of offence need to be made much more specific.[61]

The European Scrutiny Committee had considered that, in arriving at the framework decision:

> the safeguard of dual criminality has been too lightly discarded, and that the listing of offences by description in Article 2(2) will give rise to practical difficulties which have not been fully thought through. On the other hand, we do not consider that these difficulties are such as to make it necessary to embark on a harmonisation at EU level of all the offences listed in Article 2(2) .[62]

Just before publication of the draft Bill, in June 2002, Bob Ainsworth explained in answer to a written question:

> The list in Article 2.2 of the Framework Decision on the European Arrest Warrant contains broad headings, designed to ensure that all serious offences are caught. It is for the requesting state to decide whether the conduct in question falls within one of the headings.
>
> In the United Kingdom (UK), depending on circumstances, if issued by a judicial authority in the UK, "swindling" would include offences under the Theft Acts of 1968 and 1978.
>
> The UK has a number of offences which could fall into the category of "racism" and "xenophobia". These include racial discrimination, incitement to racial hatred, possession and distribution of racially inflammatory material and publication of material intended to stir up racial hatred.[63]

In the consultation on the draft Bill, Justice said:

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[61] HL Deb, 23 April 2002, col 209.

[62] European Scrutiny Committee, Seventeenth Report 2001-02, January 2002, para. 20, http://www.publications.parliament.uk/pa/cm200102/cmselect/cmeuleg/152-xvii/15201.htm

[63] HC Deb, 25 June 2002, Col 839W

> 7. JUSTICE has already raised its concerns to the Government that retrospective application of the abolition of dual criminality entailed by Article 2 of the EAW could amount to a breach of Article 7 ECHR, the right to no punishment without law.
>
> 8. The relaxing of the principle of dual criminality will mean that the UK is effectively accepting the criminal laws of all other Member States of the EU without a clear picture of what those laws might be. This could raise specific difficulties under Article 7. Although it is accepted that extradition itself is not a penalty for the purpose of Article 7, the resulting penalty in the requesting state could be. This could cause problems, in particular, where the EAW is applied retrospectively to offences which occurred prior to the coming into force of the EAW. The principle of certainty under Article 7 ECHR could be threatened by the erosion of dual criminality.

The Liberal Democrats said:

> On dual criminality, we accept that the differing technical construction of an offence which is recognised as criminal in different EU member states should not be a bar to extradition. However, in relation to tax offences it is proposed that it will be immaterial that UK law does not contain rules of the same kind as those of the requesting territory. We would oppose such a provision for as long as there are concerns about failure to apply proper judicial procedures and penalties to tax offences in some member states.
> (…)
> We would seek reassurance that concerns expressed about broadly defined crimes would not pose a risk to individual liberties and would not prevent somebody from knowing with certainty what offence they might be liable to be charged with.[64]

Leolin Price QC described the list as haphazard and not based on any apparent connecting principle. He could not understand why *clause 63* referred to twelve months rather than three years custodial sentence. And he thought that the Home Secretary might reasonably have provided each Member State's definition of offences falling within each of the 32 categories, translated into English.[65]

b. The second set of conditions: other conduct in the requesting territory

These are set out in *clause 63(3)*:

> (a) the conduct occurs in the category 1 territory;

[64] http://www.homeoffice.gov.uk/extraditionbill/responses/liberal_democrats.pdf
[65] http://www.homeoffice.gov.uk/extraditionbill/responses/memorandum.pdf

> (b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom if it occurred in that part of the United Kingdom;
>
> (c) the conduct is punishable under the law of the category 1 territory with imprisonment or another form of detention for a term of 12 months or a greater punishment (however it is described in that law).

This provision makes use of the safeguard in *Article 2.4* of the framework decision, which allows member states to decide whether to apply the dual criminality test in the case of non-list offences. The Government had reflected on whether to retain the dual criminality test and decided to do so before publishing the draft Bill.[66]

c. The third set of conditions: extraterritorial offences

These are set out in *clause 63(4):*

> (a) the conduct occurs outside the category 1 territory;
>
> (b) the conduct is punishable under the law of the category 1 territory with imprisonment or another form of detention for a term of 12 months or a greater punishment (however it is described in that law);
>
> (c) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment.

d. The fourth set of conditions:

These are set out in *clause 63(5)*:

> (a) the conduct occurs outside the category 1 territory and no part of it occurs in the United Kingdom;
>
> (b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom;
>
> (c) the conduct is so punishable under the law of the category 1 territory (however it is described in that law).

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[66] see Lord Rooker's answer at HL Deb 23 April 2002, Col 233

The third and fourth sets of conditions are both concerned with extraterritorial offences, which are offences in respect of which a state claims jurisdiction (to prosecute) although the offence was committed outside its territory. The difference between them is that under the fourth set, no part of the offence must have been committed in the UK, but it would have to have been an offence under UK law if it had been committed in the UK whereas, under the third set, the extraterritorial offence must be one which would be an extraterritorial offence under UK law.

e. The fifth set of conditions

These are set out in *clause 63 (6)* and *(7)*:

> (a) the conduct occurs outside the category 1 territory and no part of it occurs in the United Kingdom;
>
> (b) the conduct is punishable under the law of the category 1 territory with imprisonment or another form of detention for a term of 12 months or a greater punishment (however it is described in that law);
>
> (c) the conduct constitutes or if committed in the United Kingdom would constitute an offence mentioned in subsection (7).
>
> (7) The offences are—
> (a) an offence under section 51 or 58 of the International Criminal Court Act 2001 (c. 17) (genocide, crimes against humanity and war crimes);
>
> (b) an offence under section 52 or 59 of that Act (conduct ancillary to genocide etc. committed outside the jurisdiction);
>
> (c) an ancillary offence, as defined in section 55 or 62 of that Act, in relation to an offence falling within paragraph (a) or (b);
>
> (d) an offence under section 1 of the International Criminal Court (Scotland) Act 2001 (asp 13) (genocide, crimes against humanity and war crimes);
>
> (e) an offence under section 2 of that Act (conduct ancillary to genocide etc. committed outside the jurisdiction);
>
> (f) an ancillary offence, as defined in section 7 of that Act, in relation to an offence falling within paragraph (d) or (e).

Here again, the offence must not have been committed in the UK, but it must be one which is (or would have been if committed in the UK) one of the offences listed in *subsection (7),* relating to genocide, crimes against humanity and war crimes. No explanation is offered of what conduct, had it occurred inside the UK could constitute such an offence without also constituting such an offence when it occurs wholly outside the UK*(clause 63(7)(c))*.

Clause 64 defines the different kinds of conduct which can be an extradition offence in respect of category 1 territories in case where a person has been convicted and sentenced for the offence. These do not correspond exactly with the *clause 63* definitions. They include offences within the European framework list in respect of which a sentence of detention for a term of four months or more have been imposed (*subsection(2))*.

4. Further stage of extradition hearing: bars to extradition

If the judge decides that the offence specified in the warrant is an extradition offence, he must go on to decide whether the person's extradition is barred for one of the reasons listed in *clause 11(1)*. These are:

> (a) the rule against double jeopardy;
> (b) extraneous considerations;
> (c) the person's age;
> (d) the death penalty;
> (e) hostage-taking considerations;
> (f) speciality;
> (g) the person's earlier extradition to the United Kingdom from another category 1 territory;
> (h) the person's earlier extradition to the United Kingdom from a non-category 1 territory.

The next 8 clauses explain what is meant by those bars.

a. Double jeopardy

Clause 12 provides:

> A person's extradition to a category 1 territory is barred by reason of the rule against double jeopardy if (and only if) it appears that he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction if he were charged with the extradition offence in the part of the United Kingdom where the judge exercises jurisdiction.

In this context it should be noted that *Part 10* of the *Criminal Justice Bill*, which had its second reading on 4 December 2002 would, if enacted, in certain circumstances allow the retrial of a person previously acquitted on trial for a serious offence.[67]

Justice addressed the issue of double jeopardy in some detail, when commenting on the draft clause (which has not been altered):

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[67] HC Deb, 4 December 2002, col 913, and see Library Research Paper 02/74, *The Criminal Justice Bill: Double jeopardy and prosecution appeals*, http://hcl1.hclibrary.parliament.uk/rp2002/rp02-074.pdf

21. The first difficulty with the text of Clause [12] as an implementation of the EAW, is that the bill refers to the "extradition offence" rather than the "same acts".

22. The abolition of the dual criminality requirement in relation to the 32 types of serious offence contained in Article 2 of the EAW means that a request for extradition under the EAW need not be based on an offence known to UK law (either in England and Wales or in Scotland). If a request were made for an offence in another Member State which was not an offence in UK law, a defendant would not "be entitled to be discharged under any rule of law relating to previous acquittal or conviction if he were charged with the extradition offence in the part of the UK where the judge exercises jurisdiction". No such rules of law would exist in relation to an offence not known to law. This would mean that in cases where the principle of dual criminality did not apply, the rule against double jeopardy would not apply using the proposed text in the draft bill. This is presumably not the intention.

23. The use of the term "same acts" rather than "extradition offence" in the European Arrest Warrant clearly reflects a deliberate step away from the ambit of the ne bis in idem principle found in Article 4 of Protocol 7 to the ECHR. Caselaw in this context has established that the principle of ne bis in idem will not be breached by successive prosecutions relating to separate offences arising out of the same course of criminal conduct or acts. The EAW text clearly states that a final judgment on the same acts is a mandatory bar to surrender and implementing legislation should reflect this rather than the narrower Protocol 7 ECHR Article 4 ECHR notion of double jeopardy.

24. The text of the draft Bill also seems to impose our own domestic rules relating to double jeopardy in deciding whether this bar to extradition is applicable. The rules and procedures relating to final judgments and appeals therefrom vary enormously throughout the EU and Council of Europe Member States. Article 4 of Protocol 7 to the ECHR does not apply the principle of ne bis in idem across borders. The EAW Framework Decision, however, introduces the notion that a final judgment in any Member State, not just in the issuing Member State, would give rise to mandatory non-execution of the EAW. The difficulty with this, is that each Member State may have a different legal conception of what constitutes a "final judgment".

25. In a recent Advocate-General's opinion, the ECJ clarified the position in relation to ne bis in idem as found in article 54 of the Schengen Convention. It is clear from this opinion that the principle of ne bis in idem, when applied within a context of mutual recognition in criminal proceedings in the EU should be given a broad interpretation allowing for the differences in what is perceived to be a 'final judgement' in the various Member States. This European notion of ne bis in idem should be reflected in the text of the UK bill which will implement the European Arrest Warrant.

26. Article 3.2 of the EAW clearly applies the rules in relation to serving sentences of the sentencing Member State. Logically, the rest of the provision should be read in this light so that the applicable law relating to "final judgment" and double jeopardy should be the domestic law of the Member State which has issued the final judgment in question.

27. In applying a test based purely on UK domestic rules of law relating to previous acquittal or conviction, the executing court would be unable to implement fully the notion of double jeopardy applying across borders within the European Union. That notion is a key development in EU judicial co-operation based on the principle of mutual recognition.

28. Under current UK law, the wording contained in the draft bill may provide greater procedural safeguards than a draft more closely based on the EAW provisions. However, given the proposals contained in the Government White Paper "Justice for All" relating to double jeopardy, it is not certain that applying the UK law in relation to double jeopardy will in fact result in a higher level of safeguard.

29. JUSTICE would suggest that there are two possible options concerning double jeopardy in implementing the EAW and maintaining procedural safeguards found in UK law.

19. The first option involves introducing a new form of European rule against double jeopardy which reflects the EAW text (and the text of Article 54 of the Schengen Convention demonstrating a basic principle in the acquis communautaire). This could be done by replacing the text in Clause [12] with the following:

> A person's extradition to a Category 1 territory is barred by reason of the rule against double jeopardy if the judge is satisfied that the person has been finally judged by a Category 1 territory in respect of the same acts and would be entitled to be discharged under the law of that territory.

20. The second possibility would use this text as the basis of the rule against double jeopardy in the context of the EAW but would add to this the broader protections found in UK law. An additional provision allowing a discretionary bar to extradition in cases, for example, of abusive collateral attack and reflecting the principles stated in Connelly v DPP [1964] AC 1254 would allow the broader principles of abuse related to the rule of autrefois which are found in UK law to be applied in an extradition context.

21. This broader application would seem to be possible within the provisions of the EAW under Article 4.3 and 4.5 as grounds for optional non-execution of the EAW. The EAW should be interpreted in the light of the Schengen Convention as part of the acquis communautaire. Article 58 of the Schengen Convention specifically allows for "the application of wider national provisions on the "non bis in idem" effect attached to legal decisions taken abroad".

> 22. The interpretation of the provisions of the forthcoming Act will fall eventually to the courts. Clarity of intent in the provisions relating to double jeopardy and abuse of process will help to speed up extradition proceedings. In order to incorporate additional safeguards found in the UK law relating, in particular, to abuse of process in the Connelly context, the draft Bill should specify these as discretionary bars to extradition. The rule against double jeopardy in an extradition context, however, must reflect the wider wording of the EAW rather than tying the test to UK law relating to double jeopardy. JUSTICE believes that the rule against double jeopardy as outlined in Clause 10 should apply to "acts" rather than "offences".[68]

b. Extraneous conditions

Clause 13 provides:

> A person's extradition to a category 1 territory is barred by reason of extraneous considerations if (and only if) it appears that—
>
> (a) the Part 1 warrant issued in respect of him (though purporting to be issued on account of the extradition offence) is in fact issued for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions, or
>
> (b) if extradited he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

There was no equivalent of this provision in the draft Bill, and its inclusion may answer criticisms about the omission of any political exception.

c. Age

Clause 14 provides:

> A person's extradition to a category 1 territory is barred by reason of his age if (and only if) it would be conclusively presumed because of his age that he could not be guilty of the extradition offence on the assumption—
>
> (a) that the conduct constituting the extradition offence constituted an offence in the part of the United Kingdom where the judge exercises jurisdiction;
>
> (b) that the person carried out the conduct when the extradition offence as committed (or alleged to be committed);
>
> (c) that the person carried out the conduct in the part of the United Kingdom where the judge exercises jurisdiction.

The Law Society commented, on the draft:

[68] http://www.homeoffice.gov.uk/extraditionbill/responses/justice.pdf

> The explanatory note states this is the age of criminal responsibility. It is worth noting that the age of criminal responsibility is lower in England and Wales than elsewhere in Europe. The extradition of children may cause problems in the provision of welfare and education services in different member states. We suggest all the different procedures for youth justice and for welfare provision in the different member states are collated and made available publicly prior to implementation of this provision. This would assist in ensuring that children who are extradited to or from the UK, and their carers and legal representatives, are fully informed.[69]

d. The death penalty

Clause 15 provides:

> (1) A person's extradition to a category 1 territory is barred by reason of the death penalty if (and only if) he could be, will be or has been sentenced to death for the extradition offence in the category 1 territory.
>
> (2) Subsection (1) does not apply if the judge receives a written assurance which he considers adequate that a sentence of death—
> (a) will not be imposed, or
> (b) will not be carried out (if imposed).

The *Explanatory Notes* say that: [70]

> 44. The effect of this clause is to bar the extradition of a person who has been or could be sentenced to death, unless an assurance has been received that the sentence will not be carried out.
>
> 45. Subsection (1) prevents the extradition of a person who has been or could be sentenced to death in the requesting state. This does not apply where the Secretary of State receives an assurance that the death penalty will not be carried out (where imposed) or will not be imposed (subsection (2)).

While, under the provisions for extradition to category 2 territories it would be the Secretary of State who received such assurances (*clause 91*), in category 1 extradition proceedings it is the judge who is to receive an assurance and assess its adequacy.

The Law Society explained some previous difficulties, and problems which could arise:

> the Secretary of State would not issue an Authority to Proceed unless he received assurances which satisfied him that the death penalty would not be invoked in the event that the extradited prisoner were convicted of an offence by the requesting

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[69] http://www.homeoffice.gov.uk/extraditionbill/responses/law_society.pdf

[70] Explanatory Notes Bill 2-EN, http://www.publications.parliament.uk/pa/cm200203/cmbills/002/en/0300002x--.htm

> country. Historically, difficulties have arisen where certain States within the United States of America have refused to sanction such assurances or undertakings and extradition has not proceeded because the Secretary of State has declined to issue an Authority to Proceed. It is difficult to envisage what written assurance would satisfy a District Judge and indeed what method he would have of either verifying its reliability or authenticity or becoming involved in the enforcement of the assurance if at a later stage information was received that the returned prisoner had been convicted and sentenced to death.[71]

Liberty expressed fundamental objections to the way these provisions were framed:

> Apparently it will be permissible to extradite even where a defendant might be sentenced to death, provided that assurances are received it will not be carried out (see e.g. Clause 12(2)(b)).
> 25. The Sixth Protocol prohibits both the imposition of a sentence of death, and forbids the carrying out of an execution (Article 1: 'No-one shall be condemned to such penalty or executed').
>
> 26. Extradition of a person where he could be sentenced to death would, on the Soering principles, result in a violation of the Sixth and Thirteenth Protocols even if the requesting state said that it would not carry out the penalty.
>
> 27. Liberty therefore questions how these provisions are compatible with the Human Rights Act 1998 and how a district judge is expected to evaluate the quality of assurances given by the Government of a foreign state.
>
> 28. Moreover, there is a question over the quality of assurances given by some states e.g. those with a federal structure (such as the United States, the country must obviously likely to engage these provisions). In the USA extradition is sought by the Federal Government even in respect of crimes committed under state law. The individual state imposes and carries out the death penalty and is therefore not bound by undertakings given by the Federal Government on its behalf. The quality of these undertakings, and their effectiveness, can be questionable: see Nicholls, Montgomery and Knowles, The Law of Extradition and Mutual Assistance (2002), paras. 9.8-9.10.
>
> 29. Liberty therefore urges the Government in the strongest possible terms to make the death penalty an absolute bar to extradition, removing clause 12(2). The inclusion of clause 12(2) does not appear consistent with the UK government's recent signature of Protocol 13 to the ECHR abolishing the death penalty in all circumstances, or ratification of Protocol 6 to the ECHR concerning the death penalty. Liberty can see no reason for the inclusion of clause 12(2) in the context of Category 1 countries, nor any justification for the extension of the Part 1 scheme to include countries which maintain the death penalty.

[71] http://www.homeoffice.gov.uk/extraditionbill/responses/law_society.pdf

> 30. Written assurances of the type referred to in Clause 12(2) generally emanate from the executive of the requesting state. According to the principle of an independent judiciary, it is questionable whether the executive of a country has the power to make such assurances, effectively binding the courts. On this basis, a number of EU Member States have introduced an absolute bar on extradition in cases where the death penalty could be imposed for the offence in question in the requesting state.[72]

Justice stated similar objections.[73]

e. *Hostage-taking considerations*

Clause 16 provides:

> (1) A person's extradition to a category 1 territory is barred by reason of hostage-taking considerations if (and only if) the territory is a party to the Hostage-taking Convention and it appears that—
>
> (a) if extradited he might be prejudiced at his trial because communication between him and the appropriate authorities would not be possible, and
>
> (b) the act or omission constituting the extradition offence also constitutes an offence under section 1 of the Taking of Hostages Act 1982 (c. 28) or an attempt to commit such an offence.
>
> (2) The appropriate authorities are the authorities of the territory which are entitled to exercise rights of protection in relation to him.
>
> (3) A certificate issued by the Secretary of State that a territory is a party to the Hostage-taking Convention is conclusive evidence of that fact for the purposes of subsection (1).
>
> (4) The Hostage-taking Convention is the International Convention against the Taking of Hostages opened for signature at New York on 18 December 1979.

This clause had no equivalent in the draft Bill.

f. *Speciality*

Clause 17(1) provides:

> A person's extradition to a category 1 territory is barred by reason of speciality if (and only if) there are no speciality arrangements with the category 1 territory.

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[72] http://www.homeoffice.gov.uk/extraditionbill/responses/liberty.pdf

[73] http://www.homeoffice.gov.uk/extraditionbill/responses/Justice.pdf

The concept of specialty is explained in the glossary on page 8 of this paper. The effect of *clause 17* is summarized in the *Explanatory Notes* as follows:

> 50. Subsection (2) provides that there are considered to be speciality arrangements in place if a person may be dealt with in the requesting territory for an offence committed before his extradition only if the offence falls within subsection (3) or the condition in subsection (4) is met. The offences in subsection (3) are:
>
> - the offences for which the person was extradited;
> - an extradition offence disclosed by the same facts as the offence;
> - an extradition offence to which the appropriate judge has given consent under clause 52;
> - an extradition offence to which the appropriate judge is treated under clause 53 as having given his consent;
> - an offence not punishable by imprisonment or detention;
> - an offence for which the person will not be detained in connection with his trial, sentence or appeal;
> - an offence in respect of which the person has waived his speciality protection.
>
> 51. The condition in subsection (4) is that the person is given the opportunity to leave the category 1 territory and does not do so within 45 days (subsection (5)) or leaves within that period and then returns to that country.
>
> 52. Under subsection (6) speciality arrangements may be made with any Commonwealth country or British overseas territory in category 1. This could be for a specific case or general arrangements. A certificate issued by or under the authority of the Secretary of State, stating the existence and terms of such arrangements, is conclusive evidence of those matters

Objections to the proposed exceptions to the specialty rule have been expressed on a number of grounds. The Law Society thought that if there was sufficient evidence to back up the issue of a warrant there was no reason for charges being preferred under a different mechanism. They added:

> **Clause [17](3) e and f.**
>
> We have grave concerns that offences that fall into this category can be charged without the protections contained in the extradition procedures. The community or financial penalty may be extremely burdensome. Indeed they may be the primary objective of the requesting state, and the procedure thus open to abuse especially if the primary aim is the freezing of assets and financial penalties.
>
> There is no mechanism or protection to guard against extradition taking place, only for proceedings in relation to the extradition charge to be withdrawn after clause 13 proceedings are established. These unassociated proceedings may last a considerable length of time, causing prolonged disruption to the suspect's life and career. It is wrong on principle to allow procedures and proceedings in by the back door rather than be honestly addressed as offences which might give rise to a warrant for arrest.

> We also note that there is no provision or safeguard to ensure that detention or imprisonment for non payment of financial penalties or where breach of community order attracts a custodial penalty.
>
> The provisions in clauses [17](2)(a) and 13(2)(4) theoretically allow another offence to be proceeded with which was not the subject of the extradition request if the arrested person is given 45 days from the date when he or she arrives in country requesting extradition in order to leave this country. In practice it would appear that this provision would only apply if the person were not proceeded with in relation to the offence for which they have been extradited. Otherwise, it is unlikely that they would be able to leave the requesting country as they will either be in custody or most likely be subject to bail conditions restricting their ability to travel.[74]

Justice thought that the inclusion of specialty in clause 17 as a bar to extradition was somewhat misleading, adding:

> When clause [17] is read in the light of clause [53] "presumed consent to other offence being dealt with", it appears that the degree to which the rule of specialty will be maintained in relation to Category 1 territories is far from clear.
>
> 26. Clause [17](3)(d) states that speciality will not be a bar to extradition where there are speciality arrangements with the Category 1 territory and the offence is:
>
> > "an extradition offence in respect of which the appropriate judge is treated by Clause [53] as giving his consent to the person being dealt with."
>
> Clause [53] allows that the judge be treated as having given consent to the person being dealt with in the Category 1 territory for another offence where the United Kingdom and the territory concerned have each given notification under article 27.1 of the EAW.
>
> 27. The inclusion of clause [53] in the draft bill seems to indicate that the government is considering making such a notification under the EAW. The effect of such a notification would be to abolish the rule of specialty in relation to all territories that had made a similar notification under Article 27.1 of the EAW, unless the judge makes a statement to the contrary in any given case. This could, in practice, mean that the rule of specialty is to be presumed to have been abolished in relation to all EU countries (including candidate countries following accession) as any Member State is free to make such a notification.
>
> 28. The rule of specialty offers a key safeguard against abuse of the system. It should be considered as completely separate from the issue of dual criminality. It would be possible for offences prosecuted following surrender in the absence of the rule of specialty to raise other possible grounds for non-return, for example, because of an amnesty or because of a territoriality point. A decision for return on

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74 http://www.homeoffice.gov.uk/extraditionbill/responses/law_society.pdf

> the basis of such offences might have been refused. It is therefore not appropriate to issue a blanket waiver although, on a case by case basis and with the agreement of the surrendered person, a waiver could be appropriate.
>
> 29. JUSTICE urges the government not to make a notification of presumed consent to possible prosecution for other offences under Article 27.1 or to surrender or subsequent extradition under Article 28.1 of the EAW. An indication of the government's intent not to make such notifications would be reflected in the deletion of clauses [53] and [56] of the [Bill].[75]

g. Earlier extradition to the UK

Clauses 18 and *19* provide that a person's extradition to a category 1 territory is barred by reason of his earlier extradition from category 1 and non-category 1 territories without the consent of that territory but only if the extradition arrangements with that territory require consent to be given.

5. Further stage of the extradition hearing: trials in absentia

If the judge decides that none of the specific bars to extradition applies, he must go on to the next stage. If extradition of a person alleged to be unlawfully at large, after conviction, is sought, clause *20(1)* requires the judge to decide:

> (a) whether the person was convicted in his presence or in his absence;
> (b) if he was convicted in his absence, whether he deliberately absented himself from his trial;
> (c) if he was convicted in his absence and he did not deliberately absent himself from his trial, whether he would be entitled to a retrial or (on appeal) to a review amounting to a retrial.

If he decides that the person:

> (a) was convicted in his presence, or
> (b) was convicted in his absence and deliberately absented himself from his trial, or
> (c) was convicted in his absence, did not deliberately absent himself from his trial and would be entitled to a retrial or (on appeal) to a review amounting to a retrial(subsection*(3)*)

the judge must proceed to the next stage. There has been some discussion about whether this would provide adequate protection for a person who had been tried and convicted in absentia. Justice pointed out that the framework decision did allow for Member States to demand a guarantee that the subject of the EAW in such circumstances would "have the opportunity to apply for a retrial of the case in the issuing Member State and to be present

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[75] http://www.homeoffice.gov.uk/extraditionbill/responses/justice.pdf

at the judgment". Justice urged the government to amend the clause so that the person must be discharged if he:

> would not be entitled to a retrial and to be present at the judgment.

They also urged the government to include a mechanism by which the judge could determine whether or not the person deliberately absented himself:

> It is understood that in some European jurisdictions, residence can be deemed as that of a court appointed lawyer, the very existence of which the person may be unaware. JUSTICE would therefore suggest, that in order for a person to be deemed to have deliberately absented himself, evidence must be provided that notice was personally served on that person. Further, in particular for extra-territorial cases, a person should be subject to a process obliging appearance – deliberate absence should not be established purely on the basis of a summons emanating from a foreign jurisdiction.[76]

The Law Society said:

> we believe that this should be defined in order to include, non-exhaustively, the right to recall prosecution witnesses where the prosecution are not obliged to call them again to give evidence, and the ability to call defence witnesses. There is also no reference to the important matters of access to funding the defence costs or provision of other services such as adequate legal representation, interpretation and translation. Without these features, we believe it can not be said that any review would satisfy the right to a fair trial as set out in article 6 of the ECHR.

6. Further stage of extradition hearing: human rights

If satisfied on the above questions, the judge must go on to decide whether the person's extradition would be compatible with the Convention rights within the meaning of the *Human Rights Act 1998, (Clause 21).*

The inclusion of this provision has been welcomed, after earlier concerns that the fact that the requesting state is a signatory to the European Convention on Human Rights does not per se mean that extradition will be compatible with convention rights; and that the Convention has been signed by countries said to have appalling human rights records with judiciaries in many cases which were neither independent nor impartial.[77] Further suggestions have been made, such as concern on drafting:

> The inclusion of this duty in Clause 17 does, however, leave some doubt as to the precise scope of applicability of the Human Rights Act 1998 in extradition

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[76] http://www.homeoffice.gov.uk/extraditionbill/responses/justice.pdf

[77] http://www.homeoffice.gov.uk/extraditionbill/responses/liberty.pdf

> proceedings. This is because, the use of the words "the extradition" is ambiguous. In light of article 5(4), the proper interpretation of this clause is that human rights considerations will apply to both the proceedings and the actual return so that article 5(4) procedural rights would be applied in the extradition hearing and proceedings. We think this should be explicitly spelled out.[78]

The Law Society sought confirmation that proportionality arguments relating to extreme compassionate circumstances, triviality or the age of the suspect would be considered under this provision.[79]

7. Other matters arising before the end of the extradition hearing

Further clauses make provision for cases where the person sought is charged with an offence, or serving a sentence in the UK, or a certificate has been issued under a Part 2 extradition. *Clause 25*, which had no equivalent in the draft Bill, provides for adjournment or discharge of the person if the judge is satisfied that the physical or mental condition of the person is such that it would be unjust or oppressive to extradite him.

8. Who is the appropriate judge

Clause 66 provides that:

> (1) The appropriate judge is—
>
> (a) in England and Wales, the senior district judge (chief magistrate) or another district judge (magistrates' courts) designated by him;
> (b) in Scotland, the sheriff of Lothian and Borders;
> (c) in Northern Ireland, such county court judge or resident magistrate as is designated for the purposes of this Part by the Lord Chancellor.
>
> (2) The Lord Chancellor may designate a particular district judge (magistrates' courts) to be the appropriate judge in England and Wales instead of the judge referred to in subsection (1)(a).

The Council of HM Circuit Judges pointed out that their suggestion that extradition cases should begin in the High Court, to be heard by a small group of specialist judges, had apparently been ignored.[80]

9. Appeals

Clauses 26 to *29* make provision for appeals to the High Court from either the making of an extradition order, or the discharge of the person, on a question of fact or law. The

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78 ibid
79 http://www.homeoffice.gov.uk/extraditionbill/responses/law_society.pdf
80 http://www.homeoffice.gov.uk/extraditionbill/responses/hm_circuit_judges.pdf

conditions which have to be satisfied for the court to allow an appeal are set out. *Clause 27* provides that the court may allow an appeal against an extradition order if either:

- the judge ought to have decided a question before him at the extradition hearing differently and, had he done so he would have been required to order the person's discharge, or
- an issue is raised or evidence is available that was not raised or available at the extradition hearing; the issue or evidence would have resulted in the judge making a different decision at the hearing; and this would have resulted in the judge ordering the person's discharge.

Clause 29 makes parallel provisions for appeals against discharge which, if successful, result in the case going back to the judge. *Clause 30* provides for the person to be remanded in custody or on bail, pending conclusion of the appeal, if the judge is informed immediately after ordering discharge that the authority which issued the warrant intends to appeal.

Clauses 32 to *35* deal with further appeals, which will be direct to the House of Lords and will require leave. The clauses relating to appeals contain some built in time limits and some rule-making powers pertaining to timing.

10. Withdrawal of warrant before extradition

Clauses 40 to *42* deal with what is to happen when a warrant is withdrawn before a person is extradited. The court must order the person's discharge. *Clause 40* represents some departure from the corresponding clauses in the draft Bill, which had envisaged that if the warrant was withdrawn after the judge had made an extradition order, the judge would be required to inform the person, which would enable him to lodge an appeal. There would only have been an automatic discharge if the judge failed to inform the person of the withdrawal within 7 days. Respondents had pointed out the apparently absurdity, and the inconsistency with article 5 of the ECHR (right to liberty).[81]

G. Statements made on the adoption of the framework decision.

Article 32 of the framework decision provides:

> Transitional provision

[81] see the responses from the Metropolitan Police, the Law Society and Liberty at:
http://www.homeoffice.gov.uk/extraditionbill/responses/mps.pdf
http://www.homeoffice.gov.uk/extraditionbill/responses/law_society.pdf and
http://www.homeoffice.gov.uk/extraditionbill/responses/liberty.pdf

> 1. Extradition requests received before 1 January 2004 will continue to be governed by existing instruments relating to extradition. Requests received after that date will be governed by the rules adopted by Member States pursuant to this Framework Decision. However, any Member State may, at the time of the adoption of this Framework Decision by the Council, make a statement indicating that as executing Member State it will continue to deal with requests relating to acts committed before a date which it specifies in accordance with the extradition system applicable before 1 January 2004.
> The date in question may not be later than 7 August 2002.
> The said statement will be published in the Official Journal of the European Communities. It may be withdrawn at any time.

Italy, France and Austria made statements under that provision.

Article 13, which deals with consent to extradition, provides:

> 4. In principle, consent may not be revoked. Each Member State may provide that consent and, if appropriate, renunciation may be revoked, in accordance with the rules applicable under its domestic law. In this case, the period between the date of consent and that of its revocation shall not be taken into consideration in establishing the time limits laid down in Article 17. A Member State which wishes to have recourse to this possibility shall inform the General Secretariat of the Council accordingly when this Framework Decision is adopted and shall specify the procedures whereby revocation of consent shall be possible and any amendment to them.

Belgium, Denmark, Ireland, Finland and Sweden made such statements. The full text of the statements, with the framework decision are on the "Europa" website.[82]

III Part 2 extradition to category 2 territories

The process of extradition following requests from Category 2 countries has fewer significant changes from the existing arrangements and has therefore attracted less comment than the new arrangements under Part 1 of the Bill. Category 2 territories are, like category 1 territories, to be designated by Order in Council (*clause 68)*). The Secretary of State must issue a certificate stating that he has received a valid request for extradition to the Category 2 territory and that the person is accused of an offence specified in a request or is unlawfully at large after conviction (*clause 69)*). The request, the certificate, and the copy of any relevant Order in Council are then sent to the appropriate judge who will issue a warrant for arrest if he is satisfied that the offence is an extradition offence and there is sufficient evidence to justify the issue of a warrant for the arrest of the person accused of the offence or unlawfully at large (*clause 70)*).

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[82] http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_190/l_19020020718en00010018.pdf

At the extradition hearing , the judge must satisfy himself as to the identity of the fugitive and that he has the relevant documentation from the Secretary of State. He must also have before him particulars of the offence specified in the request and a warrant for his arrest issued in the Category 2 territory.
Extradition offences are defined in clauses *136* and *137* along lines similar to those in Part 1, with the important exception that there is no departure from the double criminality rule. The bars to extradition are set out in *clause 78(1)*:

> (a) the rule against double jeopardy;
> (b) extraneous considerations;
> (c) the passage of time;
> (d) hostage-taking considerations.

Under *clause 81*:

> A person's extradition to a category 2 territory is barred by reason of the passage of time if (and only if) it appears that it would be unjust or oppressive to extradite him by reason of the passage of time since he is alleged to have committed the extradition offence or since he is alleged to have become unlawfully at large (as the case may be).

The judge would also be required, under *clause 86* to decide whether the person's extradition would be compatible with the Convention rights.

A number of the comments, which respondents to consultation have made about the detailed provisions, under Part 1 could apply equally to Part 2 – for example that when a person is arrested without the warrant being shown to him, there does not appear to be any obligation to show it to him later, unless he asks for it (*clauses 71* and *73*).

The potential development under Part 2 which has attracted most comment arises from the provisions of *clause 83* :

(1) If the judge is required to proceed under this section he must decide whether there is evidence which would be sufficient to make a case requiring an answer by the person if the proceedings were the summary trial of an information against him.

(2) In deciding the question in subsection (1) the judge must treat a statement made by a person in a document as admissible evidence of a fact if—

> (a) the statement is made by the person to a police officer or another person charged with the duty of investigating offences or charging offenders, and
> (b) direct oral evidence by the person of the fact would be admissible.

(3) A summary in a document of a statement made by a person must be treated as a statement made by the person in the document for the purposes of subsection (2).
(4) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.

(5) If the judge decides that question in the affirmative he must proceed under section 86.
(6) If the judge is required to proceed under this section and the category 2 territory to which extradition is requested is designated for the purposes of this section by Order in Council—

(a) the judge must not decide under subsection (1), and
(b) he must proceed under section 86.

The effect of this is that if a category 2 territory has been so designated, the judge is precluded from deciding whether there is a prima facie case against the accused person, and must go straight on to deciding about compatibility with Convention rights.

The Law Society expressed concerns shared by Liberty and Justice:

> We oppose the abolition of the requirement to provide prima facie evidence for category 2 states. The degree of evidence that is required for the issue of an arrest warrant is not stated and the assumption is that the standard required is the same for issue of an arrest warrant in domestic proceedings rather than prima facie case sufficient to charge or to commit.
> Part I procedures rely on mutual mechanisms to enforce the ECHR in the requesting and requested state. There is not a similar arrangements with Part II procedures. Accordingly HRA issues and procedural safeguards will not be so easily or effectively monitored and enforced in Part II proceedings. In the absence of such enforcement mechanisms, the requirement for prima facie evidence would provide protections against fishing expeditions, potential abuses of the procedures or merely incompetent or mistaken investigations.[83]

IV Other provisions of the Bill

A. Repeals

Clause 202 provides that:

> An Order in Council may amend or repeal any provision of these Acts—
>
> (a) the Backing of Warrants (Republic of Ireland) Act 1965 (c. 45);
>
> (b) the Extradition Act 1989 (c. 33).

There is no explanation in the Explanatory Notes, or the draft on which there was consultation, of what is intended. In their comments on the draft Bill, the Liberal Democrats shared the doubts expressed by the Joint Committee on Human Rights in their report on the draft Bill. The Committee said:

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[83] http://www.homeoffice.gov.uk/extraditionbill/responses/law_society.pdf

> The draft Bill and its associated documentation do not explain which parts of the 1989 Act would be repealed or amended by virtue of the draft Bill. It is clear that the procedures for dealing with extradition to category 1 and category 2 territories would supersede those under the 1989 Act, but the draft Bill does not contain a list of the provisions of the 1989 Act which would be repealed. Instead, it contains a power in clauses 165 and 168 for provisions in the 1989 Act, and the Backing of Warrants (Republic of Ireland) Act 1965, to be repealed by an Order in Council, which would be subject to the negative resolution procedure. This is significant, because there are important provisions in the 1989 Act which are not replicated in the draft Bill, including provisions relating to extradition for political offences. We consider that the use of delegated legislation to amend the 1989 Act would be inappropriate. Any proposed amendments to the 1989 Act should be expressly included on the face of the Bill, so that their impact on human rights may be properly assessed and debated in the context of the general scheme which the Bill would establish.[84]

The Liberal Democrats agreed:

> We are concerned that the provision for repeal of the Extradition Act 1989 by Order in Council will not allow substantive debate, and could result in the loss key safeguards which might not have been carried over into the new legislation. We would suggest that significant proposals for repeal should be included on the face of this legislation, and that any further repeals should be open to full parliamentary scrutiny.[85]

B. Part IV - Police Powers[86]

1. Background

The police do not currently have a specific power to search for evidence when arresting a person under an extradition arrest warrant. The search and seizure powers given in the *Police and Criminal Evidence Act 1984* (PACE) relate only to domestic offences. However, it appears that general common law powers to search following arrest do apply in extradition cases.

This question was recently examined by the House of Lords, in the case of *R (Rottman) v Commissioner of Police of the Metropolis*.[87] The judgment was summarised as follows:

> A police officer who had arrested a person on his premises pursuant to a warrant of arrest issued under s 8 of the Extradition Act 1989 had power under the common law then to search those premises and seize any items which he

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84 http://www.publications.parliament.uk/pa/jt200102/jtselect/jtrights/158/15803.htm

85 http://www.homeoffice.gov.uk/extraditionbill/responses/liberal_democrats.pdf

86 Arabella Thorp, Home Affairs Section

87 16 May 2002, [2002] 2 All ER 865 http://www.parliament.the-stationery-office.co.uk/pa/ld200102/ldjudgmt/jd020516/rott-1.htm

reasonably believed to be material evidence in relation to the extradition crime in respect of which the warrant had been issued.

The House of Lords so held (Lord Hope of Craighead dissenting) in allowing an appeal by the Commissioner of Police of the Metropolis from the decision of the Divisional Court of the Queen's Bench Division (Brooke LJ and Harrison J) holding that the searching of, and the seizure of items from, the claimant's house following his arrest there under a provisional warrant for an extradition offence was unlawful and contrary to art 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as scheduled to the Human Rights Act 1998.

LORD HUTTON said that the common law permitted a police officer who had entered a house to arrest a suspect pursuant to a warrant of arrest then to search the entire premises and seize any articles which provided evidence against the suspect, and that the power applied to an extradition crime as well as a domestic crime. Although powers of search and seizure were now contained in ss 18, 19 and 32(2) of the Police and Criminal Evidence Act 1984, those provisions applied only to domestic offences. But since the 1984 Act had not extinguished the common law power, it remained available in extradition cases. The common law power of search was therefore in accordance with the law for the purposes of art 8 of the Convention. It had the legitimate aim in a democratic society of preventing crime and was necessary to prevent the disappearance of material evidence.

LORD RODGER OF EARLSFERRY delivered a concurring opinion and LORD NICHOLLS OF BIRKENHEAD and LORD HOFFMANN agreed with both. LORD HOPE OF CRAIGHEAD agreed that the 1984 Act powers did not apply to extradition offences but disagreed that the common law power allowed search of premises for evidence or was in any event available in extradition cases. He also considered that the interference with the claimant's art 8 rights had not been proportionate.[88]

2. Part 4 of the Bill

a. General

Part 4 of the *Extradition Bill* is intended to create a new set of rules, specific to extradition cases, on search and seizure (both with and without warrant) and the taking of fingerprints, samples and photographs. These would be amplified by a proposed new Code of Practice. This replacement of the existing common law is intended to give the police greater powers but also provide more safeguards on the use of those powers, and would work in parallel with the provisions of the *Police and Criminal Evidence Act 1984* and its Codes of Practice.

Most provisions would apply to the whole of the United Kingdom but some would not extend to Scotland where common law powers are more extensive.

88 http://www.lawreports.co.uk/hlpcmayb0.3.htm

b. General 'search and seizure' warrant

The provisions of **clause 154** correspond to those contained in section 8 of the *Police and Criminal Evidence Act 1984*, which come into play when a serious arrestable offence[89] has been committed. For instance, clause 154(9) is identical to section 8(3) of the *1984 Act*.

The Bill does not include provisions which match those on safeguards and the execution of warrants in the *1984 Act*.[90] It may, however, be possible to interpret these provisions of the *1984 Act* as applying to warrants issued under this clause.

The fact that there is no specific clause relating to access to computer information under this general warrant may also perhaps be explained by section 20 of the *1984 Act*. Its extension of the power of seizure to computerised information is stated to apply to any power of seizure conferred by any subsequent Act.

c. Protected material

Except in Scotland, some specific types of material would not be accessible using the general search and seizure warrants proposed under clause 154. These types of material are specified in **clause 154(6)(b)**, as interpreted by **clause 172**:

Items subject to legal privilege: it is suggested in the Explanatory Notes to the Bill[91] that this would include any communication between a lawyer and his client (or a person representing either party) that is in whole or part concerned with legal advice or proceedings; but not if it was held with the intention of furthering a criminal cause.[92]

Excluded material: this is basically material, records or substances that are held in confidence, including medical or personnel records, medical samples including tissues, information kept by ministers or counsellors, and material acquired or created for the purpose of journalism.[93]

Special procedure material: this is glossed by the Explanatory Notes to the Bill[94] as material which falls into neither of the above categories, but which is held in a professional or official capacity, and subject to an implied or express undertaking to hold

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89 see s119 of the *1984 Act*
90 sections 15 and 16
91 Bill 2-EN, para 460
92 *Police and Criminal Evidence Act 1984* s10
93 *Police and Criminal Evidence Act 1984* s11. See also the Explanatory Notes to the Bill [Bill 2-EN] para 459
94 Bill 2-EN, para 462

it in confidence.[95] This could include for example bank statements, conveyancing documents or the accounts of an association.

Items subject to legal privilege could never form the subject of any warrant or order under this Part of the Bill; but **clauses 155 to 158** are intended to provide methods of gaining access to excluded material and special procedure material. A production order would avoid the need for the police to search premises to find such evidence, as it requires the person in possession of the material either to give it to the police or to allow them access to it. However, if it appeared that the evidence was likely to be tampered with, it is proposed that a warrant could be issued either instead of or as well as a production order.

The equivalent powers for production orders and warrants for excluded material and special procedure material in connection with domestic offences are given by section 9 and Schedule 1 of the *1984 Act*.

d. Search and seizure without a warrant

The police already have the power to enter and search premises for the purposes of arrest in domestic cases, and once there to seize anything if they have reasonable grounds to believe it relates to an offence and might be tampered with if it were not seized.[96] **Clause 159** would apply this power to extradition cases. However, there appears to be no equivalent of the conditions on retention of things seized which are contained in section 22 of the *1984 Act*. Nor does the clause have a prohibition on seizing items subject to legal privilege, excluded material or special procedure material in these circumstances.

By contrast, the powers conferred by **clauses 160 and 162** (to enter and search premises where the person was at the time of his arrest or immediately before,[97] or which were occupied or controlled by the person[98]) would not extend to items subject to legal privilege. However, excluded material and special procedure material could be seized under these provisions.

Clause 161, on the search of a person who has been arrested away from a police station under an extradition arrest power, mirrors the relevant parts of section 32 of the *1984 Act*.

e. Examination, fingerprints and samples

Clauses 164 to 169¸ which would not apply to Scotland, set out the rules which would apply for taking fingerprints, samples and photographs of people arrested under extradition arrest powers. The equivalent sections of the *1984 Act* are expressly

95 *Police and Criminal Evidence Act 1984* s14
96 Section 17 of the *1984 Act*
97 for the domestic provisions see section 32 of the *1984 Act*
98 for the domestic provisions see section 18 of the *1984 Act*

disapplied to extradition cases by **clause 167** (England and Wales) and **clause 168** (Northern Ireland).

Clause 164, on the taking of fingerprints or non-intimate samples,[99] does not include the conditions under which such fingerprints and samples can be taken without the consent of the arrested person. By contrast, section 61(7) of the *1984 Act*, for example, says that if a person's fingerprints are taken without his consent, he must be told why they are being taken before this happens. Further qualifications to the power to take and retain fingerprints and non-intimate samples are contained in sections 63A to 64 of the *1984 Act* and not mirrored in this Bill.

The Bill would not allow for intimate searches to be carried out or intimate samples to be taken, as is provided for in certain circumstances by the *1984 Act*. However, these powers, along with those on searching detained persons and seizing anything found, may be extended by the Secretary of State to cover extradition cases under **clause 169**.

f. Rights of person arrested

The Bill does not appear to contain any provisions which would give a person arrested under an extradition power the right to have access to legal advice, or to have someone informed of his arrest. Sections 56 and 58 of the *1984 Act* contain such rights for people arrested for domestic offences. However, **clause 169** would permit the Secretary of State to extend these rights to extradition cases.

g. *Delivery of seized property*

The aim of **clause 170** is to allow any property seized under this Part of the Bill to be handed over to the overseas authority. However, there does not appear to be any definition of 'an authority of the relevant territory' for the purposes of this clause.

h. Codes of Practice

It appears that neither the *Police and Criminal Evidence Act 1984* nor its Codes of Practice currently extend to extradition cases. **Clause 171** would therefore require the Secretary of State to issue specific codes of practice on police powers in extradition cases. The procedure for implementing and amending these codes would be similar to that which the government wishes to see for the PACE Codes of Practice.[100]

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[99] the definition for both of these terms would be that given by section 65 of the *1984 Act*. Non-intimate samples include hair (other than pubic hair), saliva, and swabs taken from any part of the body, including the mouth but not other orifices.

[100] See the *Criminal Justice Bill 2002-03*, Part 1

3. Responses to the government's proposals

The Metropolitan Police Service (MPS) gave the following response to the equivalent part of the draft Extradition Bill:

> These powers are welcomed by the MPS and we acknowledge the considerable value added to the fight against international crime which these powers permit. In the main these are powers with which police officers are familiar and their existing domestic equivalents are well tested within domestic legislation. We note the intention to write a Code of Practice for these extradition powers and we would ask to be involved in that process in order that our experiences to date with similar legislation can be considered.[101]

They also made some suggestions on the contents of the Code of Practice:

> We support the inclusion of Codes of Practice. We believe that the Codes should contain a comprehensive guide to the person's rights throughout his/her detention as in PACE, as well as providing guidance for the exercise of police powers (as required in Clause 137(4), for example). The Codes should detail police responsibilities in relation to information to be given on arrest, rights, and procedures upon arrival at a police station, through detention and 'charge' until the subject leaves police detention. Much of this should parallel what is contained within the PACE Codes of Practice.[102]

The Law Society's response was more guarded:

> PACE and Codes of practice do not automatically apply to those arrested under an extradition arrest warrant, and it is necessary to set out in this primary legislation the protections, and procedures relating to police powers.
>
> The Secretary of State [would be] given the power to insert sections of PACE by order. This includes the right to for someone to be informed of the suspect's arrest and detention, the right to legal advice and rights in relation to searches. We consider that reminders of the detained persons rights should be in primary legislation or specifically set out in the codes […]. However it is inappropriate for such fundamental and existing rights to be given the status of favours extended or removed by the executive.[103]

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[101] *MPS Response to Consultation on Draft Legislation: Extradition Bill* - Metropolitan Police Service (12 September 2002) (summary of key areas): http://www.homeoffice.gov.uk/extraditionbill/responses/mps.pdf

[102] *Response to Consultation on Draft Legislation: Extradition Bill* - Metropolitan Police Service (12 September 2002) para 9: http://www.homeoffice.gov.uk/extraditionbill/responses/mps.pdf

[103] *Response to Home Office Draft Extradition Bill*- Law Society (September 2002) p 9 http://www.homeoffice.gov.uk/extraditionbill/responses/law_society.pdf

V Scotland

Clause 207(1) provides that *sections 155* to *158, 164* to *166* and *169* and *171* (the police powers clauses) do not apply to Scotland while *section 182* applies to Scotland only. The *Explanatory Notes* comment that the police powers clauses are based on the *Police and Criminal Evidence Act 1984*, which do not apply to Scotland, which has comparable powers under Scottish common law and statute.[104] Otherwise, with the exception of clauses on legal aid applying to Northern Ireland only, all the provisions of the Bill will apply to Scotland.

On 21 November 2002, the Deputy First Minister and Minister for Justice, Jim Wallace MSP, explained to the Scottish Parliament why he was moving a Sewel motion on the Extradition Bill, although extradition was a reserved matter under the *Scotland Act 1998*. He said:

> Sewel motions were not to be only on issues concerning devolved matters; we have understood and agreed that, if functions are conferred on Scottish ministers—albeit on reserved matters—it is important that this Parliament is aware of what is happening and is content that those functions be conferred on them.

Before the motion was agreed to (on a division), there was some debate as to whether the European Arrest Warrant might be distinguished from extradition, so that it would not be reserved. The full debate is available on the website of the Scottish Parliament website at http://www.scottish.parliament.uk/official_report/session-02/sor1121-02.htm#Col15606

[104] Bill 2-EN http://www.publications.parliament.uk/pa/cm200203/cmbills/002/en/0300002x--.htm