



JUSTICE Response to Draft Extradition Bill 2002

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1. JUSTICE is an independent all party law reform and human rights organisation which aims to improve British justice through law reform and policy work, publications and training. It is the British section of the International Commission of Jurists.
2. The Draft Extradition Bill, published on June 27th 2002, aims to streamline the process of extradition in the UK to avoid unnecessarily lengthy and cumbersome legal proceedings. It introduces a two-tier system of extradition depending on which country is requesting extradition. Category 1 territories are EU and Schengen states (including, upon accession, those candidate countries due to join the EU in 2004); Category 2 territories are all other countries with which the UK has extradition arrangements. This response will concentrate on Part 1 of the draft bill relating to Category 1 territories reflecting JUSTICE 's ongoing work on EU criminal justice.
3. In relation to Category 1 territories, the draft bill is intended to implement the EU Council Framework Decision on the European Arrest Warrant and Surrender Procedures between Member States (EAW)¹. Two key aspects of this legislation are the removal of a final executive decision in extradition to Category 1 territories and the erosion of the principle of dual criminality in relation to a number of types of offence listed in Article 2(2) of the EAW. The comments made in this response will deal both with concerns relating to human rights and procedural safeguards and with issues surrounding the accurate implementation of the EAW.

Human Rights - the Extradition Hearing

4. JUSTICE welcomes the inclusion of a specific duty on the judge in the extradition hearing to decide whether extradition would be compatible with Convention rights and to discharge the person if not. The inclusion of this duty in Clause 17 of the draft bill leaves no doubt as to the scope of applicability of the Human Rights Act 1998 in extradition

¹ OJ L 190, 18.7.2002, p.1

proceedings. It reinforces the principle, recently outlined in the case of *ex parte Ramda*² that the fact that the requesting state is a signatory to the European Convention on Human Rights (ECHR) does not *per se* mean that extradition will be compatible with convention rights.

5. The drafting of this clause is, however, slightly unclear as it refers to “the extradition” which could be interpreted as meaning only the actual return. JUSTICE assumes that the intention of this clause is that human rights considerations will apply to both the proceedings and the actual return so that Art 5(4) ECHR procedural rights³ would be applied in the extradition hearing and proceedings.
6. Under current extradition legislation there is a statutory bar on return where an extradition request has been made in bad faith. The Courts have found that requests emanating from European countries may be in bad faith⁴. JUSTICE hopes that this protection is to be regarded as included within the ambit of clause 17 even though there may be cases where a request made in bad faith is not necessarily “arbitrary” within the definition of Article 5 ECHR.
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 law⁵.
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.

² R v Secretary of State for the Home Department, *Ex Parte Rachid Ramda* (2002), [2002] EWHC 1278 (Admin)

³ R v Secretary of State for the Home Department, *Ex Parte Kashamu* – check ref

⁴ *Ex Parte Rachid Ramda*, supra

⁵ JUSTICE letter of 24th May 2002 to Bob Ainsworth, Home Office Minister

9. In practical terms, retrospective application of the EAW could lead to requests being received which apply to people who may have been involved in conduct in the past which is not criminalised in the UK. Those people may be established in this country and have developed strong family and professional ties with this country in the knowledge that the UK does not criminalise the alleged conduct, or, indeed, precisely because the UK does not criminalise the alleged conduct. In certain circumstances this could affect the principle of proportionality⁶.
10. **JUSTICE urges the UK Government to take advantage of the transitional provisions allowed for in Article 32 of the EAW Framework Decision by making a statement to the effect that it will continue to deal with requests relating to acts committed before a specified date, in accordance with the extradition system applicable before January 2004. Such a declaration should be reflected in the provisions of the draft bill.** Similar statements have already been made by France, Italy and Austria⁷.

Procedural Safeguards

Bail

11. JUSTICE welcomes the fact that the draft bill brings the magistrates' powers to grant bail in extradition cases into line with the domestic presumption of bail. This welcome step, is, however, accompanied by proposed amendments to the presumption of bail found in the white paper *Justice for All* which rather weaken the positive move with regard to bail in extradition cases. In particular the government proposes reversing the presumption in favour of bail in the case of class A drug users. **JUSTICE applauds the government's move to introduce the presumption in favour of bail in extradition cases but urges the government not to weaken this presumption in general in bail proceedings.**

Identity of the Accused

12. Clause 5 addresses the identity of the accused, but contains no specification on the evidential standard required or where the burden of proof lies. The draft appears to create the role of investigating magistrate which is unknown to UK law. **In the interests**

⁶ see for example offences listed in para 36 below.

⁷ OJ L 190, 18.7.2002, p.19

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.

Certification of the warrant

13. JUSTICE is concerned that Clause 2 does not provide a sufficient degree of assurance in the certification of the warrant. The certifying body should not simply be the police or NCIS – an appropriately qualified certifying body should be specified, perhaps from within the CPS of the Home Office extradition team.

Extension of time limits

14. Clause 6(5) allows an unfettered discretion to extend time limits on the request of one of the parties without any need for representations from the other party or possibility of review of the decision. **JUSTICE believes that the right to make representations is crucial when a decision is made impacting on a person's right to liberty. All hearings relating to extensions of time limits should be *inter partes* and decisions should be subject to review. The Act should contain clear procedures for applications to extend time limits.**

Details of the Warrant

15. Clause 8 requires the judge to decide whether or not the offence specified in the Part 1 warrant is an extradition offence. There is no specification of the information needed in the warrant in order for the judge to come to such a decision. While the Framework Decision on the European Arrest Warrant contains an annexe model of the warrant, there is a degree of flexibility as to the information included on the warrant. 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 where the assault involved hitting someone with a 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.

16. **JUSTICE** would urge the government to specify the information needed on the warrant to allow the judge to decide whether the offence (in the light of the alleged conduct) amounts to an extradition 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 ECHR on the grounds of arbitrariness.

Withdrawal of a Part 1 warrant

17. Clauses 32, 34 and 35 address the situation where a warrant is withdrawn while extradition proceedings are ongoing. These provisions allow the courts to retain a person in detention for up to 7 days following notice of the withdrawal of a warrant. The deprivation of a person's right to liberty for 7 days when no proceedings are pending is entirely unjustifiable. This is particularly so as the draft bill already contains provisions for dealing with competing requests. **JUSTICE strongly urges the government to remove this time lag in discharging a person following withdrawal of the warrant. The provision as drafted would be in breach of Article 5 ECHR, the right to liberty as the continued detention does not fulfil the requirements of any of the categories in Article 5(1).**

Consent to Extradition

18. Clause 36 relates to consent to extradition. **JUSTICE** believes that free legal advice must be available prior to consent, given the irrevocable nature and the very serious consequences of consent including, in particular, the waiver of the specialty rule following extradition. Such serious consequences require that sufficient safeguards be in place to protect the rights of the individual. The extremely coercive nature of extradition and the complexities of extradition law demand that adequate legal advice must be available to an individual in such circumstances. **JUSTICE urges the government to make provision that the judge before whom consent is given must be satisfied that:**

- (i) the person before him has been informed of their right to free legal advice and has understood that information, and**
- (ii) that access to such legal advice was made available to them before consent is deemed to have been given.**

Specific Bars to Extradition

19. Clause 9 of the draft bill lists the specific bars to extradition to Category 1 territories.

They are:

- a) the rule against double jeopardy;
- b) the person's age;
- c) the death penalty;
- d) specialty;
- e) the person's earlier extradition to the United Kingdom from another Category 1 territory;
- f) the person's earlier extradition to the United Kingdom from a non-Category 1 territory.

These bars are then further defined in sections 10-16.

Double Jeopardy

20. Clause 10 of the draft bill defines double jeopardy as a bar to extradition:

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.

21. The first difficulty with the text of Clause 10 of the draft Bill 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 acts⁸. 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 opinion⁹, 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

⁸ Oliveira v Switzerland, Judgment July 30, 1998, unreported.

⁹ Cases C-187/01 Gozutok and C-385/01 Brugge, Advocate-General’s opinion of 19 September 2002.

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 10 of the draft bill 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*¹⁰ 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”.**

Death Penalty

23. The bar to extradition by reason of the death penalty set out in clause 12 does not apply if the judge receives written assurance that a sentence of death would either not be imposed or, if imposed, would not be carried out. While it is accepted that the death penalty does not exist in general in what are likely to be designated as Category 1 territories, **JUSTICE urges the government 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.** JUSTICE 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.

24. 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 state¹¹.

Specialty

¹⁰ supra

¹¹ e.g. Italy – Constitutional Court, Sent – 223/96 Caso Venezia

25. The inclusion of specialty in clause 13 as a bar to extradition is somewhat misleading. When clause 13 is read in the light of clause 41 “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 13(3)(d) states that specialty will not be a bar to extradition where there are specialty arrangements with the Category 1 territory and the offence is:

“an extradition offence in respect of which the appropriate judge is treated by Clause 41 as giving his consent to the person being dealt with.”

Clause 41 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 41 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 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 41 and 43 of the draft bill.**

Conviction in absentia cases

30. Clause 16(2) of the draft bill states that the judge must discharge a person where he was convicted in his absence, not having deliberately absented himself from his trial, and “would not be entitled to a retrial or (on appeal) to a review amounting to a retrial”. The text of the EAW Framework Decision allows for Member States to demand a guarantee that the subject of the EAW in such circumstances, “will have the opportunity to apply for a retrial of the case in the issuing Member State and to be present at the judgment”¹².

31. **JUSTICE urges the government to amend the wording in Clause 16(2)(c) of the draft bill to reflect the level of protection offered by the EAW and the UK’s avowed position on the right to retrial in cases of conviction *in absentia*. The following text is suggested:**

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

32. JUSTICE urges the government to include a mechanism by which the judge can 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.**

Extradition Offences

32. Clause 47 of the draft bill sets out what constitutes an extradition offence in relation to Category 1 territories. For pre-conviction requests in respect of offences falling outside the type of offences listed in Article 2.2 of the EAW, an extradition offence is defined as conduct which would attract a sentence of at least 12months imprisonment in both the UK and the requesting state – for these cases, the dual criminality principle still applies

¹² Article 5(1) EAW Framework Decision, *supra*

and the level of extraditable offence is basically unchanged from the current situation. JUSTICE is primarily concerned by the definition of an extradition offence in relation to pre-conviction cases which fall within Article 2.2 of the EAW.

33. Article 2.2 of the EAW abolishes dual criminality in relation to a list of 32 types of offence where they are punishable with a maximum sentence of at least three years detention according to the law of the issuing Member State. Whether or not conduct comes within the list is a matter for the judge in the issuing state to decide – the types of offence on the list are not defined and even where there is a degree of harmonisation at EU level (such as in the case of racism and xenophobia), the application of the EAW is not restricted to EU definitions of offences. The abolition of dual criminality in relation to offences carrying a maximum sentence of at least three years is indicative of the intention that this should apply only to serious offences (although in practice in the UK potential maximum sentences of over three years are common even for relatively minor offences such as shoplifting, this is not the case in most Member States). While the EAW allows Member States to abolish the principle of dual criminality more widely in Article 2.4, Member States are not required to go beyond the provision in Article 2.2 in implementing the EAW.
34. The draft bill effectively abolishes dual criminality for extradition requests from Category 1 territories for conduct which the issuing judge classifies as within the Article 2.2 list and which carries at least a maximum of 12 months sentence. This provides a significantly lower level of protection than that required by the EAW.
35. It is difficult to ascertain exactly what kind of conduct may be covered by such a low threshold in Member States and in the candidate countries that are due to join the EU when the EAW comes into force in 2004. The principle of mutual recognition is based on mutual trust in the judicial systems of the Member States but not on mutual knowledge. The current or future laws applicable in Member States for types of offence which could be classified as “participation in a criminal organisation”, “racism and xenophobia”, “swindling” or “computer related crime” are an unknown quantity. Extradition is an extremely coercive measure that has serious implications for a person’s right to liberty and private and family life. Such a coercive measure should only be used in very serious cases if the principle of proportionality is not to be breached.
36. When considering the application of these provisions, it must be borne in mind that the threshold in relation to pre-conviction offences has no regard for the sentence that would

in fact be imposed for the alleged conduct, only the potential sentence for the offence is considered.

37. As a demonstration of the kinds of offence that could give rise to the execution of an EAW where dual criminality is abolished, the following offences carrying a maximum of at least 1 year but less than 3 years sentence are found in the criminal codes of some EU Member States and candidate countries. They are all offences which could be construed as being of a racist or xenophobic type, depending on the facts of the case:

Lithuania – Art. 72 of the criminal code punishes infringement of national and racial equality rights with up to 2 yrs imprisonment.

France – Art. 36 of the law of 29 July 1881 criminalises causing public offence to a foreign head of state (until 15 June 2000 this was punishable with up to one year's imprisonment and a fine of 300 000 francs).

Italy – Art. 405 of the criminal code - Disturbing the religious function of a Catholic cult carries 16 months imprisonment.

38. In the UK, we still have draconian laws relating to blasphemy. The fact that prosecutions are rarely taken for blasphemy does not remove the potential for blasphemy to form the basis for issuing an EAW. The recent Strasbourg case of *Colombani and Others v France*¹³ found that the French penal law relating to causing offence to a foreign head of state was in breach of Article 10 ECHR, the right to freedom of expression. This case concerned a prosecution of journalists for citing an EU report which linked the King of Morocco and the Moroccan royal family to the illicit drugs trade. The prosecution was brought by the French authorities on the insistence of the King of Morocco. These examples are put forward to demonstrate the lack of knowledge that Member States have about the kinds of laws that exist in other states and the types of sanctions that they carry. This problem is exacerbated by the fact that it is impossible to predict future developments in the criminal law of Member States¹⁴. **JUSTICE urges the government to implement the EAW at its highest, abolishing dual criminality only for offences of the type on the list in Article 2.2 which carry at least a maximum of 3 years custodial sentence. This would go some way to avoid the abusive use of the coercive measure of extradition for minor offences which do not constitute crimes in this country.**

¹³ Judgment of 25 June 2002

¹⁴ As can be seen by the recent criminalisation of Batasuna, a political party with over 600 elected representatives in Spain.

39. JUSTICE is concerned that the draft bill contains only a reference to the Framework Decision in defining that class of extradition offences. **In the interests of legal certainty, the Framework list should be imported directly into the Act.**

Part 2 - Retention of Prima Facie Case Requirement

30. With regard to Part 2 cases, many of the points raised above in relation to Part 1 also apply. Clause 62 of the draft Bill, however, relates to the *prima facie* case requirement which is only maintained in relation to Part 2 cases. This requirement provides an important safeguard in the case of requests emanating from Category 2 territories, the majority of which are not signatories to the ECHR. JUSTICE is concerned that the *prima facie* case requirement is effectively removed or at least diluted by the admission of a summary of a statement as evidence included in clause 62(3). **JUSTICE urges the government to redraft this clause, maintaining a high standard of evidence required for establishing the existence of a *prima facie* case.**

31. The standard of evidence required is further eroded by clauses 109/110 relating to the admissibility of faxed documents and the levels of authentication required. Again, JUSTICE urges the government to tighten up the procedural requirements on the standard of evidence in order to maintain the requirement of a *prima facie* case.

Relationship between International Obligations and Domestic Rights

32. JUSTICE urges the government to specify in clauses 1 and 50 that the Act is operative in accordance with the relevant bilateral or multilateral treaty, thus ensuring that domestic rights are not less than those accorded by the relevant international obligation. The clauses should specify this and JUSTICE would put forward the following possible wording:

“This Act shall have effect in relation to that state, but subject to the limitations, restrictions, conditions, exceptions and qualifications, if any, contained in the order.”

Conclusion

33. JUSTICE welcomes the inclusion of provisions relating to human rights considerations in the extradition hearing, but would urge the government to implement the European Arrest Warrant with the highest level of procedural safeguards possible. Where clauses in Part 1 are mirrored in Part 2 our comments apply to both. In particular, we would urge the government to:

- **Make a declaration in accordance with Article 32 EAW to the effect that the EAW provisions will not apply retrospectively;**
- **Set out procedure and evidential requirements for the establishment of identity in clause 5 of the draft bill;**
- **Identify an appropriate body for the certification of warrants;**
- **Set out procedures for *inter partes* hearings for applications to extend time limits;**
- **Specify the details required on the face of the warrant to allow the judge to come to a reasoned decision on whether or not the matter relates to an extradition offence;**
- **Remove the 7 day discretion to detain following withdrawal of a warrant or extradition request;**
- **Ensure that free legal advice is made available prior to consent being accepted;**
- **Apply the rule against double jeopardy to “acts” rather than “offences”;**
- **Make the possibility of the death penalty an absolute bar to extradition by removing clause 12(2) of the draft bill;**
- **Refrain from making statements of presumed consent to further prosecutions or re-extradition following surrender under Articles 27 and 28 of the EAW;**
- **Require a guarantee of a retrial in cases of conviction *in absentia*;**
- **Establish set criteria by which a person may be deemed to have deliberately absented themselves from a trial;**
- **Abolish dual criminality only in relation to offences included in the Article 2.2 list of the EAW carrying at least a maximum of three years;**
- **Include the framework list in the text of the statute in the interests of legal certainty;**
- **Maintain a high standard of evidence required for establishing the existence of a *prima facie* case in Part 2 cases; and**

- **Make operation of the statute subject to the terms of international obligations.**

JUSTICE

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