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Inquiry on

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Witness: James Brokenshire MP

USE OF THE TRANSCRIPT

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Members present

Lord Inglewood (Chairman)
 Lord Brown of Eaton-under-Heywood
 Lord Empey
 Lord Hart of Chilton
 Lord Henley
 Lord Hussain
 Baroness Jay of Paddington
 Lord Jones
 Lord Mackay of Drumadoon
 Lord Rowlands CBE
 Baroness Wilcox

Examination of Witness

James Brokenshire MP, Minister for Immigration and Security

Q36 The Chairman: I would just to welcome James Brokenshire. As everybody knows, he is the Minister for Immigration and Security. One small point: I gather we do not have any special interests to declare before the hearing—although, Lord Henley, you would like to say something.

Lord Henley: It is just to say that, having served as a colleague during this Parliament with the Minister in the Home Office, I will not ask any questions, but I will listen to the answers.

The Chairman: Minister, perhaps you could introduce yourself for the purposes of putting it on the record and say anything you would like to say at the outset, after which we will move into the questioning proper.

James Brokenshire: Thank you, Lord Inglewood. Thank you for this opportunity to appear before the Committee this morning. Extradition policy is one that rightly has a significant amount of focus attached to it, given the impact that an extradition request can have on a British citizen. Indeed, your inquiry comes at a time when there has been relatively significant change to the original Extradition Act in terms of forum, the European arrest

warrant, proportionality and a range of other issues. I therefore welcome your Committee's inquiry and investigations in terms of assembling the evidence.

I am conscious that this is a complex area of law, particularly for non-practitioners in this area like me. My officials have put together a briefing note surrounding the Act, some of the reviews that have taken place and, indeed, the subsequent legislation that has sought to amend the original Act. That has come before me and I am content with the form of it. I am planning to get this issued to you straightaway. I hope that that will act as a guide to assist and help in terms of what I accept is quite a complex area of law that has been changed in a number of ways in recent years.

The Chairman: Thank you very much indeed for that introduction and for telling us that this material will be with us shortly. Perhaps I might ask a general opening question. We live in a world where increasing numbers of people are moving around the world and across our borders. Crime seems to be increasingly trans-border and, indeed, global, as does terrorism. We have seen the development of things like the Schengen Information System II and also an extension, in a number of instances, of criminal extraterritoriality. How, as a Government, are we in this country looking at responding to these kinds of changes in the way the world seems to be working?

James Brokenshire: There is certainly a challenge in terms of being able to facilitate requests. You rightly highlighted the situation in relation to the Schengen Information System II, SIS II, which has the ability to put European arrest warrants on to a computer system and share those in real time. Certainly, it is something that I have been a supporter of over a number of years. We will be able to respond to the challenge and ensure we have clarity on information that is flowing across the EU. Schengen Information System II remains on track to be delivered, subject to some further discussions with the Commission and other

member states, by quarter 4 of this year. That will give us some additional benefits, rather than a paper-based system.

You are right in flagging up this issue around the cross-border nature of criminality. When I look at most organised crime cases now, they have some form of cross-border element. Therefore, yes, it is about our ability to make extradition requests ourselves and recognise that there are extradition requests that we will be receiving inbound, and how to manage that in terms of an assessment of where the right place should be for a case to be brought.

In some ways, that does get us on to issues of forum. I know the consideration the Committee has already given to that on assessing where we should be looking to bring prosecutions, and having greater transparency in respect of where those cases should occur, which is what the forum bar provisions were intended to provide.

Q37 The Chairman: Is it the Government's view that the way in which the world is moving is that this is going to become a more severe problem over time rather than the opposite? Are there bigger challenges ahead?

James Brokenshire: We are moving to a more challenging environment, because of the connected and cross-border nature of the criminality that we see. The National Crime Agency, which obviously receives and manages inbound requests for the European arrest warrant, for example, has overseas liaison: that sense of how we are able to respond to criminality that may be stemming from outside our shores but equally has a direct impact in the UK as well. That is obviously straying much broader than your Committee in relation to extradition, but it does have connections. When we look at types of crime like cybercrime, where criminality may be perpetrated against citizens in this country from overseas, where we are able to take action against those individuals, there is a balance as to whether there is liaison and prosecution taking place, for example, within the particular country where that

individual may be located and the support that is provided, or our ability to extradite as well, and how that works vice versa, and building relationships with countries to ensure that we have not simply strong extradition but also mutual legal assistance.

There is an interesting read-across here between where, within Europe, we have the new European investigation order (EIO), for example, sitting alongside the European arrest warrant. I have always been struck by the balance between the two and when you should be using a European investigation order, which is now obviously coming into effect and being adopted, as against the European arrest warrant, given that, interestingly, within the EIO specifically there is a proportionality filter.

Obviously, we have sought through domestic law to put in proportionality arrangements in relation to the European arrest warrant, but it is an interesting balance, looking at those two instruments, where one would argue that the EIO is less intrusive but has a proportionality provision specifically in its terms, whereas the European arrest warrant—although it provides flexibility to member states to make arrangements domestically—does not have it in such specific terms, in part, perhaps, because of the way the law has evolved over time. It is interesting to compare those two instruments on what can be described as mutual legal assistance between two countries.

The Chairman: Before moving on to Lord Hart, are we making any efforts to try to secure amendments to the European arrest warrant—or the framework decision/directive?

James Brokenshire: Discussions obviously do continue at EU level; there has been some interest from within the Parliament as well, although that has not progressed as far as some perhaps had anticipated that it may have done. Now we have the EIO on the European statute book, those issues become even more relevant than they were before, because of this potential distinction between the two orders. It is something we are raising and

continue to raise in relation to the European arrest warrant—recognising, however, that a reform package takes time, albeit that the EIO has given greater clarity to that debate. That is obviously a point we will be underlining in the months ahead.

Q38 Lord Hart of Chilton: We are going to be quite interested in how the policy on extradition evolves and how the Government actually take carriage of the evolution of extradition. Your department, presumably, is in the lead. Do you have a full-time policy unit that looks at extradition all the time, examines the cases as they happen, and reflects on whether the particular consequences or results of a particular case seem to require a bit more tinkering, or is there no specialist policy unit in charge? How do you liaise with other departments, for example the Ministry of Justice and the Foreign and Commonwealth Office? How do you consult externally to your department with stakeholders? I am interested in seeing the nuts and bolts of how it happens.

James Brokenshire: Obviously, extradition is a core policy area as part of the Home Office, including the handling of requests that come through and, indeed, the residual requirements that do exist for Ministers to consider extradition requests from Part 2 countries. There is an extradition unit that is contained within the Home Office. It obviously handles those cases, puts up submissions to Ministers surrounding them and, equally, will flag up potential policy issues that may arise that particular cases may be indicating. There is that iterative process, if I can put it like that, for examining how case law is developing and, indeed, what individual cases may be saying as to whether the pattern of law is changing.

There is a good connection between us, the Ministry of Justice and the Foreign and Commonwealth Office in respect of those arrangements. If issues do arise, clearly we are able to escalate them within the other departments that have those responsibilities to see that the system works well. When you take that step back, clearly we have made number of

changes to extradition law over the course of this Government, when we look at issues with the forum bar and, indeed, some of the changes we are enacting in domestic legislation for the European arrest warrant that will take effect at the end of this month. There has been that ongoing policy examination of issues that have arisen. Obviously, it is something that we keep under review. We do not have any current plans to change extradition law. What we want to see is the existing changes now bedding in, because when I look at the issues of, for example, forum, they were introduced in relation to Part 2 countries at the end of October last year. The cases are slowly starting to come through. It is a question of assessing those as to how the law is being applied by the courts. There is that ongoing process that does exist.

Engagement with others would be on a case-by-case basis. I could not say that to my knowledge there is a systematic approach that exists in relation to external stakeholders—albeit that, if issues arise and there are particular representations that are made or particular issues come to the fore, obviously we will contact stakeholders as appropriate.

Q39 Lord Hart of Chilton: From time to time, the searchlight of publicity strays into the cupboard that you are in charge of. Does that trouble you from time to time—in particular the cases that get maximum publicity in terms of extradition to the United States? When you see that, does that concern you at all?

James Brokenshire: Sometimes, a focus on an individual case certainly brings to life a number of the factors and elements that sit alongside this. Sometimes, individual cases can shine a light on particular challenges or the way in which the law is being applied. Inevitably, because these issues relate to the liberty of individuals—and, therefore, what happens to them if they are extradited—there will of course be a focus that will be given to this by the press and others outside of this place and outside of government. I do not see that as a bad

thing: I see that as a healthy challenge at times for us to ensure that the law is being applied as we intend and that, if issues are being flagged up, that we have the ability to respond.

I should also correct that, obviously, the forum provisions apply to Part 1 and Part 2 countries—just to be clear on that in terms of the record. Obviously, however, in respect of the forum bar challenges, we have had one of particular specific reference that has occurred since October. Clearly, we will keep these issues under review.

Lord Hart of Chilton: You think that in the main everything is going along alright. You are not troubled by anything.

James Brokenshire: It is rather that, as I say, with further changes formally introduced to the statute book at the end of this month, our focus is on seeing how implementation beds in and keeping this under review, given the changes that have taken place. It is now a question of assessing what the courts do, how they apply and interpret the changes that have been made and then assessing whether further change may be needed thereafter. Do the Government have any plans to change extradition law again? As I sit here today, I cannot say to this Committee that we do have any current plans to do so.

Lord Rowlands: I wondered, in the context of external agencies, how much attention you are paying to the interests and needs of victims. There is a great deal of interest in the defendant's rights—and that is very understandable—but what about the victims of these crimes? Are their interests and rights being observed, or should we actually encourage or develop them further?

James Brokenshire: You are right to highlight this issue of the interests of victims in the context of extradition. I hope, Lord Rowlands, that you will see, when you see the note on some of the changes being introduced around the forum provisions contained in the Crime and Courts Act, that one of the specific provisions that has to be taken into account is the

interests of justice and the interests of any victims. It is relevant. The voice of victims should not be lost in this context of seeing that justice occurs for their closure and benefit, and seeing that a criminal has been brought to justice, which is why extradition does matter in seeking to fulfil that.

Q40 Lord Jones: Very briefly, one of our witnesses previously was the chief executive officer of Fair Trials International. It is a pretty big-hearted lobby—and quite vociferous, perhaps. Have you encountered it? Have you sought to engage with it? Do you listen to it? Does it submit to you? Is there any impact upon your work?

James Brokenshire: Yes, it has. We do have representations and have met a number of different non-governmental organisations that do make important cases on reform of the law. For example, when I look at things like the changes to the European arrest warrant and the trial-ready provisions that are contained within it, because of the concern that individuals might be extradited simply to languish in a foreign prison because the other country had not been prepared for trial, it is those representations from organisations like that that have been heard, and the Government have sought to respond in a number of different ways around that.

Lord Jones: Have you yourself met this chief executive?

James Brokenshire: Please remind me of his name.

Lord Jones: His name is Jago Russell.

James Brokenshire: Yes, I have met Jago Russell.

Lord Jones: I need say no more.

James Brokenshire: It was in the context of the time when we were looking at the European arrest warrant provisions and the trial-ready nature of them, because I know that his

organisation has advocated on behalf of some families who have been affected by some of these issues. So yes, I can say that to you, Lord Jones.

Q41 Baroness Jay of Paddington: We had a very useful evidence session last week with Sir Scott Baker, who obviously referred back to his report. One of the things he raised—we did not have to ask him about it—was his continuing concern about the legal aid position. He obviously accepted, as the Committee has noted, that the Government made the case that there was not really a business case for restoring the legal aid rights that had previously been there. If it has not disappeared from my iPad, I will just quote him. He said, “We were firmly of the view that there would be an overall saving when one looked at how long cases were taking when they were being adjourned—people were being held in custody and so forth.” I wanted you to reflect, if you would, on that comment, and also on the general balance between the objective of justice and the objective of efficiency, which seem in some tension there.

James Brokenshire: Obviously, legal aid matters are led by my colleagues at the Ministry of Justice rather than being my specific policy lead on that. Obviously, however, we are in contact with the MoJ on extradition matters more generally. It is appropriate to say that legal advice is provided to all arrested individuals at the police station with no means or merits test. It is then when we look at the cases that are brought, for example, before the magistrates’ courts on the substantive cases that arise.

In preparation for this evidence session, I did ask for some figures from the Ministry of Justice to give some sense of numbers. If there are further inquiries, I hope we may be able to assist in getting further data from the MoJ. It is perhaps a snapshot—and I would characterise it in these terms. In the period between the start of August 2012 and the end of June 2014, nearly 2,000 individuals applied for criminal legal aid in order to fund

representation at extradition hearings taking place before the City of Westminster magistrates' court. In approximately 95% of these cases, criminal legal aid was granted to the individual. That might give some context as to, perhaps, who is receiving legal aid support. As you will know, there is the merits test as well as the financial means test that applies. However, I appreciate this is something that was obviously flagged in your evidence session last week and is an interest. As I say, it lies slightly beyond my own direct remit, but, if we are able to facilitate information to the Committee, obviously we would be very happy to do so.

Baroness Jay of Paddington: That would be very helpful. What you have said already is obviously helpful. Beyond that, there is the other question of the automatic right of appeal. We are obviously looking at the ways in which justice is effectively dispensed. Earlier this morning, the witness who has already been referred to from Fair Trials International suggested that, because the system was, shall we say, not particularly expert, sometimes there were cases where people who had the right to appeal had things revealed only at that stage that obviously should have been dealt with earlier. In other cases, the right of appeal simply was not there because it was not automatic and cases went by default. Is that something the Government are considering?

James Brokenshire: It is certainly not something that has been flagged to me in terms of an issue that has arisen in relation to rights of appeal being exercised. Certainly, it is something we can raise with the Ministry of Justice, which perhaps would have that more direct purview over these matters in terms of the operation of the courts and appeal rights being exercised. It is not something that has been flagged with me. Going back to the figures that I have provided and that have been given to us by the Ministry of Justice, the question is how many cases would be affected and, therefore, the extent to which these are significant

issues or not. It is maybe a question of looking at the evidence and the cases that are being presented.

Baroness Jay of Paddington: Obviously that is true, but it goes back slightly, does it not, to Lord Hart's question earlier about what we need in this area being what is called, in the jargon, joined-up government? On this issue, between the MoJ and the Home Office there perhaps needs to be closer collaboration.

James Brokenshire: If there are issues that impact on broader extradition policy, that may well be the case; however, my sense is this may well reside in legal aid policy, in respect of which the Ministry of Justice obviously does have that direct oversight and policy lead. Therefore, in that sense of where joined-up government and where the interests of individual departments overlap, I would characterise legal aid provision as being a specific policy lead for the Ministry of Justice and, therefore, if there are those issues that are being raised with the Committee, rightly it is the Ministry of Justice that should respond on legal aid. Clearly, however, if there are issues that do cross over into broader extradition policy, absolutely we should respond. That certainly is the case, as far as I can see, in terms of the join-up between departments where we are seeing issues that go, perhaps, to the fundamentals of the law or the application of the law.

The Chairman: I am conscious that time is moving on, so I am going to slightly edit the sequence that we previously had the questions in. Could I urge both the questioners and you to try to keep it brief?

James Brokenshire: I am sorry.

The Chairman: No, it is all good stuff.

Q42 Baroness Wilcox: My question is quite quick, but I imagine the document you are going to send to us will have the answer in it anyway. Maybe you can quickly answer this.

Will the forum bar be compatible with the Lisbonised framework decision? Is it going to give it more weight?

James Brokenshire: We believe the forum bar is compatible with the framework decision and that it does meet the provisions of Article 4(7)(a) of the decision. My answer to the Committee is yes.

The Chairman: That was an exemplary reply, if I may say so.

Q43 Lord Empey: The question I was going to ask you was this: what process have you in place to monitor and ensure that assurances given about rights by a requesting state are honoured? For obvious reasons, it is very important. Whose responsibility is it and what sort of assurances does the United Kingdom ask for from other states?

James Brokenshire: In terms of assurances, that will vary from country to country in respect of the nature of the law of a particular country. Therefore, when you look at assurances, it is also important to recognise that there are assurances that are given on extradition; there may be assurances that are given in respect of individual cases as to how someone may be treated; and, also, there is the read-across on to deportation policy as well, in relation to, for example, our policy on deportation with assurances, where we will be seeking specific assurances to be able to deport people. I appreciate that is distinct from extradition, but it is important to understand that in the round.

There is no systematic approach that is taken to assess ongoing compliance. Obviously, the courts have a very direct interest—and indeed we do have an interest ourselves, as does the country giving the assurance, because if it could be shown by an applicant in a particular case that assurances had not been met in a preceding case in some way, obviously that would then have a direct bearing on the weight given to those assurances in the future. Therefore, the Foreign and Commonwealth Office would be the normal avenue of complaint

for individuals who allege that assurances have been breached. It would be flagged in that way. Equally, there could be challenges through the courts. I know that the courts do take this issue seriously. If it might help the Committee, there has been the recent case of Khalifa through the courts, which made a very clear finding that the fact that the Algerians had fully maintained their assurances on deportation cases meant that assurances provided in that case could be trusted. I suppose it tends to be that type of iterative approach that is taken, rather than some sort of central mechanism in government that seeks to monitor this.

Lord Empey: Is it fair to characterise your response as saying that in the event of somebody blowing the whistle or raising an objection or going to the court, the matter is then looked at, but as a matter of routine there is no process in place for monitoring individuals and what happens in their cases? Is it only if they complain or try to get back to the court that somebody actually starts to look at it?

James Brokenshire: If complaints are made either to the court or to our posts in a particular country, obviously that would be something that would be looked into seriously. Perhaps, Lord Empey, in terms of giving you a response on the types of assurances we may be talking about, obviously they relate to things like the death penalty, prison conditions, health and what is known as non-refoulement. If matters come to light in a particular country, that would then be flagged up by a post on their monitoring of relations with those countries and may well be triggered in that way, rather than a specific complaint being made.

The Chairman: Do those countries care? The sorts of countries that break assurances are not the sorts of countries that will care much about being rapped over the knuckles by us.

James Brokenshire: I disagree, actually. A lot of countries do seek to underline their compliance with international law and their international relations. If assurances were ridden roughshod over, that could then have a material impact on relations between

countries. Equally, it would mean that, on a bilateral basis, we may change our relationship on requests that were received in the other direction as well. It would be wrong to characterise it as other states would not care. There could be consequences of someone simply ignoring assurances that had been provided.

Q44 Lord Brown of Eaton-under-Heywood: Minister, let us go back to our old friend the forum bar and the new Sections 19B, C, D and all the rest of it. It is pages long and it is quite a complicated provision. This came in at the end of October, I think you said. Was it 14 October? So it has been going for nine months.

James Brokenshire: You could be right, yes.

Lord Brown of Eaton-under-Heywood: That was under the Crime and Courts Act. Just to try and get the shape of all of this, that is a different statute from the anti-social behaviour one.

James Brokenshire: That is correct.

Lord Brown of Eaton-under-Heywood: That is the one bringing in things like proportionality, which you have told us is coming in at the end of this month.

James Brokenshire: It is coming in at the end of this month, yes.

Lord Brown of Eaton-under-Heywood: Thank you very much. On the forum bar, we have had nine months' experience of it. Has it been exercised yet?

James Brokenshire: I am aware of one case that has arisen in relation to the forum bar. Obviously, sometimes these cases do take some time to progress. Therefore, it is still early days. There was a case related to an individual called Shaw, where the court has ordered that extradition should proceed. It has now been appealed, and therefore it is difficult for me to comment further. There is at least one case I am aware of that does touch on the substantive elements of the forum bar.

Lord Brown of Eaton-under-Heywood: That is very helpful. So the bar was refused and it is now under appeal?

James Brokenshire: In that particular case, it is being appealed—hence the reason why it is difficult for me to comment.

Lord Brown of Eaton-under-Heywood: Do you know when it is going to be heard at all?

James Brokenshire: I am afraid I do not have that level of detail, but that is certainly a live case. Whether we are able to provide any further information on that to assist the Committee—I have just been told it will be in September.

Lord Brown of Eaton-under-Heywood: That will be very helpful. What is it called?

James Brokenshire: It is called Shaw.

Q45 Lord Brown of Eaton-under-Heywood: Under the new scheme, prosecutors have enormous influence. Indeed, their certificate is almost decisive, is it not?

James Brokenshire: Certainly, when you look at the new provisions that have been inserted into the 2003 Act, obviously, there is the certificate process, where a prosecutor can issue a certificate and the relevant grounds are set out there. Again, I hope that the note I will circulate will be able to assist in decoding some of this, because when you are amending an earlier statute it sometimes can be quite complicated to get that level of detail. However, you are right that there is that potential bar where the prosecutor has in essence considered whether prosecution should take place here and, effectively, determines that they have weighed it up, they have balanced it out, they have considered the interests of justice and various other factors that are specified—albeit that that certificate can be challenged by way of appeal to the High Court.

Lord Brown of Eaton-under-Heywood: That is under 19E.

James Brokenshire: That is right, yes.

Lord Brown of Eaton-under-Heywood: In the case of Shaw, however, do you know whether there was a certificate? Perhaps we can learn from your officials behind you.

James Brokenshire: As I say, it is a live case before the courts. Perhaps if I can say to the Committee that if there are further background or basic details of that case that we are able to provide, obviously we will share them with the Committee.

Lord Brown of Eaton-under-Heywood: As matters presently stand, subject to whatever the courts may say in this case or other cases, are you content with these rather elaborate new provisions?

James Brokenshire: Yes, we are. As I say, we will monitor the way in which the courts interpret them, and that will be the clear factor on how they are applied in practice. However, yes, we believe that they do provide greater transparency and do address the issue of forum appropriately.

The Chairman: Does that mean you will look and see how the courts apply the rules, and if they apply them in the way you anticipated they would, you will be satisfied, and if not you will get the law changed?

James Brokenshire: Lord Inglewood, you will know that all Governments keep legislation under review. Indeed, the purpose of your Committee is very much to look at the 2003 Act and see whether it remains appropriate and balanced in that post-legislative scrutiny frame of mind.

The Chairman: Indeed, yes.

James Brokenshire: However, we are content that the law does gain assistance in terms of forum; it does strike the right balance between the interests of the individual and the interests of the prosecutor. Obviously, however, we will continue to monitor it as case law develops.

Q46 Lord Rowlands: In some of our evidence, we have been discussing whether the law should be more prescriptive or less prescriptive. We have taken some rather conflicting evidence on this. Your recent legislation is quite prescriptive, would you agree?

James Brokenshire: It certainly specifies a number of different factors, for example, that the court has to take into account. We touched on factors such as the interests of victims, the balance of justice and the provisions that have been inserted into the 2003 Act as considerations the court has to take into account. You are right: there is a balance to be struck here. We felt, however, that it was important to set those factors out so that there was transparency as to the elements the court does take into account and, on issues of forum, that is appropriate.

Lord Rowlands: You seem in your answers, however, also to be saying, “We are waiting for the courts to define our law”.

James Brokenshire: No. Clearly the law is codified here and we believe the changes that have been made remain appropriate. The law does give clarity for all of those involved on the elements that should be considered—and, indeed, on the role of the prosecutor on the certificate as well. I am merely saying that, obviously, we will continue to monitor the situation as we would in relation to any other piece of legislation. It is not that it is specific to this. The law is clear, but obviously we will continue to see the way that the courts continue to interpret it.

Q47 Lord Jones: I have a brief question on category 2 designations. How does the Home Secretary decide which countries should be designated category 2 territories?

James Brokenshire: Category 2 territories in their terms are those where we have a bilateral treaty, those that have ratified the European Convention on Extradition, or Commonwealth countries that have endorsed the London Scheme on Extradition within the Commonwealth.

Obviously, the UK will add to the list of those designated where a new treaty is signed or where another country joins the convention or the scheme. I suppose we tend to enter into those on the basis of operational need.

The Chairman: Could you slightly elaborate on what “operational need” is in this context? There are some apparently strange bedfellows to be found in some of these groups of countries.

James Brokenshire: Again, the information that we will be sending to the Committee, from the draft I have seen, will provide a list of the relevant countries as well to inform the Committee on the different categorisations: those that are required to provide, for example, prima facie evidence and those that are not. That is in many respects decided by issues such as the convention itself and also the scheme. When I talk about operational need, it is where we have developed relations with a particular country to such an extent on mutual legal assistance, where we see that there is an operational need because of perhaps criminality, the changing patterns of that, and, therefore, how a relationship with an individual country has evolved over that time.

I do see extradition as something that is—because of the nature of it and the impact on the liberty of citizens—a fair way down the track in terms of a relationship with a particular country. Therefore, you may well have seen mutual legal assistance and other arrangements being entered into first to ensure that there is that understanding of law and practice between the UK and another country. I suppose that is what I mean by “operational need”: it is that evolving picture both in terms of relationship and in terms of criminality that may emerge.

Q48 The Chairman: I think I am right that the Government said that they were going to review, in response to the Sir Scott Baker review, the list of designated category 2 countries. Is that under way?

James Brokenshire: It has not formally commenced as yet; however, the Home Secretary has said that she believes the courts currently are able to subject extradition requests to sufficient scrutiny to identify and address injustice or oppression. However, I cannot say to the Committee that we have formally conducted the review that was contemplated.

The Chairman: Are you going to, do you think?

James Brokenshire: There is no current date to start that as yet.

The Chairman: Finally, some territories have to provide a prima facie case and some do not. Is this something you are bearing in mind in the context of the process you are carrying out? You are obligated under the Convention on Extradition to accept that there is no need to provide a prima facie case. It would rather startle many members of the public that some of the countries that are in the scope of the Convention are countries with which we have this arrangement.

Lord Brown of Eaton-under-Heywood: I am trying to get the overall shape. There are two sorts of designation. There is the overall designation of countries. You are not in Part 2 of the legislation at all unless you are designated for that purpose. Within that designated list, there are fewer countries that are signed up to the 1957 Convention. Then, as you say, there are one or two Commonwealth countries and—I do not think you mentioned it—the United States. They are further designated and they do not have to produce a prima facie case; they merely have to produce information showing probable cause.

James Brokenshire: You are right that there are, within the Part 2 countries, those additional elements as to whether a prima facie case needs to be made out in support of an extradition

request. Part of that is set out in Article 12 of the Convention, which the Chairman was alluding to in terms of the specific requirements. Obviously, in relation to Commonwealth countries we have specific requirements for those. Obviously, I am sure you will be familiar from the Sir Scott Baker review with the tests that need to be applied in relation to US/UK extradition requests—albeit that Sir Scott Baker concluded that they were in balance and there was not this distinction that some had advanced between the two natures of the inbound and outbound tests.

It is important to stress as well that extradition requests can be challenged on human rights grounds. Therefore, simply because an extradition request makes out all of the basic requirements does not mean it cannot be challenged and that other factors cannot be brought to the court's attention in respect of this as part of the process. I hope, again, that the notes that we send will specify the list of countries and also flag up those countries that are or are not subject to a prima facie test in order to be able to respond directly and give the Committee clarity on those countries that are bound by the requirements on prima facie or not.

Lord Brown of Eaton-under-Heywood: I am conscious of the time, but take somewhere like Russia, Ukraine or Azerbaijan. They are within the 1957 Convention; therefore, on the face of it, they have to be designated and not required to produce prima facie evidence. Assuming we have reached the point of thinking, "That is really not satisfactory in their cases," what can you do about it? Can you de-designate them consistent with the 1957 Convention?

James Brokenshire: In essence, we are bound by the Convention, because it is specified in Article 12 on the request and supporting documents that are to be made by those countries. It does require that to be followed in that purpose. There are further articles that, if the

information is found to be insufficient, allow the requested party to make a decision in pursuance of the Convention and to request supplementary evidence and to fix a time limit for receipt. There are some safeguards that are built in to allow the requested state to make further requests for information or accept an extradition or not, putting aside the other challenges that are there. So, yes, while it is correct to highlight the requirements that are set out in the European Convention on Extradition, it is also important to understand there are these additional points and challenges that can be made in individual cases if something is seen to be wholly inappropriate.

The Chairman: Before we move on, can I come at this point from a different direction from Lord Brown? Are you telling us that the domestic safeguards that we have and the way in which we handle extradition requests from countries we might have concerns about are such that you are satisfied that justice can be done within the context of our domestic rules and procedures? Are you saying that, in a sense, reviewing the designated countries is not really a worthwhile thing to do, because we probably cannot—other than in a very complicated and convoluted way under international law—wriggle out and then reinstate ourselves, and that justice's best interests are being served by approaching it the way we are? Is that right?

James Brokenshire: In essence it does come back to the point I made in terms of what the Home Secretary said and being satisfied that there are appropriate means of challenge and protection within our courts and legislation to deal with those issues. For example, on US cases I understand that 14 cases have been discharged by the court. Yes, there are tests that actually have to be satisfied in terms of the form of the request as specified in the relevant requirements under the Act and designation and, therefore, the Convention or the other

requirements that sit there. However, there are those additional safeguards bound into our law to ensure that justice is done.

Q49 Lord Hussain: There are obviously countries with which we do not have any treaties for extradition. Are you drawing up any new list of countries or are you drawing any new extradition treaties with countries such as Japan, for example?

James Brokenshire: There are ongoing discussions, obviously, as we have said in terms of how we keep these issues under review. Perhaps I can send a note to the Committee, if that would be helpful, of where we may be in the process of negotiation or where agreements have been set but perhaps have not been added on to the Part 2 list at this point in time. That may, I am sure, assist the Committee in that way.

Lord Rowlands: What is our position with Pakistan? What are our extradition arrangements with Pakistan?

Home Office Official: We do not have a formal treaty with Pakistan; we have ad hoc arrangements on a case-by-case basis. It is the same with Japan and other countries, too. The fact that we do not have formal relations with them does not mean that they cannot make requests to us and we cannot make requests to them. It is just done on an individual circumstance. With Pakistan, if they make a request to us we need to have an individual treaty¹ with them. For example, at the moment we have an individual treaty with Rwanda regarding the cases that are going through the courts at the moment about alleged war criminals. There is a case going through the Scottish courts that relates to Taiwan, so we have a mini-treaty with Taiwan. That is what happens in those circumstances.

James Brokenshire: I am sorry. Again, I hope that answer from my official shows that there are different cases and different circumstances in which you are able to bilaterally come to

¹ From here, references in this section to “treaty” and “mini-treaty” are used as a convenient short-hand, but the arrangement is technically a memorandum of understanding.

particular agreements. As I say, perhaps it might be helpful to the Committee if we were able to write to the Committee and perhaps set out some of those processes in order to inform your consideration.

The Chairman: It would be helpful to know exactly how it works in the real world.

Q50 Lord Mackay of Drumadoon: I have been asked to ask you quite a few questions about the US/UK situation. I suspect you may already be aware of what these questions are and have the answers. Is that right?

James Brokenshire: The starting point to this is that the Government believe that the treaty is fair and balanced. Obviously, this was something the Sir Scott Baker review did specifically examine in detail, and the distinction between reasonable suspicion and probable cause and whether that was balanced. Clearly, the panel stated, “In our opinion, there is no significant difference between the probable cause test and the reasonable suspicion test. We believe that any difference between the two tests is semantic rather than substantive”. We obviously did ask Sir Scott Baker and his review to examine this, and we do remain satisfied that it is fair and balanced.

Lord Mackay of Drumadoon: So you have no plans to amend that?

James Brokenshire: No.

Lord Mackay of Drumadoon: We asked a number of other questions about the numbers involved. I am not expecting you to answer them now. I just want to know you have these questions—and then you can answer them. You do not? Right—okay.

The Chairman: Lord Mackay, the specific question you are referring to is not one that has been specifically put to the Minister. If you ask the questions, he can then undertake to give us a reply.

James Brokenshire: If the request is for details of requests that have been made and received from the US to the UK and perhaps those that have been refused, I have already indicated that under the 2003 Act the UK has refused 14 extradition requests from the US, whilst, interestingly, the US has not refused any requests from the UK. If we are able to give a sense of the quantum to the Committee, obviously I am very happy to write to the Committee to provide that detail.

The Chairman: Would it be helpful, before Lady Jay comes in, to give you the specific questions that we hope you might be able to answer?

James Brokenshire: Yes.

The Chairman: If I might, then, reading from the piece of paper: first, how many requested people has the UK extradited to the US since the signing of the US/UK treaty? I will give you these papers. Secondly, how many requested people has the UK extradited from the US since the US ratified the treaty? Thirdly, how many requests from the US have been refused on human rights grounds? Fourthly, how many requested people has the UK extradited to the US after human rights assurances were made? We will give you the questions.

James Brokenshire: Perhaps I can write to the Committee with those statistical details, as I must confess I do not have those numbers in front of me.

The Chairman: That is absolutely fair enough. We have some more questions of this sort.

Q51 Baroness Jay of Paddington: Going back to the point we talked about earlier, we understand the nature of the decision by Sir Scott Baker and others that the treaty is in balance as far as the legal side is concerned, but the Committee have also raised what more generally might be called political jurisprudence questions about the United States in respect of matters such as long sentences, plea bargaining and the differences between the individual state jurisdictions—where judges may well be elected on rather extreme

platforms—and the federal system et cetera, which make us concerned that perhaps although you can technically say the relations are legally in balance, there are differences that concern people in a broader sense, particularly citizens of this country who have faced extradition to the United States.

James Brokenshire: As I say, we believe the treaty remains appropriate. Obviously, we have touched on some of the evidential tests. Obviously, this is something—as you know, Baroness Jay—that has been litigated on in the past in human rights cases. One of the most high profile we have seen over the course of the last year or so is probably Abu Hamza, where some of the issues over the nature of prisons were litigated all the way up to the European Court of Human Rights, which upheld the ability to extradite in those circumstances. Our judgment is that the relationship and the treaty are properly balanced. Obviously, it has been upheld by the courts in a number of different circumstances, but I do point to the fact that extradition has been refused by our courts on 14 occasions, whereas on no occasion has the US refused a request from the UK.

Baroness Jay of Paddington: That is certainly one of the questions we will put in our supplementaries, which I think will come before you.

Lord Brown of Eaton-under-Heywood: When you come to write to us, can you give us in each of the 14 cases an indication of the grounds that we refused them on?

James Brokenshire: I can certainly ask to see the details on the 14 extradition requests. If we are able to break that down in some way as to why extradition was not upheld by the court in those circumstances, certainly we can see what further details could be provided.

The Chairman: Could you also tell us: 14 out of how many?

James Brokenshire: As I said, I will also be able to give you the total number we have seen over the course of the last few years, which I hope will equally give some further context to that.

Q52 Baroness Jay of Paddington: On the question of relative sentencing, for example, do our authorities regularly ask of the US authorities that, where someone has either UK citizenship or a strong relationship with this country, they serve their sentence here?

James Brokenshire: That is going slightly further than pure extradition in those terms. It has become particularly relevant on issues such as forum as well, where we see that cases could be potentially prosecuted here or there. There may be criminality here and criminality in the United States. Therefore, where the balance may lie on whether somebody should be prosecuted here would have to take into account where the evidence is, where the witnesses are, where the harm has been caused and, therefore, what may be in the broader interests of justice in respect of how prosecution should occur. That does draw us back to the forum bar provisions. It is the sense of providing that transparency, which is why I emphasised it in that way.

Baroness Jay of Paddington: One of the things we were specifically concerned with, though, was not the pre-trial arrangement but the sentencing.

James Brokenshire: Ultimately, sentencing would be a matter for the US authorities—as it would be for someone here in this country. Ultimately, that would be a decision for the US, but it would not impact on the decision as to whether extradition could be made out or not, unless there were specific grounds for challenge that could be made—for example on human rights grounds in some way.

The Chairman: Can I just stop you there? For the avoidance of doubt, what you are saying as far as sentence is concerned is that in any extradition case, unless it could be shown that

it was in breach of the European Convention, we take view that the detail of whatever sentence may be imposed is not a matter for us.

James Brokenshire: That would be matter for the US authorities in respect of sentencing.

The Chairman: That is just to be clear on what you were saying.

Lord Mackay of Drumadoon: Taking that point one stage further, that would mean that the UK authorities do not raise with the American authorities the possibility of serving a sentence imposed in America in the United Kingdom?

James Brokenshire: Obviously, there are separate arrangements that we have with a number of different countries around prisoner transfer agreements. As I sit before this Committee, I am not aware of the specifics on our relations with the US on that particular aspect, but, again, the facilitation of those arrangements would be led in large measure by the Ministry of Justice rather than the Home Office.

Lord Mackay of Drumadoon: Can I also ask that, when you reply to the various questions you have been asked, you make it clear how many of the requests for extradition originated with prosecutors at state level and how many originated with prosecutors at federal level?

James Brokenshire: I will certainly take those questions on board. I recognise that this inquiry is at the start of its process in terms of seeking to get the evidence together. I expect to return to this Committee at a later stage when obviously you will have had some further information from us on that and, I am sure, other details as well. I hope, therefore, at that stage to be able to respond in terms of your further supplementaries that may arise.

Q53 The Chairman: Thank you. That is helpful, because, as you appreciate, we are still digging around. Finally, I might just ask you—since it is in a sense your role—another question. The role of the Home Secretary has changed recently in dealing with extradition

matters, in particular in deciding a human rights bar; has that had any positive or negative effect?

James Brokenshire: It has not had any particularly negative effects on the basis that someone could still raise human rights issues at any stage of the process. It is simply now that people must do that with the courts. In terms of the ability to uphold a human rights challenge, clearly the courts have the ability to consider that and consider the evidence. Obviously, we did examine the question carefully as to whether there should be this retained residual right of the Home Secretary around human rights issues, but it is appropriate that allowing the courts to consider and decide human rights issues should strengthen the extradition process by achieving timely and fair resolutions to requests and having that sense of the court being seen to consider the evidence, rather than the Executive having that residual role. I do not think it has weakened the process or, indeed, weakened in any way the right of those challenges to be made.

The Chairman: Everything the Home Secretary could do, judges can do instead.

James Brokenshire: We think so. The courts are able to consider these matters carefully.

The Chairman: Thank you. You have given us a very helpful overview of a number of topics and aspects of this we are concerned about. Is there anything else you would like to say to us?

James Brokenshire: On the debate around the European arrest warrant, sometimes it is always characterised and seen in the context of requests that are made to the UK to extradite UK citizens overseas to other European countries. What I was keen to underline to the Committee is, for example, the utility that the UK has from the European arrest warrant in seeing that criminals who have evaded justice here in the UK are brought to justice. I have been a very keen supporter of something called Operation Captura, which is a scheme

conducted with Crimestoppers and with the Spanish authorities to see that individuals are brought back to justice from Spain to the UK. It has been very successful. It has seen 60 of our targets now returned to the UK. I wanted to make the point, as something that might be helpful to the Committee in terms of its balanced view on extradition and considering all of these elements, that I do regard the European arrest warrant as an important part of our fight against organised criminality and bringing criminals to justice overseas.

Perhaps I may drop the Committee a line on that particular scheme we are operating, because it does give a sense of the power of extradition to see that the rights of victims are properly respected and those who think they can leave this country to evade justice can be brought to book and see that justice is meted out to them.

The Chairman: That is point I hope we will not lose sight of at any point in the proceedings.

Thank you very much indeed.

James Brokenshire: Thank you.

The Chairman: We are very grateful.