FAIR TRIALS INTERNATIONAL

JUSTICE

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PROTECTING CIVIL LIBERTIES
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**Anti-Social Behaviour, Crime and Policing Bill**

**House of Lords, Report Stage Briefing**

**Briefing and Suggested Amendments on Extradition Appeals**

**January 2014**

**Background**

1. The Anti-social Behaviour, Crime and Policing Bill (the Bill) introduces new safeguards to tackle injustice within the UK's extradition arrangements, particularly in relation to the European Arrest Warrant (EAW). These reforms represent a further step from the Government in response to grave public and political concern about injustices caused as a result of the UK's extradition arrangements. However alongside these reforms the government is planning to remove one the key safeguards from the current regime – the automatic right to appeal an extradition decision – and our organisations are gravely concerned about the implications of these proposals.

2. Following changes to the extradition regime in March 2013, the Home Secretary announced in July 2013[1] that the UK would exercise its option under Protocol 36 of the Lisbon Treaty to opt out of EU crime and policing measures adopted before 2009, but opted back in to some including the EAW Framework Decision.[2] These reforms were designed to tackle the use of the EAW for trivial offences and the lengthy pre-trial detention of British citizens and residents overseas following extradition under an EAW.

3. Our organisations have previously produced detailed briefings on the Bill, suggesting ways in which these new safeguards could be strengthened, but this briefing focuses on the priority issue of retaining the automatic right to appeal against extradition orders – a key safeguard of the rights of those facing extradition. The proposed removal of the automatic right to appeal is clearly designed not to increase the fairness of the UK's extradition arrangements but to make it harder for people to exercise their rights to challenge unjust extradition, creating a risk of more cases of injustice.

**We therefore urge Peers to support the following amendment, tabled by Lord Hodgson of Astley Abbotts, to Clause 148 which is intended to protect this vital safeguard and ensure that those facing extradition have adequate opportunity to make use of it.**

[1] Hansard, 9 July 2013, Column 197.
[2] Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1).

***Amendment***

Page **112,** Clause **148**, lines **36-39**, delete paragraphs (a) and (b). Consequential amendments are needed to rename paragraph (c).

Page **113,** Clause **148**, lines **1-6**, delete subsection (2) in its entirety. Consequential amendments are needed to re-number the other subsections.

Page **113**, Clause **148**, lines **8-11**, delete paragraphs (a) and (b). Consequential amendments are needed to rename paragraph (c).

Page **113,** Clause **148**, lines **18-23**, delete subsection (4) in its entirety. Consequential amendments are needed to re-number the other subsections.

Page **113,** Clause **148**, lines **26-29**, delete paragraphs (a) and (b). Consequential amendments are needed to rename paragraph (c).

Page **113,** Clause **148**, lines **37-41**, delete subsection (6) in its entirety.

***Effect***

4. This amendment would remove the requirement for leave to appeal in both Part 1 and Part 2 cases.

***Briefing***

5. During Committee Stage, Lord Hodgson pointed to the "enormous impact" which extradition has on individuals' lives, and those of their families, and discussed the problems which frequently arise at first instance extradition hearings. Both he and Lord Rosser expressed concern about limiting access to appeal courts. A vast majority of individuals subject to extradition proceedings cannot afford a lawyer and are therefore represented by a duty solicitor. Many duty solicitors have little experience of extradition cases and therefore may not be familiar with the complex provisions of the 2003 Act and associated case law[3]. This can be contrasted with the position of the requesting state, which is automatically entitled to representation by a specialist unit of CPS lawyers. The complexity of extradition cases also means that there is often inadequate time at a first instance hearing for consideration of all the relevant facts and issues. If individuals lose their automatic right to appeal, then, as long as these problems at first instance remain, there may be cases which result in people being wrongly extradited. This is because many appellants within

[3] Edward Grange, a specialist extradition solicitor, has explained:

> At present there are over 400 individual solicitors signed up to the extradition rota at Westminster Magistrates' Court. The majority of individual solicitors have never had conduct of an extradition case before and yet these are the solicitors that are entrusted to provide appropriate advice and assistance to those arrested on extradition warrants. The Extradition Act 2003 is complex and the case law it has generated is vast.

E. Grange, 'Leave it out', *The World of Extradition*, 12 May 2013, http://worldofextradition.wordpress.com/2013/05/12/leave-it-out/

the seven day period for appeal are unrepresented and can manage only bare argument in their appeal notice, until they are able to find specialist representation once the appeal is lodged. With a leave requirement they will have to show an arguable case to the High Court that the extradition judge was wrong, often from their prison cell.[4]

6. The problems are demonstrated by the case of Krzysztof Juszczak, who in February 2013 successfully appealed against extradition to Poland on the basis that his removal from the UK would constitute a disproportionate interference with his family life under Article 8 ECHR.[5] Although Mr. Juszczak is the primary carer for his severely disabled step-daughter, this was not raised by the duty solicitor before the District Judge – an omission which was criticised as a 'failure of [...] duty' by Mr Justice Collins in his appeal judgment. As this evidence was only obtained late in the process, there is a clear danger that, under the proposed system, Mr. Juszczak would have been denied leave to appeal.

7. It is in the interests of both defendants and the state that the appeal process works to correct genuine errors rather than to delay the judicial process. Our review of the judgments of the High Court in extradition appeals, however, demonstrates that judges are able to dispose of appeals based on weak arguments in an efficient manner which prevents significant court time from being spent on unsuccessful appeals. In our view, introducing a leave requirement will not, therefore, assist the High Court with the large volume of appeals it receives. Rather it will risk deserving cases not being heard.

8. It is also relevant that the safeguards introduced by the Government, through its amendments to the 2003 Act added to Part 12 of the Bill in July 2013, will now give weight to arguments which may previously have been deemed to be without merit due to the lack of a legislative basis. It is likely, therefore, that these reforms will reduce the number of unmeritorious appeals reaching the High Court. Further, the Government has introduced a requirement for the National Crime Agency to review extradition requests and to sift out cases where it is clear that a judge would be required to order the person's discharge on the basis that extradition would be disproportionate.[6] This will result in a reduction of the number of cases based on EAWs that come before the courts.

9. It is vital that individuals are given a full opportunity to put together a case and identify any valid grounds on which their extradition should be refused, and the appeal process should reflect this. The potential impact of the introduction of a leave requirement on the ability of the person to comply with the appeal deadline must also be taken into consideration. At Committee Stage, Lord Hodgson identified that if the leave requirement is introduced and "the proposal set out in paragraph 10.14 of the Sir Scott Baker Review is followed, with leave to appeal being sought and

[4] See *Lukaszewski v The District Court in Torun, Poland* [2012] UKSC 20 where all three appellants were remanded in custody at HMP Wandsworth following decisions to surrender them to Poland. None had legal representation and were assisted by the prison officers in the Legal Services Department to file their notices of appeal. However, the officers did not have a legal background and made mistakes in the filing process, a problem repeated in numerous cases.

[5] *Juszczak v Poland* [2013] EWHC 526 (Admin).

[6] Section 2 of the 2003 Act (Clause 145(3) of the ASBCP Bill).

granted or refused on paper, the drafting needed to produce the leave application could become more onerous, complex and time-consuming than for the current notice."[7]

10. In our view the leave to appeal requirement is liable to create unfairness and inequality of arms and we do not think that it is justified. Accordingly, we urge you to support Lord Hodgson's deletion of this requirement.

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[7] HL Deb 11 December 2013, vol 750, col 849.