



International Cooperation and Extradition Scoping Review Briefing

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Background: This scoping review, commissioned by the Law Commission and led by the Criminal Law Reform Now Network (CLRNN), evaluates the UK's frameworks for **extradition**, **mutual legal assistance** (MLA), and **criminal jurisdiction**. Based on consultation with over 80 stakeholders from across the criminal justice system, the review finds that the current legal frameworks are fragmented, inconsistent, and increasingly unfit for addressing modern cross-border crime.

Why does the report matter?

- **Modernising legal frameworks** for cross-border criminal justice aligns with UK national security priorities and international obligations.
- The report highlights **outdated, fragmented laws** that hinder swift cooperation, risk impunity for serious crime, and expose individuals to unfair processes.
- Reform would support the new **Border Security Command**, address **post-Brexit cooperation** gaps, and advance the UK's position as a **global leader** in rule-of-law based enforcement.

Key Findings

■ Extradition

- The **Extradition Act 2003** has not been reviewed since 2011, despite significant developments such as multiple legislative amendments, the UK's departure from the EU, and growing pressure on the extradition system.
 - **Assurances** are widely used but **lack independent monitoring or enforceability**. This undermines procedural fairness and may result in repeated litigation at public expense.

- The **forum bar** is not operating as parliament intended. It often fails to address concerns over exorbitant jurisdiction and can result in impunity when upheld.
- There is limited transparency and no statutory right of participation in **speciality decisions**, where the Secretary of State consents to prosecution for additional offences.
- The bar on **decision to charge and try** is causing significant delays but does not reduce the time a requested person spends awaiting trial as intended by parliament.
- Parallel **asylum and extradition proceedings** create duplication and inefficiency, contributing to delays and avoidable costs.
- The **Crown Prosecution Service** plays a unique role in extradition hearings, without statutory responsibility for legal review of incoming requests from other states, leaving a gap in independent scrutiny of requests.
- A recent Supreme Court decision dramatically changed the UK's approach to the assessment of **dual criminality** in extradition requests involving extraterritorial conduct. This may offer some protection against exorbitant claims to jurisdiction but may also hinder cooperation with EU and global partners.

■ Mutual Legal Assistance

- MLA is the formal process by which countries request and provide help in **gathering evidence, sharing information, or taking investigative steps** for use in criminal investigations and prosecutions across borders.
- MLA requests frequently encounter **delays of over 12 months**, impeding prosecutions.
 - Consideration should be given to centralising police resources to support more timely and coordinated responses to overseas requests
- There is no statutory clarity on the application of **PACE** to MLA requests or the legal status of **police-to-police cooperation**.
- **Admissibility of overseas evidence** is legally uncertain, which may result in an over-reliance on MLA.
- MLA **safeguards** are not on a statutory footing but are the responsibility of the Home Secretary and applied on a discretionary basis. How and when these are applied can be opaque. A review would consider whether the safeguards currently applied are **proportionate and necessary** and if some safeguards should be on a statutory footing.

■ Criminal Jurisdiction

- The report considers the legal authority of courts to try individuals for criminal offences taking into account factors such as where the crime occurred, the nationality of the suspect or victim and the crime's impact on the country's interests.
- The UK lacks a clear or consistent legal basis for **territorial and extraterritorial jurisdiction**:

- Courts rely on an **uncodified and conflicting mix of tests** (e.g., “substantial measure” vs. “terminatory theory”) which can lead to inconsistent decision-making.
- **Extraterritorial jurisdiction (ETJ)** is granted inconsistently across statutes.
- There is no consistent statutory definition of who qualifies as a **UK national** for jurisdiction purposes.
- Current frameworks risk creating **impunity gaps** in some cases and **jurisdictional overreach** in others.

Recommendations

- The report recommends that the **Law Commission undertake a full reform project** to modernise the UK’s framework across all three areas.
- If not pursued as a single project, each area (extradition, MLA, jurisdiction) could be addressed in **separate but coordinated reviews**.
- Ministerial and parliamentary **support will be essential** to move any Law Commission project forward.

Relevance to Current Government Priorities

- A review of international cooperation frameworks aligns with the **Labour manifesto** commitment to ensure closer cooperation with European and global partners to address crime.
- Supports the operational goals of the **Border Security Command**, particularly in addressing transnational and immigration-related crime.
- Offers a principled opportunity to address impunity, lower litigation costs, and ensure **fair and efficient procedures** in cross-border criminal justice.