



## Equality Impact Assessment [EIA] Crime and Policing Bill

### Extradition

#### 1. Title and Outline of issue under consideration.

This EIA has been drafted to consider the equality implications of the proposed amendment to the Extradition Act 2003 to specify that in extradition proceedings, a right to a retrial may be subject to a domestic finding of deliberate absence. This amendment to the Crime and Policing Bill is being made as a result of the UK Supreme Court case of *Merticariu v. Romania* which adjudicated that the current drafting of the Extradition Act 2003 is now to be read as requiring a guaranteed retrial in the requesting state subject only to procedural requirements following someone's extradition if they had been tried 'in absentia'.

The Extradition Act 2003 had previously been interpreted as a right to apply for a retrial subject to the domestic laws of the requesting state as per the amendment. This legislation reverts to the previous interpretation of the Act and prevents future cases being discharged on these grounds. There are a number of states which cannot offer assurances to meet the conditions imposed by the *Merticariu* judgment and there is, therefore, a public safety risk of individuals being discharged. To address this, the Bill reinstates the previous interpretation on right to retrial in absentia cases with corrective drafting.

#### 2. Evidence

In drafting this EIA, the judgment in the *Merticariu* case has been considered. Additionally, its impact has been subject to consultation with operational agencies and external legal counsel. Beyond this judgment, consideration had been given the data on the functioning of the extradition system and trends which exist (e.g. gender balance of individuals subject to extradition).

#### 3. Consideration of aim 1 of the duty: eliminate unlawful discrimination, harassment, victimisation, and any other conduct prohibited by the Equality Act 2010.

The Department has considered potential direct and indirect impacts of measures within the Bill below. Where direct and indirect discrimination is not addressed, that is because at this time the Department has assessed that there is no direct or indirect discrimination to be considered for that measure or in relation to a particular protected characteristic; the Department will keep this under review and update as necessary. The policy proposal applies equally to all individuals in scope of the Extradition Act 2003 and therefore, as per the Act, the proposed amendment will apply equally to all individuals irrespective of any other protected characteristic.

#### Age

##### *Indirect Discrimination*

While statistically more younger people than older people commit crimes and are therefore subject to the Extradition Act 2003, the proposed amendment itself does not

target young people but is instead exercisable where a specific individual is subject to extradition proceedings, in relation to committing a serious offence. To the extent that any indirect impact occurs, that impact is considered proportionate to the legitimate aim of reducing the public safety risk posed by the discharge of requested persons, the seriousness of the alleged offences and the public policy interest in ensuring that the victims of serious crimes receive justice.

## Race

### *Indirect Discrimination*

The policy could indirectly impact on race because it will, depending on the country they are extradited to mean that some individuals will be extradited on the basis that they have a conditional right to retrial whereas other individuals will be extradited with a guaranteed right. This distinction will not be directly based on nationality as individuals will be extradited based on where the harm was committed rather than their nationality. However, in a significant proportion of cases these will be the same. This is an inevitable consequence of the policy intention to ensure that only the right to request a retrial is required in order to effect extradition. Any indirect discrimination is considered proportionate to the legitimate aim of reducing the public safety risk posed by the discharge of requested persons, the seriousness of the alleged offences and the public policy interest in ensuring that the victims of serious crimes receive justice.

## Religion and Belief

### *Indirect Discrimination*

Although the effect of the proposed amendment will apply to certain states only (those which cannot currently offer a guaranteed retrial on return), the policy may indirectly impact on religion and belief if those states have a higher concentration of nationals with particular religions or beliefs, on the basis that extradition requests are more likely to be successful in respect of nationals from those states. However, this is an inevitable consequence of the policy intention to ensure that only the right to request a retrial is required in order to effect extradition. Any indirect discrimination is considered proportionate to the legitimate aim of reducing the public safety risk posed by the discharge of requested persons, the seriousness of the alleged offences and the public policy interest in ensuring that the victims of serious crimes receive justice.

## Sex

### *Indirect Discrimination*

While statistically more men than women commit serious criminality and therefore fall to be considered under the Extradition Act 2003, the proposed amendment itself does not target a particular gender specifically but is instead exercisable where a specific individual is subject to extradition proceedings, in relation to committing a serious offence. Given the seriousness of such criminality any indirect discrimination is considered proportionate to the legitimate policy aims.

#### **4. Consideration of aim 2 of the duty: Advancing equality of opportunity between people who share a protected characteristic and people who do not share it.**

The Department has not identified any impacts as regards the need to foster good relations between people who share a protected characteristic and people who don't: the policy is neutral in this regard. The proposed amendment will be exercisable where an individual has committed a serious offence and is subject to the powers of the Extradition Act 2003. This Act applies to a specified individual (or specified individuals) subject to extradition proceedings, and so cannot apply to general classes of individuals. The extradition request, and the supporting information which is required to progress the extradition proceedings through UK courts, would potentially apply to individuals with any (or no) protected characteristics.

It is possible that individuals with certain protected characteristics may experience a greater impact as a result of extradition proceedings (for example, certain age groups or people with disabilities may experience more discomfort than other individuals). When determining the action regarding the progression of any individual extradition request, UK courts have the powers to take appropriate action in accordance with the Extradition Act 2003 and obligations under the European Convention on Human Rights.

The proposed amendment does not introduce any further matters for consideration in this analysis.

#### **5. Consideration of aim 3 of the duty: Fostering good relations between people who share a protected characteristic and persons who do not share it.**

It is unlikely that the changes made by this proposed amendment would have an impact on fostering relations between those who share a particular protected characteristic and people who do not, because there is no distinct impact on either group. In our view, the changes made by this amendment would neither advance nor hinder relations but would have a neutral impact.

As such, the proposed amendment is unlikely to have an impact on tackling prejudice, or building understanding, between different groups; and there is no need to take positive mitigating measures to tackle prejudice or build understanding between different groups.

The proposed amendment does not introduce any further matters for consideration in this analysis.

#### **6. Ongoing compliance with the PSED.**

The Home Office regularly liaises with operational agencies on the progressing of cases through the UK extradition system and will continue to do so following, subject to parliamentary agreement, the implementation of the amendment. Standing meetings take place on a quarterly basis and the Home Office will request feedback on the amendments impact from operational agencies managing relevant cases, including on the equalities impacts, in order to develop a qualitative assessment of impact.

Data on protected characteristic in extradition cases is not regularly collected beyond nationality. In these cases, this data will be of limited value as the proposed amendment will only impact in absentia cases from countries where they cannot already guarantee the right to a retrial. While some countries which fall into this category are known (e.g. Romania), the full number is not known. It is therefore challenging to obtain accurate and usable quantitative data to assess the impact of this amendment

## **7. Declaration and sign off.**

I have read the available evidence, and I am satisfied that this demonstrates compliance, where relevant, with section 149 of the Equality Act 2010 and that due regard has been had to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations.

The proposals considered in this document will be reviewed throughout the legislative process and will be subject to the normal post-legislative review three to five years after Royal Assent

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