HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

Number 8689, 19 June 2020

Extradition (Provisional Arrest) Bill 2019-2021

By Joanna Dawson

Contents:

Contents

Summary

The Extradition (Provisional Arrest) Bill was introduced in the House of Lords by the Government in January 2020. It completed Third Reading on 15 June and is due to have Second Reading in the House of Commons on 22 June.

Extradition is the legal process by which a person accused or convicted of a crime is surrendered from one state to another to stand trial or serve a sentence. It is governed by the *Extradition Act 2003*, which implements the European Arrest Warrant for EU Member States, and sets out the procedure to be followed in the case of other territories with which the UK has formal extradition agreements.

The Bill would amend the 2003 Act to provide police with the power to arrest without a warrant for the purposes of extradition. According to the Government this is necessary to address a capability gap that exists at present where the police become aware of a person wanted by a non-EU territory, usually through the system of Interpol alerts, but are unable to arrest them without obtaining a warrant from a court. This gives rise to a risk that the wanted person might abscond or offend before the police are able to detain them.

Currently the Bill only applies to extradition requests from certain non-EU countries: Australia, Canada, Liechtenstein, New Zealand, Switzerland and the USA.

The Government has said that this is because the UK has a high level of confidence in these countries as extradition partners, in their criminal justice systems, and in their use of extradition.

It also reflects the fact that the power already exists under the European Arrest Warrant (EAW) and is therefore not needed for nationals of EU Member States before the end of the Brexit transition period.

Further territories could be added to the list in the future by regulations, and the Government has said the power could be extended to EU countries if the UK lost access to the EAW. However during debates in the House of Lords the minister stated that the Bill was not an attemp to replicate the capability of the EAW.

The House of Lords was broadly supportive of the aims of the Bill but amended it to introduce additional safeguards to the process of adding further territories in the future. This reflects concerns about the possibility of countries with poor human rights records abusing the extradition system.

The Government has published Explanatory Notes and an Impact Assessment. The Bill page on the Parliament website includes links to the House of Lords debates and the Delegated Powers Memorandum.

The Bill has the same territorial extent as the legislative provisions it would amend. A table in Annex A to the Explanatory Notes sets out the territorial application of each provision.

The substantive provisions of the Bill would be brought into force by regulations.

Further reading

Extradition: processes and review, Gov.uk
Brexit next steps: European Arrest Warrant, House of Commons Library, 20 February 2020
Extradition (Provisional Arrest) Bill: Briefing for Lords Stages, House of Lords Library Briefing, 27 January 2020
Home Office preparations for the UK exiting the EU, Home Affairs Select Committee, 2018
UK-EU security cooperation after Brexit: Follow-up report, Home Affairs Select Committee, 2018
Brexit: the proposed UK-EU security treaty, EU Home Affairs Sub-Committee, 2018
UK-EU security cooperation after Brexit, Home Affairs Select Committee, 2018

1. Background

1.1 The Extradition Act 2003

Extradition between the UK and other countries with which the UK has formal extradition agreements is governed by the *Extradition Act 2003* (EA).

The EA divides territories into Category 1 or Category 2 for the purposes of extradition, as designated by the Secretary of State in regulations.[1]

Category 1 territories are those that operate the European Arrest Warrant (EAW), a simplified system for extradition between EU Member States.[2] The EAW is based on the principle of mutual recognition of judicial decisions between Member States. Therefore, extradition takes place with minimal inquiry into the facts or circumstances that gave rise to the warrant, and there is no executive involvement in the decision. Mutual recognition is underpinned by common membership of the European Convention on Human Rights (ECHR) in the EU. As a member of the EU the UK has used the EAW since 2004. Under the Withdrawal Agreement this will continue until the end of the transition period.[3]

Category 2 territories are those with which the UK has extradition agreements, such as bilateral extradition treaties, and those party to the European Convention on Extradition 1957.[4] Extradition requests from these territories generally require prima facie evidence of guilt (although the Secretary of State has a power to disapply this requirement with respect to certain territories).[5] The process combines judicial and executive decision making responsibilities.

Existing powers of arrest

Extradition to Category 1 territories is governed by Part 1 of the EA. Under Part 1, a law enforcement officer can arrest a person if a warrant has been issued with respect to that person by a judicial authority in a Category 1 territory and certified by the UK's designated authority, the National Crime Agency (NCA).[6] It is also possible to make a provisional arrest if there are reasonable grounds for believing that a judicial authority in Part 1 territory has or will issue a warrant.[7] The arrested person would then need to be brought before a judge within 48 hours, at which point the Part 1 warrant must be produced.[8]

1 Sections 1 & 69
2 Framework Decision 2002/584/JHA. Category 1 territories are listed in the Extradition Act 2003 (Designation of Part 1 Territories) Order 2003/3333
3 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and European Atomic Energy Community, article 62
4 Category 2 territories are listed in the Extradition Act 2003 (Designation of Category 2 Territories) Order 2003/3334
5 Section 74
6 Sections 2-4
7 Section 5
8 Section 6

Neither of these powers require a UK court to issue a warrant. Law enforcement officers are able to act directly on the basis of a warrant issued by a judicial authority in an EU Member State, provided it has been certified by the NCA. However, this is because of the principle of mutual recognition. The arrest power is judicially authorised, but by a judicial authority in another EU Member State.

By contrast, for requests under Part 2 of the Act, the Secretary of State must certify the extradition request and then send it to a judge, who may issue a warrant, provided the relevant requirements are met.[9] A requesting territory may also seek provisional arrest, pending a full extradition request. Section 73 sets out the conditions that must be met in order for a justice of the peace to issue a provisional arrest warrant, including:

- that a person is, or is believed to be in or on their way to the UK
- that there are reasonable grounds to believe that the person is accused or convicted in a Category 2 territory of an extradition offence;[10] and
- there is evidence or information that would justify the issue of a warrant in the justice's jurisdiction

According to the Explanatory Notes ("EN") there is a capability gap at present where the police become aware of a person wanted by a Category 2 territory, usually through the system of Interpol alerts, which are systematically available to police and Border Force officers. If such an individual is encountered by chance, for example during a stop and search, vehicle search or border check, it is not possible to arrest them without applying to a judge for a warrant, raising the possibility that the person concerned could offend or abscond before being detained.[11]

1.2 The European Arrest Warrant & Brexit

One consequence of the UK's departure from the EU is that it will no longer be part of the EAW system and will need to negotiate new extradition arrangements with EU member states.

The Impact Assessment highlights the potential impact of this

> In a 'no deal' scenario or in the event of a Future Security Partnership which does not support the retention of EU Member States in Part 1 of the Extradition Act, the current capability gap would extend to EU Member States. 15,540 requests were made under the EAW process in 2018/19. In that same year, 1,412 arrests were related to EAWs.[12]

---

9 Section 71. The requirements are broadly equivalent to those in s73.

10 As defined by section 137 and 138 of the EA 2003 by reference to the nature of the offence and sentence length in the relevant jurisdiction and in the UK

11 Paras 4-5

12 Impact Assessment, para 7. The Bill was originally announced in the Queen's Speech in October 2019 and the Impact Assessment was published at that point. The Bill was introduced after the General Election in December 2019.

By contrast it estimates that, on the basis that the Bill applied only to the countries currently listed, it would result in six individuals entering the criminal justice system at an earlier stage, over a period of 10 years.

The police requested the new arrest power as part of contingency planning for a scenario in which no agreement is reached for ongoing cooperation. In evidence to the Home Affairs Committee in September 2019, DAC Richard Martin of the National Police Chiefs Council said

> We have just talked about extradition, and we are currently in discussions with the Home Office about introducing a power of arrest for red notices. Of course we know that is one of our biggest challenges, so the argument that we have put forward is that if we are working with member states in the EU at the moment and so we trust their processes under the ECHR—that's why we use European arrest warrants with them—why wouldn't we have a power of arrest for red notices in relation to those 27 member states? What we are trying to do is close the gap that says, "I don't want an officer being put in a really tricky position where they have somebody wanted for a serious offence in front of them and they can't do anything with them."[13]

The Government has said the new power could be extended to EU countries in the future if the UK lost access to the EAW. The EN state:

> The amendments to the 2003 Act made by this Bill include a power to specify further countries by statutory instrument, subject to the affirmative procedure; a single and separate statutory instrument per territory is required under the Bill. Additional countries in whose law enforcement systems the UK has a similarly high level of confidence could therefore be specified in the future, where both Houses of Parliament approve the legislation. Should the UK lose access to the EAW, statutory instruments may be made to extend this arrest power to some or all of the EU Member States, subject to the affirmative procedure.[14]

However during the Second Reading debate in the House of Lords the Minister stated that the Bill was not an "attempt… to replicate the capability of the EAW".[15]

The current status of the negotiations

The UK's most recent proposals indicate that it is not seeking to retain access to the EAW, but to replace it with a fast track extradition system.

The EU's draft treaty

Part three of the EU's draft treaty would provide for the proposed future 'Security Partnership'. Chapter seven would provide for a fast-track system of extradition between the UK and Member States to replace the EAW.

The provisions are similar to those of the EU-Norway/ Iceland Surrender Agreement,[16] which was identified as a precedent in the UK's

---

13 Home Affairs Committee, oral evidence session, 4 September 2019, Q37
14 Paragraph 7
15 HL Deb 4 February 2020, c1757
16 Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the

negotiating mandate.[17] That agreement is based largely on the EAW, but includes further grounds on which extradition can be refused. These include:

- As with the Withdrawal Agreement (but not the EAW), the draft treaty would permit the parties to refuse to surrender their **own nationals**.
- It includes a requirement of '**double criminality**' (the act for which the individual is sought must constitute an offence in both jurisdictions), but the parties can waive this requirement on a reciprocal basis for certain serious offences.[18] Unlike the EAW, this waiver would be optional.
- It also provides for the parties to refuse on a reciprocal basis to surrender individuals sought for **political offences**, with the exception of certain specified terrorist offences.[19]

It sets out a procedure for the transmission of arrest warrants to replace the arrangements under the EAW, which include issuing alerts via the Schengen Information System database SIS II ,and communication through EU mechanisms. Under the draft treaty, arrest warrants could be issued via Interpol, or directly to the relevant authority.

The draft treaty would also guarantee certain procedural rights for the requested person, which are currently provided for in other EU instruments. These include the right to legal representation, translation, legal aid, and specific safeguards for children.

It sets out time limits for dealing with requests in line with existing limits under the EAW, but also provides for the parties to notify each other of cases in which these time limits would not apply. As with the Norway/ Iceland Agreement it provides that arrest warrants be dealt with and executed as a matter of urgency.

The UK's draft proposals

The UK's approach also mirrors that of the Norway/ Iceland Surrender Agreement.[20]

However the UK is proposing "appropriate further safeguards", in the form of additional grounds for refusing to extradite. These include proportionality; human rights; and a requirement that cases are ready to

European Union and Iceland and Norway, OJ l 292. This agreement provides for political settlement of disputes and requires the parties to keep under review the case law of the CJEU and national courts to ensure uniform application and interpretation: Articles 37 and 38

17 The Future Relationship with the EU: The UK's approach to the negotiations, HM Government, February 2020, para 51

18 Offences carrying a custodial sentence of at least three years, listed at Article LAW.SURR.78: Scope

19 Article LAW.SURR.81: Political offence exception

20 Draft working text for an agreement on law enforcement and judicial cooperation in criminal matters, Part 4: Extradition

go to trial.[21] These safeguards are already contained in Part 1 of the EA.[22]

During Committee stage in the House of Lords, the Minister explained that the Norway/ Iceland agreement operates under Part 1 of the EA, and that if the UK were to reach an agreement with the EU based on that precedent, there would be no need to re-designate EU Member States as Category 2 territories.[23]

Fall-back options in a non-negotiated outcome

If no new agreement is reached the UK and EU will fall back on previous arrangements. These are contained in the 1957 Council of Europe Convention on Extradition. This would require amendments to domestic legislation. The UK would also be reliant on other Member States making equivalent amendments because some have repealed legislation that gave effect to the Convention since the EAW.

Unlike the EAW, the Convention does not impose time limits and requests are made through diplomatic rather than judicial channels. There are also more grounds on which extradition can be refused than under the EAW.

The May Government published an assessment of the impact of there being no agreement on extradition arrangements.[24] It stated that relying on the 1957 Convention would mean that requests would be subject to a longer and more complex process, and extraditions would be more difficult. It also noted that prior to the implementation of the EAW, the UK extradited fewer than 60 people each year. It pointed to the example of Rachid Ramda, whose 2005 extradition to France on terrorism charges took 10 years from the original request.

The *Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019*, made under section 8 of the *EU (Withdrawal) Act 2018*, were intended ensure that the UK's statute book continued to function effectively in the area of security, law enforcement and criminal justice should the UK leave the EU without a deal. Part 14 of the Regulations would adjust the designation of EU Member States under the EA from Part 1 to Part 2. According to the Government, this would provide the necessary legislative underpinning for the use of no-deal contingency arrangements in relation to extradition. It would give the UK the domestic legal basis to handle requests made under the Convention in the way set out in the Convention. Without this change it is not clear that new incoming extradition requests from EU Member States could be lawfully processed.[25]

---

21 House of Lords European Union Committee, Oral evidence session, 28 May 2020, Q13
22 Sections 11, 12A, 21 & 21A
23 HL Deb 5 March 2020, c382GC
24 EU Exit: Assessment of the security partnership, HM Government, 2018
25 Explanatory Memorandum to the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019, para 12.5

1.3 Interpol Red Notices

A red notice is a request through Interpol to police forces worldwide to locate and provisionally arrest someone who is wanted for prosecution or to serve a sentence. They would usually precede an extradition request. Members of Interpol have a National Central Bureau (NCB) which connects national law enforcement with other countries and with a centralised communications network (called I-24/7). The UK's NCB is the UK International Crime Bureau, part of the National Crime Agency.[26]

The use of Interpol red notices has been controversial. The range of political regimes that make up the membership of Interpol and the possibility that they might be used for political purposes has led them to be treated with suspicion.

A 2019 study by the European Parliament considered the impact of reforms introduced since 2015 to improve the legal and procedural framework governing the use of red notices, aimed at addressing reported abuse of the system. It concluded that there was solid evidence that the reforms had improved the system, but that abuses continued to be observed. The study made a number of recommendations as to how procedures could be further improved, including with respect to the consistent handling of requests; access to independent redress mechanisms; improved data protection processes; and greater transparency.[27]

During the Second Reading debate in the House of Lords, Baroness Ludford noted that many countries do not allow warrantless arrest on the basis of red notices. This includes the USA, which does not consider them to satisfy the probable cause standard required by the constitution. She suggested that

> It is well known that Interpol red notices have been misused for political purposes by a number of its member countries, targeting political opponents, journalists, peaceful protesters, refugees and human rights defenders.[28]

Responding to questions about the abuse of Interpol channels, the Minister informed the House that the UK was working with Interpol to ensure rules are sufficiently robust and adhered to by Interpol members, including by seconding legal and operational personnel.[29]

---

26 The legal basis for a red notice according to Interpol's constitution is a valid arrest warrant or court order issued by the judicial authorities of the country concerned.

27 Misuse of Interpol's Red Notices and Impact on Human Rights – Recent Developments, Policy Department for External Relations, European Parliament, January 2019

28 HL Deb 4 February 2020, c 1738

29 Ibid, c 1760

2. Debate in the House of Lords

At Second Reading the Minister, Baroness Williams, emphasised that the Bill would not alter the extradition process or existing safeguards, or the UK's extradition relationships with other countries. Rather, it was aimed solely at enabling the arrest of a suspect who is wanted by a non-EU country and encountered by chance by the police or at the border. This, she said, would prevent such individuals from absconding or committing further offences.[30]

She informed the House that last year, over 60% of EAW arrests (for which there is a warrantless arrest power) made by the Metropolitan Police were as a result of a chance encounter, and provided examples of suspects from non-EU countries that had remained at large after an encounter with the police.[31]

Responding for the Opposition, Lord Kennedy was generally supportive of the Bill, but indicated an intention to pursue amendments aimed at introducing further safeguards.[32]

Baroness Hamwee for the Liberal Democrats did not oppose the Bill, but suggested that the Government's insistence that it had nothing to do with the UK's departure from the EU defied credibility. She cited a letter from the NCA, Counter Terrorism Policing and the National Police Chiefs' Council which said

> The risks in this area are not new, but have been brought into sharp focus as a consequence of our collective efforts to plan for the United Kingdom's exit from the EU. The European Arrest Warrant enables an officer to arrest a wanted subject there and then.[33]

Lord Hogan-Howe responded to the suggestion made by several speakers that the existing provisional arrest powers under section 73 EA were sufficient. He pointed out that this requires knowledge of the fact that a wanted person is present in the country in order to obtain the warrant, whereas the new power would be available in a scenario in which an officer had a chance encounter with someone not previously known to be in the country.[34] The Minister reiterated this point when responding to the debate.[35]

Most Members spoke in favour of the Bill, but concerns were expressed about a number of specific issues, including:

- The use of wide regulation-making and Henry VIII powers;
- The lack of specific criteria or safeguards to be applied when adding Category 2 territories to the specified list in the future;
- The lack of human rights safeguards;

30 HL Deb 4 February 2020, c 1726-1728
31 Ibid
32 Ibid, c 1755-1757
33 Ibid, c 1729
34 Ibid, c 1745
35 Ibid, c 1760

- The integrity of the Interpol red notice system;
- The impact of losing access to the EAW, and what other measures might be necessary to mitigate against those risks;
- Whether the UK would seek reciprocity with territories to which the new power is extended in the future.

These issues were further explored via amendments and debate in Committee and at Report stage, although there were no divisions (due in part to the need to establish remote voting procedures).

Several substantive amendments were made to the Bill at Third Reading, including:

- **Replacing the previous time limit within which an arrested person must be brought before a judge, of 24 hours, with a requirement of "as soon as practicable"**.[36] This was tabled as by Baroness Ludford with the support of Labour at Report stage, reflecting concerns that the Bill as drafted did not take account of weekends or public holidays.[37] The Government accepted that "as soon as practicable" was consistent with other provisions in the EA and introduced an amendment to this effect at Third Reading. This in part reflects the reality that a limited number of courts deal with extradition requests, and what is reasonably practicable might vary from case to case. The Minister provided examples of factors that might be relevant, including geographical distance, natural disasters and illness of the arrested individual. The opposition parties supported the Government amendment;[38]
- **Introducing new conditions that must be fulfilled before regulations are made which would change the specified list in Schedule A1 in the future**:[39]
  - That the Secretary of State consults on the change with (i) each devolved administration, and (ii) non-governmental organisations with a relevant interest;
  - The Secretary of State lays an assessment of the risks of the change before each House of Parliament; and
  - If the regulations would add a new territory to the list, the Secretary of State must lay a statement before each House of Parliament confirming that the territory does not abuse Interpol red notices.

  This was an opposition amendment introduced at Third Reading. The Government resisted the amendment on the basis that it was unnecessary, and it was passed on a division.[40]
- **Requiring that only one territory may be added to the list of specified territories per statutory instrument.**[41] This was an amendment tabled by Baroness Hamwee with the support of the Opposition. It reflected concerns that under the affirmative

36 New section 74B(3)
37 HL Deb 23 March 2020, c1641
38 HL Deb 15 June 2020, c1950
39 New section 74B(7)&(8)
40 Ibid, c1960-1963
41 New section 74B(9)

resolution procedure by which such regulations would be made, Parliament would have the option only to reject or accept an SI in its entirety. Therefore, if it contained a list of new territories, some of which Parliament was content to be added and some of which it was not, it would be faced with dilemma. Baroness Hamwee acknowledged that this reflected shortcomings in procedures for dealing with secondary legislation more generally, but suggested that the solution in this context was to deal with proposals one at a time. The Government resisted the amendment on the basis that the EA provided a precedent for designating multiple territories (as Category 1 or 2) via a single SI, and it was passed on a division.[42]

[42] HL Deb 15 June 2020, c1971-1973

3. The Bill

The Bill consists of two clauses and a Schedule. **Clause 1** and the **Schedule** would insert a number of new sections (74A-E) and a new Schedule A1 into the EA 2003.

Clause 2 makes general provision on extent and commencement.

The Bill would create a new power of arrest for extradition purposes. This would enable law enforcement officers to arrest individuals without a warrant from a UK court, as would currently be required, where a request is certified as having been issued by a "specified category 2 territory" in relation to a serious offence.[43]

The Explanatory Notes state that the request could take the form of an Interpol red notice.[44]

The request must have been certified by a "designated authority" as fulfilling certain requirements, namely:[45]

- The request must be a valid request, made by an authority in a specified category 2 territory, for the person's arrest. For a request to be valid it must have been made by an appropriate authority in the territory in question and contain specified information about basis on which they are wanted.[46]
- The designated authority must be satisfied that there is a domestic arrest warrant or conviction with respect to the requested person in the territory in question.[47]
- They must be wanted in relation to a "serious extradition offence", meaning an offence carrying a custodial sentence of three years or more, and the designated authority must be satisfied that the seriousness of the offence justifies issuing the certificate.[48]

The authority would be designated by the Secretary of State in regulations, subject to the negative resolution procedure.[49] The Government intends the designated authority to be the NCA, which is the UK's National Central Bureau for Interpol and currently certifies warrants from Part 1 territories.[50]

Following arrest the person must be brought before an appropriate judge as soon as practicable.[51]

---

43 New section 74A(1)
44 Paragraph 2
45 New section 74B
46 New section 74B(1)(a) and new section 74C
47 New section 74B(1)(b)
48 New section 74B(1)(c) & 74B(11)
49 New section 74B(4)
50 Paragraph 9
51 New section 74B(3). Under equivalent provisions in the EA 2003, the courts have held that "as soon as practicable" is a question of fact to be determined by the particular exigencies of the case: *R(on the application of Nikonovs) v Governor of Brixton Prison [2005] EWHC (Admin)*

The judge must then determine on the basis of any evidence or information produced, whether the person would be liable to arrest under section 73 of the EA, which sets out the criteria for making a provisional arrest, pending a full extradition request.[52] The judge must be satisfied that there are reasonable grounds for believing (a) that the offence in question is an extradition offence[53] and (b) that there is evidence or information that would justify issuing a warrant in the judge's jurisdiction.[54] If the judge is not satisfied of both, the person would be discharged and the proceedings discontinued, unless further evidence or information could be produced which could not reasonably have been produced already.[55] If an adjournment is granted in these circumstances, the person could be remanded in custody or on bail, for up to a maximum of 72 hours.[56]

An arrested person could apply to be discharged. The judge *may* order their discharge if a copy of the certificate issued by the designated authority was not provided to them as soon as practicable.[57] Or, if it did not contain the required information, namely:

- the validity of the request;
- the seriousness of the offence;
- the specification of the territory in Schedule A1; and,
- information about the basis for, and form of,[58] the request.[59]

The judge *must* order the person's discharge if convinced that there were no reasonable grounds for issuing the certificate,[60] or because they were not brought before a judge as soon as reasonably practicable after arrest.[61]

If the judge decides at the hearing that a warrant would have been granted under section 73 of the EA then a similar process would be followed as that after an arrest under section 73.[62] The judge would have to inform the person of the basis on which they are wanted; explain that they could consent to extradition; and, grant bail or remand them in custody.[63]

52 New section 74D. See section 1.1 above
53 As defined by sections 137 and 138 of the EA 2003 by reference to the nature of the offence and sentence length in the relevant jurisdiction and in the UK
54 New section 74D(1). Under section 73 EA the Secretary of State can designate certain territories as having to meet a lower evidentiary threshold for this purpose. Australia, Canada, Lichtenstein, New Zealand, Switzerland and the USA are all currently designated as territories that are not required to produce prima facie evidence to support a request for extradition: Extradition Act 2003 (Designation of Part 2 Territories) Order 2003/3334, article 3
55 New section 74D(2) & (4)
56 New section 74D(7)-(9)
57 New section 74D(10)(a)(i)
58 For example, whether it was an Interpol red notice.
59 New section 74D(10)(a)(ii)
60 New section 74D(10)(b)(i)
61 New section 74D(10(b)(ii)
62 New clause 74E
63 New clause 74E(1)-(2)

If a full extradition request is not received within 45 days then the person must be discharged.[64]

Schedule A1 lists the category 2 territories that would be specified for the purposes of the new arrest power.

The Secretary of State would be able to amend by regulations the list of specified territories, subject to the fulfilment of certain conditions.[65] They must:

- consult on the change with the devolved administrations and relevant interested stakeholders;
- Lay a statement before parliament on the risks of the change;
- Lay a statement before parliament confirming that the territory in question does not abuse the Interpol red notices system, where the change is to add a territory.

The regulations would be subject to the affirmative resolution procedure.[66]

The territories currently specified in new Schedule A1 are Australia, Canada, Liechtenstein, New Zealand, Switzerland and the USA.

The new power is available retrospectively with respect to these territories and could therefore be used with respect to requests made before the Bill is passed.

Part 2 of the Schedule makes various consequential amendments.

Paragraph 29 confers a power on the Secretary of State to make further provision that is consequential on the amendments made by the Schedule to this Bill. Regulations under paragraph 29 may amend, repeal or revoke any provision of primary legislation.

---

64 New clause 74E(4). The Secretary of State can specify a period longer than 45 days when designating a territory as a category 2 territory for the purposes of the EA 2003, s 74(11). Currently the USA has a longer period of 65 days in which to submit a full extradition request: Extradition Act 2003 (Designation of Part 2 Territories) Order 2003/3334, article 4

65 New section 74B(7)&(8)

66 Schedule, Part 2, para 24 would amend section 223 of the EA 2003 to provide that regulations made under new section 74B(7) are subject to the affirmative resolution procedure

4. Commentary

Max Hill QC, the Director of Public Prosecutions, wrote to the Security Minister, James Brokenshire, in March setting out his views on the Bill. He stated that it

> …strikes the right balance between ensuring sufficient human rights safeguards and delivering the capabilities that the police and CPS require in order to safeguard the public.
>
> …
>
> The Bill does not make it more or less likely someone will be extradited, but it does increase the chances that persons wanted for serious offences by some of our closest and trusted partners will enter, with all the existing safeguards, the extradition process.[67]

The law reform organisation JUSTICE have criticised the Bill, suggesting that it is unnecessary, given that provisional arrest powers already exist. JUSTICE points to the fact that section 73 of the EA permits the state seeking to extradite to request the accused's provisional arrest pending a full extradition request (although this does require an application to a judge).[68]

JUSTICE also expressed concern that the Bill's interference with the right to liberty (under Article 5 of the European Convention on Human Rights) is not justified, and at the potential for abuse of the red notice system.

The EN includes an analysis of the Bill's compatibility with the ECHR. This acknowledges that Article 5 would be engaged but concludes that any interference is proportionate, in light of the law and order justification for the measures, and the safeguards provided for by the Bill.[69]

In an article commenting on the Queen's Speech announcement and Impact Assessment in November 2019, Rebecca Niblock, an extradition specialist at Kingsley Napley LLP, described the focus of the Bill on non-EU countries as "disingenuous", and the loss of the EAW as a "far graver concern" than the threat posed by the current capability gap

> Promoting the Bill as one which is primarily concerned with the problem of arrests from non-EU countries has the benefit of avoiding an emphasis on what will be lost when we leave the EU, whilst giving the appearance of enhancing law and order.[70]

She also expressed concern that Interpol "remains an unaccountable organisation that is frequently misused".[71]

---

67 Letter from Max Hill QC to James Brokenshire, 2 March 2020, DEP2020-0196
68 Extradition (Provisional Arrest) Bill: House of Lords Second Reading Briefing, January 2020, justice.org.uk
69 Explanatory Notes, paras 87-90
70 Rebecca Niblock, Changes proposed by the Extradition (Provisional Arrest) Bill, Law Society Gazette, 6 November 2019
71 Ibid

BRIEFING PAPER
Number 8689
19 June 2020

About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publicly available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email hcenquiries@parliament.uk.

Disclaimer