

# EXTRADITION (PROVISIONAL ARREST) BILL [HL]

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Extradition (Provisional Arrest) Bill [HL] as brought from the House of Lords on 16 June 2020 (Bill 138).

- These Explanatory Notes have been provided by the Home Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

# Table of Contents

Subject	Page of these Notes
<b>Overview of the Bill</b>	<b>2</b>
<b>Policy background</b>	<b>2</b>
<b>Legal background</b>	<b>4</b>
<b>Territorial extent and application</b>	<b>6</b>
<b>Commentary on provisions of Bill</b>	<b>6</b>
Clause 1:	6
Clause 2:	6
The Schedule: Power of Arrest for Extradition Purposes	7
<i>Part 1 – Main Amendments to the Extradition Act 2003</i>	7
Section 74A	7
Section 74B	8
Section 74C	9
Section 74D	9
Section 74E	10
<i>Part 2 – Consequential Amendments</i>	11
<b>Financial implications of the Bill</b>	<b>13</b>
<b>Parliamentary approval for financial costs or for charges imposed</b>	<b>13</b>
<b>Compatibility with the European Convention on Human Rights</b>	<b>14</b>
<b>Annex A - Territorial extent and application in the United Kingdom</b>	<b>15</b>

## Overview of the Bill

1. This Bill amends Part 2 of the Extradition Act 2003 (“the 2003 Act”) to create a new power of arrest for extradition purposes. Part 2 of the 2003 Act deals with extradition to territories with which the UK has formal extradition arrangements based on the exchange of extradition requests between governments. In contrast, Part 1 is designed to implement arrangements based on the exchange of arrest warrants, such as the European Arrest Warrant (‘EAW’) scheme.
2. The new power of arrest will enable law enforcement officers to arrest individuals without a warrant of arrest from a UK court in certain cases falling under Part 2 of the 2003 Act. This new power will only apply where the request for an individual’s arrest for extradition purposes (which could, for example, take the form of an Interpol red notice) has been certified as having been issued by a specified country (one of the listed countries to which the new power of arrest will apply) in relation to a serious offence.
3. The amendments to Part 2 of the 2003 Act are set out in the Schedule to the Bill. Part 1 of the Schedule makes provision for the new power of arrest set out above. Part 2 of the Schedule makes necessary consequential amendments to the 2003 Act and other legislation. It also provides a power to make further consequential amendments.

## Policy background

4. At present, when UK police become aware that a person is wanted for criminal prosecution or to serve a sentence by authorities in a territory which has been designated for the purposes of Part 2 (a “a category 2 territory”), they are required by law to seek a warrant from a judge before arresting that person. In contrast, UK police can immediately arrest an individual on the basis of a warrant issued by a territory which has been designated for the purposes of Part 1 (a “category 1 territory”) as long as the warrant has been properly issued by the requesting authority and certified by the National Crime Agency (“the NCA”). Police do not need to apply for a separate domestic warrant from a court in the UK.
5. The usual way in which police become aware of a person wanted by a category 2 territory is through the circulation of alerts through Interpol channels. Interpol alerts from all countries are systematically available to police and Border Force officers. The circulation of these alerts can result in law enforcement officers encountering an individual whom they understand, on performing a simple database check, to be wanted for an offence by another country, or to have absconded following a conviction in another country but being unable to arrest them without first applying to a judge for an arrest warrant. That application takes at least a matter of hours and creates a possibility that the person concerned could offend or abscond before being detained.
6. Many countries (including most EU Member States) already afford their police forces the ability to arrest on the basis of Interpol alerts seeking the arrest of wanted persons. This Bill creates a power for the police and other relevant UK law enforcement officers to arrest an individual on the basis of such an alert without a UK warrant for arrest having been issued first. While Interpol red notices are, in practice, a common way in which requests for arrest for extradition purposes are communicated

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internationally, the power in this Bill is not limited to red notices and would apply in respect of any international request for arrest, provided it complies with the requirements set out in the Bill.

7. The Bill provides for a number of safeguards with regard to the availability of the new power of arrest. The new power of arrest will only apply where a certificate has been issued in respect of a request for arrest. One of the criteria for issuing a certificate is that the request must have been made by an authority in a specified category 2 territory. The list of specified category 2 territories is set out in a Schedule inserted by this Bill (new Schedule A1). The territories currently listed in new Schedule A1 are Australia, Canada, Liechtenstein, New Zealand, Switzerland and the United States of America. The new power of arrest has been made available in respect of requests for arrest issued by these six countries because the UK has a high level of confidence in them as extradition partners, in their criminal justice systems and in their use of extradition. 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.
8. A further safeguard is that the new power of arrest will only apply in relation to serious offences. In order for a request for arrest to be certified, the offence must be punishable in the UK with a custodial sentence of three years or more and the conduct constituting the offence must be sufficiently serious to make it appropriate to issue the certificate. The designated authority must also be satisfied the requesting territory has arrangements in place which ensure requests are underpinned by a warrant or conviction in that territory.
9. Only the designated authority may issue a certificate in respect of a request for arrest, with the effect that the power of arrest applies. The designated authority will be specified in regulations made by the Secretary of State. It is intended that the NCA, which is the UK's National Central Bureau for Interpol, will be the designated authority. As a matter of policy, the designated authority will also be responsible for ensuring that requests in respect of which a certificate is issued are clearly identifiable on the databases available to front-line officers, and for ensuring that information on those databases is up-to-date and accurate.
10. The Bill provides that, after arrest, the person must be brought before a judge as soon as practicable. Failure to comply with this requirement will mean that, upon application, the judge must discharge the person. At the hearing, the judge must decide whether a warrant of arrest would have been issued in respect of that person, in order to determine whether the proceedings should continue. Information and evidence that would justify the issue of the warrant will need to be put forward for these purposes. The judge will be able to adjourn the proceedings, up to a maximum of 72 hours, to allow more evidence or information to be put forward in appropriate cases.
11. If the judge decides that a warrant would be issued the extradition process will continue in the normal way. The Bill will therefore enable wanted persons who fall within the scope of the legislation to be brought into extradition proceedings more efficiently, in order to manage the risk that they might

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otherwise be at liberty in the UK and able to abscond or offend. However, the legislation does not alter the subsequent process by which it is determined whether a person should be extradited from the UK. Anyone arrested under this new power will benefit from the existing safeguards available under Part 2 of the 2003 Act in relation to the decision to extradite. These safeguards include the person not being extradited if the court considers that their extradition to the category 2 territory would breach their human rights or considers the request to be politically motivated. If the court finds that their extradition is not barred, the Home Secretary cannot order their extradition if they could be, will be, or have been sentenced to death unless she receives a credible assurance that the death penalty will not be imposed or, if imposed, will not be carried out.

## Legal background

12. Extradition is the formal legal process by which a person accused or convicted of a crime is surrendered from one State to another for trial or punishment. The extradition of persons from the United Kingdom is governed by the 2003 Act.

### *Overview of Parts 1 and 2 of the 2003 Act*

13. Part 1 of the 2003 Act implements Council Framework Decision 2002/58/JHA establishing the EAW scheme and currently deals with extradition to the EU Member States and Gibraltar. It can also be used to implement other warrant-based extradition schemes. The EAW scheme is based on the principle of mutual recognition of judicial systems by EU Member States and requires judicial authorities to recognise and act upon an arrest warrant made by the judicial authority of another Member State. Part 1 provides that an arrest warrant certified by the designated authority as having been properly issued by a judicial authority of a category 1 territory (i.e. a territory designated for the purposes of Part 1 by order under section 1 of the 2003 Act) attracts an immediate power of arrest.
14. Part 2 of the 2003 Act deals with extradition to category 2 territories (i.e. territories designated by order under section 69 of the 2003 Act). These are territories with which the UK has formal extradition arrangements other than category 1 territories. Currently, Part 2 requires that a domestic warrant of arrest be obtained prior to the arrest of a person sought for extradition purposes.

### *Part 1 of the 2003 Act*

15. Part 1 enables UK authorities to process and execute incoming warrants from category 1 territories. The procedure under Part 1 can be summarised as follows:
  - On receipt of a warrant from a category 1 territory, the designated authority, which is the NCA, must decide whether to issue a certificate. Where the NCA issues a certificate, the person may be arrested pursuant to the warrant.
  - Where the person is arrested, the person is brought before a judge as soon as practicable. At the initial hearing, the judge will decide whether the person is the person named in the warrant. In cases where the judge decides that that is the case, the judge must fix a date for the extradition hearing.
  - At the extradition hearing, the judge must decide whether the offence described in the warrant is an extradition offence. If the judge is satisfied that it is, he or she must consider

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whether the person's extradition is barred by any of the reasons set out in Part 1 of the 2003 Act. If the judge is satisfied that it is not barred, the judge must order extradition.

16. Part 1 also provides for a person to be arrested before receipt of a warrant in urgent cases (the relevant law enforcement officer must have reasonable grounds for believing that a warrant has been or will be issued). In such cases, the person must be brought before a judge within 48 hours of the arrest. The warrant, together with the certificate issued in respect of that warrant, must be received by the court within this time, although a further 48 hours may be granted if the judge decides that the requirement to produce the documents within the initial time-period could not reasonably be complied with.

#### *Part 2 of the 2003 Act*

17. Under Part 2, extradition requests to the United Kingdom and the accompanying arrest of the person concerned can follow one of two paths. The first is a request for the provisional arrest of a person considered to be at risk of leaving or travelling to another jurisdiction. Such requests are generally made through police channels pending receipt of a full extradition request and supporting document. The second is a full order request, where the full extradition request and supporting documentation is submitted through the diplomatic channel in advance of arrest.

18. Where the request for extradition is made prior to arrest, the procedure is, in summary, as follows:

- a. On receipt of an extradition request from a category 2 territory, the Secretary of State must decide whether to issue a certificate. Subject to limited exceptions, the Secretary of State must do so and send the request and certificate to a judge.
- b. Where the request and certificate are sent to a judge, the judge may issue a warrant for the arrest of the person concerned if certain conditions are satisfied.
- c. If the person is arrested, he or she must be brought before the judge as soon as practicable. Where that happens, the judge must fix a date for the extradition hearing.
- d. At the extradition hearing, the judge must consider a number of factors including whether there is an 'extradition offence' (as defined in Part 2) and whether the person's extradition is barred for any of the reasons set out in Part 2. Having addressed these issues, and provided the judge is satisfied that the person's extradition is compatible with the ECHR (and nothing else in the relevant sections of Part 2 demands the person's discharge), the judge must send the case to the Secretary of State for a decision on whether to order extradition.
- e. The Secretary of State must decide whether he or she is prohibited from ordering extradition on any of the grounds set out in Part 2. Provided the Secretary of State is satisfied that the person's extradition is not prohibited, he or she must order the person's extradition, unless certain limited exceptions apply.

19. In cases where a request for provisional arrest is made prior to receipt of the extradition request, Part 2 provides that the court may issue a provisional warrant for the arrest of the person concerned if certain criteria are met. These include that the person is, or is believed to be, in the United Kingdom, or is, or is believed to be, on their way to the United Kingdom. Additionally, the judge must have reasonable grounds for believing that the offence is an extradition offence and that there is written evidence (or information in the case of certain category 2 territories) which would justify the issue of a warrant.

20. Where a person is arrested under a provisional warrant, he or she must be brought before a judge as soon as practicable. The request for extradition and certificate must be provided to the judge within 45 days of arrest, unless a longer period has been specified for the requesting territory in the section 69 Order designating that territory as a category 2 territory. Following receipt of these documents, the judge must fix a date for the extradition hearing. The procedure thereafter is the same as for cases where the request for extradition was made prior to arrest.
21. In Scotland, most of the functions which the Secretary of State performs in England, Wales and Northern Ireland in Part 2 cases are performed by the Scottish Ministers.

#### *Other Parts of the 2003 Act*

22. Part 3 deals with extradition to the UK and Part 4 with police powers in connection with extradition. Part 5 is concerned with miscellaneous matters.

## **Territorial extent and application**

23. Clause 2(1) sets out the territorial extent of the Bill, that is the jurisdictions of which the Bill forms part of the law. Clauses 1 and 2 of the Bill extend to England and Wales, Scotland and Northern Ireland. Any amendment or repeal made by the Schedule to the Bill has the same extent within the United Kingdom as the provision amended or repealed. The majority of the amendments extend to the United Kingdom, but consequential amendments are made to the Police and Criminal Evidence Act 1984 (which extends to England and Wales only), to the Police and Criminal Evidence (Northern Ireland) Order 1989 (which extends to Northern Ireland only) and to the Criminal Justice (Scotland) Act 2016 (which extends to Scotland only). Clause 2(2) contains a power to extend the Bill's provisions to the British Overseas Territories, the Channel Islands or the Isle of Man.
24. The amendments made by this Bill generally apply to the United Kingdom, however service police may arrest a person subject to service law or a civilian subject to service discipline anywhere.
25. See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

## **Commentary on provisions of Bill**

#### **Clause 1:**

26. Clause 1 provides a summary of the Schedule to the Bill.

#### **Clause 2:**

27. Clause 2 makes general provision on extent, commencement and the short title of the Bill.
28. Subsection (1) provides that any amendment or repeal made by the Bill has the same extent as the provision being amended or repealed.

29. Subsection (2) provides that the existing powers in the 2003 Act to extend provisions of that Act to the British Overseas Territories and Crown Dependencies, by Order in Council can be used to extend the amendments made by this Bill.
30. Subsections (3) to (7) make provision in relation to commencement. Clause 2 will commence on Royal Assent. The remaining provisions of the Bill will commence on the day appointed by regulations, and different days may be appointed for different purposes.
31. Subsection (8) sets out the short title of the Bill when enacted – the Extradition (Provisional Arrest) Act 2020.

#### [The Schedule: Power of Arrest for Extradition Purposes](#)

32. The Schedule to the Bill sets out the substantive provisions of the Bill. It is divided into Part 1 (main amendments to the Extradition Act 2003) and Part 2 (consequential amendments).

#### *Part 1 – Main Amendments to the Extradition Act 2003*

33. Part 1 amends Part 2 of the 2003 Act, which makes provision for the extradition of persons to category 2 territories (i.e. territories which have been designated by order for the purposes of Part 2). The amendments in Part 1 create a new power of arrest, without warrant, for the purpose of extraditing people for serious offences.
34. Paragraph (2) inserts new sections 74A to 74E into Part 2 of the 2003 Act. In summary, new section 74A sets out that the new power of arrest applies where a request for a person's arrest has been certified under new section 74B. It also provides that a person arrested under the new power must be brought before the appropriate judge as soon as practicable. New sections 74B and 74C set out the requirements for certifying a request for a person's arrest. The procedure to be followed upon the person being brought before the judge is set out in new sections 74D and 74E. No amendments are made to the provisions in Part 2 concerning any subsequent extradition hearing.

#### [Section 74A](#)

35. Subsection (1) provides constables, customs officers and service policemen with a power to arrest a person on the basis that a certificate has been issued in respect of the person under the procedure in new section 74B. This obviates the need to first obtain a warrant of arrest from a UK court. Whereas a constable or customs officer may exercise this power in any part of the United Kingdom, a service policeman may exercise the power anywhere, but only in relation to a person who is subject to service law or is a civilian subject to service discipline (subsections (5) to (7)).
36. Under subsection (2), the person must be given a copy of the certificate as soon as practicable after their arrest. If this requirement is not met and the person applies to the judge, new section 74D(10)(a)(i) provides that the judge may order the person's discharge.
37. Subsection (3) requires any person arrested under this section to be brought, as soon as practicable after arrest, before the appropriate judge. The 'appropriate judge' is defined in section 139 of the 2003 Act and varies according to the different jurisdictions of the UK. If the requirement in

subsection (3) is not met and the person applies to the judge, new section 74D(10)(b)(ii) provides that the judge must order the person's discharge.

38. Subsection (8) prohibits a person from being arrested more than once on the basis of the same certificate.

## Section 74B

39. This section provides for the issue of a certificate in respect of a person, for the purpose of enabling that person's arrest under new section 74A.
40. Under subsection (1), the power to issue a certificate is conferred on the designated authority, which is the authority that has been designated in regulations made by the Secretary of State to perform this role (subsection (4)). The regulations may designate more than one authority and may also designate different authorities for different parts of the United Kingdom (subsection (5)). While future operational arrangements may require this flexibility, the current intention is to designate the NCA for all parts of the United Kingdom.
41. Subsection (1) further provides that the power to issue a certificate in respect of a person is contingent upon the criteria in paragraphs (a) to (d) being met. Absence of reasonable grounds for issuing the certificate constitutes a mandatory ground of discharge, upon application to the judge, under new section 74D(10)(b)(i).
42. To meet the criterion in paragraph (a) of subsection (1), the designated authority must have received a request for arrest which complies with the criteria for a valid request in new section 74C and the request for arrest must have been made by an authority of a specified category 2 territory. Subsection (6) defines a "specified category 2 territory" as a category 2 territory that is specified in Schedule A1.
43. Under paragraph (b), the designated authority must be satisfied that the request is made under arrangements which allow such a request to be made only if a warrant for the person's arrest has been issued in the category 2 territory or if the person is alleged to be unlawfully at large after conviction of an offence in the category 2 territory. This is intended to ensure that certificates are only issued where requests are underpinned by a domestic warrant, or a conviction, in the requesting territory.
44. The criteria in paragraphs (c) and (d) of subsection (1) are intended to ensure that certificates are only issued in respect of serious offences. Under paragraph (c), the designated authority must have reasonable grounds for believing that the offence described in the request is a serious extradition offence. Subsection (9) sets out that, for these purposes, a "serious extradition offence" is an extradition offence within the meaning of sections 137 and 138 of the 2003 Act, subject to certain modifications. The key modification is that the conduct in question must constitute an offence punishable in the United Kingdom by a custodial sentence of three years or more (rather than one year or more, as in sections 137 and 138). Additionally, the conduct may constitute an offence in any part of the United Kingdom, reflecting the fact that extradition proceedings in a particular jurisdiction of the United Kingdom will not have commenced at this stage. Under paragraph (d) of subsection (1), the designated authority must also be satisfied that the seriousness of the offence makes it appropriate to issue the certificate. For example, although the offence of theft carries a maximum custodial sentence of seven years (so that conduct constituting the offence of theft may meet the definition of a serious extradition offence), certification would not be appropriate if the conduct in question related to low-value shoplifting.

45. Subsection (2) sets out the information that must be included on the certificate. It requires certain matters – in particular, the validity of the request for arrest, the seriousness of the offence and the specification of the category 2 territory which made the request in Schedule A1 – to be certified in the certificate. It also requires information found in the request for arrest concerning the basis for arrest to be set out. Paragraph (a) of subsection (2) refers to the form of the request. If, for example the request was issued in the form of an Interpol red notice, the certificate must state this. Non-compliance with subsection (2) provides a discretionary ground for discharge in new section 74D(10)(a)(ii).
46. Under subsection (3), a certificate may be withdrawn and reissued on the basis of the same request if the person has not yet been arrested in reliance on it. This will enable the designated authority to fix a defective certificate if not yet relied upon. However, should a judge have exercised his or her discretion to discharge a person on the basis that the certificate did not meet the criteria in new section 74B(2), the designated authority would only be able to issue a further certificate under new section 74B in respect of a freshly issued request.
47. Subsection (7) allows the Secretary of State to amend, by regulations, the list of specified category 2 territories in Schedule A1 and to amend, in consequence, what it means to make a request “in the approved way” in new section 74C(6). This consequential power would, for example, allow for the fact that there may be different authorities within the newly specified territory which have the function of issuing requests in that territory and that it may be appropriate to single out one or more of them. Regulations which designate a territory may only include one territory per statutory instrument. Additionally, the Secretary of State may only make regulations under subsection (7) if certain conditions are met. Specifically, the Secretary of State must first: consult on the merits of adding, removing or varying a territory with the devolved administrations and relevant interested stakeholders; lay a statement before parliament on the risks of the change; and, where adding a territory, lay a statement before parliament confirming that the territory does not abuse the Interpol Red Notices system.

#### Section 74C

48. This section sets out the criteria that a request for a person’s arrest must meet to be valid for certification purposes.
49. Subsection (1) provides that a request for a person’s arrest is valid if it is made in the approved way and contains the correct statement and information referred to in subsections (2) to (5). Subsection (6) explains that a request is made in the approved way if it is made by an authority which the designated authority believes has the function of making such requests in that territory.
50. The statement and information that a request for arrest must contain under subsections (2) to (5) will vary according to whether the person is accused in the category 2 territory of the commission of an offence and is therefore wanted for prosecution or whether the person has been convicted of an offence by a court in the category 2 territory and is therefore wanted for the purposes of being sentenced or serving a sentence. The relevant provisions are self-explanatory.

#### Section 74D

51. This section sets out the procedure to be applied once a person has been arrested and brought before the appropriate judge under new section 74A.

52. Subsection (1) requires the judge to decide a hypothetical question: namely, whether, on the basis of any evidence or information produced, a warrant for the person's arrest would be issued under section 73 of the 2003 Act if the person were not already under arrest. Section 73 of the 2003 Act sets out the criteria that must be met for a justice of the peace to issue a warrant of arrest (known as a provisional warrant) in circumstances where a full request for extradition has not yet been received. In accordance with those criteria, for the purposes of subsection (1), the judge must determine, amongst other matters, whether there are reasonable grounds for believing that the offence of which the person is accused or has been convicted is an extradition offence and whether there are reasonable grounds for believing that there is evidence or information that would justify the issue of a warrant. The judge's answer to the hypothetical question will determine whether the proceedings are to be continued.
53. If the judge determines that a warrant would not be issued, subsection (2) requires the judge to order the person's discharge.
54. Conversely, if the judge determines that a warrant would be issued, subsection (3) provides that the judge must proceed under new section 74E. In effect, this puts the person in the same position as a person arrested pursuant to a provisional warrant issued under section 73 of the 2003 Act.
55. The requirement to order the person's discharge in subsection (2) is, however, subject to subsection (4), according to which the judge may adjourn the proceedings to allow more evidence or information to be produced. The judge must be satisfied that evidence or information could not reasonably have been produced in time to avoid the need for the adjournment. This might, for example, be the case where a public holiday in the territory where the requesting authority is located has meant that the requesting authority was not able to respond in time.
56. Subsection (5) provides that the judge must remand the person in custody or on bail in the event of granting an adjournment. If the person is remanded in custody, according to subsection (6), the judge may later grant bail. Under subsection (7), multiple adjournments may be granted, but their total period must not exceed 72 hours, with allowances made for days of the weekend and bank and court holidays (subsection (8)). On each occasion that the person comes before the judge following an adjournment, the judge must decide whether a warrant of arrest would be issued were the person not under arrest, unless he or she grants a further adjournment (subsection (9)).
57. Subsection (10) sets out the circumstances in which, following an application by the person to be discharged, the judge either may or must order the person's discharge. Discharge is discretionary where either a copy of the section 74B certificate was not provided to the person as soon as practicable after their arrest or the certificate does not contain the information set out in new section 74B(2) (subsection (10)(a)). Discharge is mandatory where the judge decides that there were no reasonable grounds for issuing the section 74B certificate (for example, because the conduct constituting the offence was plainly not sufficiently serious to warrant doing so) or because the person was not brought before the judge as soon as practicable after arrest.

## Section 74E

58. This section sets out how the judge must proceed if they decide that a warrant would be issued under section 73 of the 2003 Act if the person were not already under arrest. New section 74E closely mirrors section 74(7) to (11) of the 2003 Act, concerning the procedure to be followed by the appropriate judge in respect of a person arrested under a provisional warrant. This reflects that the fact a person to whom new section 74E applies is in an analogous position to a person arrested pursuant to a provisional warrant.

59. Subsection (1) requires the judge to inform the person of the basis on which they are wanted, to give them the required information about consent to extradition, and to remand them in custody or on bail. Subsection (2) sets out the necessary information about consent to extradition. Provision regarding consent to extradition can be found in sections 127 and 128 of the 2003 Act. Section 127, as amended by this Bill, provides that a person arrested under new section 74A may consent to their extradition, subject to certain criteria (including legal representation at the time of consent) being met.
60. Subsection (3) sets out that, if the judge chooses to remand the person in custody, they may later decide to grant bail.
61. Subsection (4) provides that the judge must order the person's discharge if the judge does not receive the full request for extradition and the certificate issued in respect of that extradition request under section 70 of the 2003 Act (together, these constitute the documents referred to in section 70(9) of the 2003 Act) within the required time-frame as defined in section 74(11) of the 2003 Act. The required time-frame is 45 days, starting with the day on which the person was arrested, or a longer period if the Secretary of State has so provided when designating a territory as a category 2 territory by order.
62. Paragraph 3 inserts new Schedule A1, which lists the specified category 2 territories, into Part 2 of the 2003 Act. The significance of Schedule A1 lies in the fact that, under new section 74B(1), a certificate may only be issued in relation to a person for the purposes of the new power of arrest if, among other criteria, the request for their arrest is made by an authority of a specified category 2 territory.
63. The category 2 territories specified in new Schedule A1 are Australia, Canada, Liechtenstein, New Zealand, Switzerland and the United States of America.
64. Paragraph 4 allows a certificate to be issued under new section 74B in respect of a request for arrest made before the Bill is enacted, with the effect that the new power of arrest can apply in relation to such requests.

### *Part 2 – Consequential Amendments*

65. Part 2 makes provision for amendments that are required as a consequence of the creation of the new power of arrest.
66. Paragraphs 5 and 6 amend the definition of an “extradition arrest power” in section 65 of the Police and Criminal Evidence Act 1984 and Article 53(1) of the Police and Criminal Evidence (Northern Ireland) Order 1989 respectively to refer to the power of arrest in new section 74A. No such amendment is required to the equivalent legislation in Scotland, the Criminal Procedure (Scotland) Act 1995, since the definition of an extradition arrest power in that Act cross-refers to section 174(2) of the Extradition Act 2003.
67. Expanding the definition of an extradition arrest power in those enactments to include the new power of arrest created by this Bill has the effect of disapplying provisions regarding police powers in those enactments in respect of a person arrested under the new power of arrest.
68. Paragraph 7 amends section 94(6A) of the Nationality, Immigration and Asylum Act 2002 so that the Secretary of State is not obliged to certify an asylum or human rights claim if the person concerned is the subject of certificate issued under new section 74B of the 2003 Act. The amendment is consistent with the approach taken in section 94(6A) in respect of persons who fall within the scope of the other extradition arrest powers.

69. Paragraphs 8 to 24 provide for consequential amendments to the 2003 Act.
70. Paragraph 9 amends section 76 so that the provisions for fixing a date for an extradition hearing apply to a person arrested under new section 74A as well as to a person arrested under a provisional warrant.
71. Paragraphs 10 and 11 amend sections 76A and 76B, which are concerned, respectively, with the scenario where a person is charged with an offence in the United Kingdom before the extradition hearing and the scenario where a person is serving a sentence in the United Kingdom before the extradition hearing. The effect of the amendments is to apply these sections to a person arrested under new section 74A.
72. The amendments made by paragraph 12 to section 127(2) ensure that a person arrested under new section 74A may consent to their extradition.
73. Paragraph 13 amends section 136, which deals with a situation where a request for a person's extradition to a category 2 territory is made after their sentence has been transferred from one territory to another under an international arrangement (i.e. under measures allowing the transfer of prisoners or custodial sentences). The amendments provide that new sections 74B, 74C and 74E can be read with appropriate modifications where these circumstances apply. A modification is also applied in respect of section 74(7)(a) in consequence of these amendments.
74. Paragraphs 14 to 17 make amendments to Part 4 of the 2003 Act, which sets out various police powers in connection with extradition. The powers are exercisable where a person may or has been arrested under an extradition arrest power. Paragraph 17 amends the definition of an extradition arrest power in section 174 to include reference to the power of arrest in new section 74A. Paragraphs 14 to 16 make additional consequential amendments to powers of search and entry on arrest and after arrest (sections 162 and 164 respectively) and to the delivery of seized property to the requesting territory (section 172) to ensure that the powers in those provisions can be applied where a person has been arrested under new section 74A.
75. Paragraphs 18 and 19 amend sections 193 and 194 respectively. These sections allow for extradition, in certain circumstances, to territories which are not designated under Part 1 or 2. Section 193 is concerned with extradition requests to a territory that is party to a designated international convention, while section 194 deals with extradition requests to a territory with which the United Kingdom has special extradition arrangements. If the Secretary of State issues a certificate under either section, the 2003 Act applies as if the requesting territory were a Part 2 territory, with certain omissions. The amendments made by paragraphs 18 and 19 mean that the provisions relating to the new power of arrest cannot be applied in respect of territories falling within the scope of section 193 or 194.
76. The amendments made by paragraphs 20 and 21 to section 206B and 206C respectively apply provisions relating to the use of live links at certain hearings to those who have been or may be arrested under the new power.
77. Paragraph 22 amends section 208, which enables the Secretary of State to prevent a person's extradition where their extradition would be against the interests of national security. The amendments mean that, where the Secretary of State has issued a direction that a request for a person's extradition is not to be proceeded with, a person arrested under the new power does not need to appear or be brought before the appropriate judge and must be discharged. If the person

arrested under the new power appears or is brought before the appropriate judge, the judge is no longer required to proceed with the matter.

78. Paragraph 23 amends the interpretative provisions in section 216 so that a different definition applies to references to ‘the designated authority’ in new sections 74B and 74C than applies to references to ‘the designated authority’ in the rest of the 2003 Act.
79. The amendments made by paragraph 24 to section 223 apply the affirmative resolution procedure to regulations made for the purpose of adding, varying or removing a reference to a territory in new Schedule A1. By omission, the negative resolution procedure is applied to regulations made for the purpose of designating an authority that may issue certificates under new section 74B.
80. Paragraphs 25 to 27 amend the UK Borders Act 2007. Paragraph 26 amends section 2 of that Act so that temporary detention at port can take place on the basis of a certificate issued under new section 74B in an analogous way to existing warrants issued under the 2003 Act.
81. Paragraph 27 amends section 33(5) of the UK Borders Act 2007 so that the auto-deport provisions in that Act do not apply if the person concerned is the subject of certificate issued under new section 74B of the 2003 Act. The amendment is consistent with the approach taken in section 33(5) in respect of persons who fall within the scope of the other extradition arrest powers.
82. Paragraph 28 amends section 57A(3) of the Criminal Justice (Scotland) Act 2016, to add the power of arrest in new section 74A to the list of powers to arrest otherwise than in respect of an offence. This clarifies that, in respect of the new power of arrest, the modifications made by sections 57A and 57C of the 2016 Act to other provisions of Part 1 of that Act (which deal generally with arrest and detention) apply. No amendment is required to the definition of an “extradition arrest power” in the 2016 Act, since the definition cross-refers to section 174(2) of the Extradition Act 2003, which is amended by paragraph 17.
83. Paragraph 29 creates a power for the Secretary of State to make further consequential amendments by regulations. If such consequential amendments modify primary legislation, they are subject to the affirmative resolution procedure; if they do not, they are subject to the negative resolution procedure.

## **Financial implications of the Bill**

84. An impact assessment was conducted by the Home Office Analysts and agreed by the Home Office Chief Economist.
85. There are no monetised costs associated with this legislation. It is expected that the benefits of reducing offending and absconding will outweigh any negligible costs.

## **Parliamentary approval for financial costs or for charges imposed**

86. The Bill does not require either a money resolution or a ways and means resolution.

# Compatibility with the European Convention on Human Rights

87. The changes made by this Bill will engage Article 5 of the ECHR, concerning the right to liberty and security. An individual's detention is in accordance with Article 5(1) where action is being taken with a view to extradition (sub-paragraph (f)) and is in accordance with a procedure prescribed by law. Caselaw confirms that detention pursuant to a request for provisional arrest for extradition purposes falls within the scope of Article 5(1)(f), i.e. there is no requirement for an extradition request to have been issued ([Soldatenko v Ukraine](#) (2008) appln no 2440/07). **Error! Hyperlink reference not valid.**
88. Although Article 5(3) (requirement to be brought promptly before a judge etc) does not apply in cases to which Article 5(1)(f) applies, the extradition proceedings must be pursued with "due diligence" ([Quinn v France](#) (1995) appln no 18580/91). In compliance with this requirement, the Bill provides that a person arrested under the new power must be brought before a judge as soon as practicable after their arrest. At the initial hearing, the judge will be required to consider whether to decide to continue with the proceedings (or adjourn) on the basis of evidence or information presented at that hearing.
89. The Bill further provides that, upon arrest, the person must be provided as soon as practicable with a copy of the certificate issued in respect of their arrest. The certificate will set out the reasons for their arrest, in compliance with Article 5(2) of the ECHR. Ensuring compliance with Article 5(4) and (5) of the ECHR, a person arrested under this power will be entitled to challenge the lawfulness of their arrest, and to seek compensation, under existing judicial mechanisms for redress.
90. Any interference with Article 5 rights is considered proportionate. The Bill contains safeguards (such as restricting the scope of the power to specified category 2 countries and to serious offences) and is intended to prevent individuals who are wanted in relation to serious offences in trusted partner countries from offending or absconding while a warrant of arrest is obtained from a UK court.
91. The changes made by this Bill will also engage Article 14 of the ECHR, on the basis that the power of arrest is likely to impact the nationals of specified category 2 territories to a greater degree than the nationals of other countries. However, it is considered appropriate to limit the application of the new power of arrest to requests for arrests made by authorities in territories in whose criminal justice systems the UK has a high degree of confidence. This difference in treatment can therefore be objectively and reasonably justified.
92. While the decision to extradite a person may engage additional Articles of the ECHR, including Articles 3 and 8, this Bill does not impact on that decision. As is currently the case, the extradition hearing under Part 2 will enable judicial scrutiny of the compatibility of extradition with a person's rights under the ECHR.
93. The Government therefore considers that the Extradition (Provisional Arrest) Bill is compatible with the European Convention on Human Rights. Accordingly, the Security Minister James Brokenshire MP, has made a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect.
94. The following documents are relevant to the Bill and can be read at the stated locations:
- [Impact Assessment](#)
  - [The Extradition Act 2003](#)

*These Explanatory Notes relate to the Extradition (Provisional Arrest) Bill [HL] as brought from the House of Lords on 16 June 2020 (Bill 138-EN)*

## Annex A - Territorial extent and application in the United Kingdom

Provision	Extends to England and Wales and applies to England?	Extends to England and Wales and applies to Wales	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Legislative Consent Motion needed?
Clause 1	Yes	Yes	Yes	Yes	No
Clause 2	Yes	Yes	Yes	Yes	No
Schedule – Part 1					
Paragraph 1	Yes	Yes	Yes	Yes	No
Paragraph 2	Yes	Yes	Yes	Yes	No
Paragraph 3	Yes	Yes	Yes	Yes	No
Paragraph 4	Yes	Yes	Yes	Yes	No
Schedule – Part 2					
Paragraph 5	Yes	Yes	No	No	No
Paragraph 6	No	No	No	Yes	No
Paragraph 7	Yes	Yes	Yes	Yes	No
Paragraph 8	Yes	Yes	Yes	Yes	No
Paragraph 9	Yes	Yes	Yes	Yes	No
Paragraph 10	Yes	Yes	Yes	Yes	No
Paragraph 11	Yes	Yes	Yes	Yes	No
Paragraph 12	Yes	Yes	Yes	Yes	No
Paragraph 13	Yes	Yes	Yes	Yes	No
Paragraph 14	Yes	Yes	Yes	Yes	No
Paragraph 15	Yes	Yes	Yes	Yes	No
Paragraph 16	Yes	Yes	Yes	Yes	No

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Paragraph 17	Yes	Yes	Yes	Yes	No
Paragraph 18	Yes	Yes	Yes	Yes	No
Paragraph 19	Yes	Yes	Yes	Yes	No
Paragraph 20	Yes	Yes	Yes	Yes	No
Paragraph 21	Yes	Yes	Yes	Yes	No
Paragraph 22	Yes	Yes	Yes	Yes	No
Paragraph 23	Yes	Yes	Yes	Yes	No
Paragraph 24	Yes	Yes	Yes	Yes	No
Paragraph 25	Yes	Yes	Yes	Yes	No
Paragraph 26	Yes	Yes	Yes	Yes	No
Paragraph 27	Yes	Yes	Yes	Yes	No
Paragraph 28	No	No	Yes	No	No
Paragraph 29	Yes	Yes	Yes	Yes	No

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# **EXTRADITION (PROVISIONAL ARREST) BILL [HL]**

## **EXPLANATORY NOTES**

These Explanatory Notes relate to the Extradition (Provisional Arrest) Bill [HL] as brought from the House of Lords on 16 June 2020 (Bill Bill 138-EN).

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