

Part 2 extradition: No warrant, No problem

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Mark Smith



The Extradition (Provisional Arrest) Act 2020 introduced the power for police officers to arrest a person without an extradition warrant. This opens the door for arrests to be made where the only information provided is an INTERPOL Red Notice. The provisions inserted into the Extradition Act 2003 at sections 74A to 74E are not straightforward to navigate and set out numerous procedural steps of which both prosecutors and defence lawyers need to be aware.

What's changed?

Before the 2020 Act, a person could be arrested on an extradition request from a 'Part 1' territory (i.e. EU member state) on the basis of a certificate issued by the National Crime Agency, but needed to seek a warrant from a judge before arresting a person requested by a 'Part 2' territory (i.e. non-EU country). To avoid this procedural delay, the 2020 Act introduced a power to make a Part 2 arrest based on an NCA certificate without having to go to court.

This new power only applies to some specified 'Part 2' territories, currently Australia, Canada, Iceland, Liechtenstein, New Zealand, Norway, Switzerland, and the USA. The power can only

be exercised for 'serious offences' meaning offences that would attract a sentence of 3 years or more in the UK. The NCA should also only issue a certificate if the seriousness of the conduct makes it 'appropriate' to do so.

Procedure

If the NCA receives an INTERPOL Red Notice (or other similar request) and considers that it meets the criteria, a certificate can be issued under s.74B. A person can be arrested on the basis of this certificate under s.74A and then brought before Westminster Magistrates' Court under s.74D. From there, the process follows much the same format as the procedure for other Part 2 provisional arrests, but practitioners should take particular note of the requirements of the NCA certificate.

The certificate must satisfy s.74B(2) by naming the relevant territory and the form and date of the request (e.g. INTERPOL Red Notice). It must also specify that the country is a specified Part 2 territory, that it is a valid request, for a serious extradition offence, and that it is appropriate to issue the certificate. The certificate must also include the information set out in s.74C, including the relevant provisions of law and particulars of sentence. This is commonly done by annexing the INTERPOL Red Notice itself.

Potential challenges

If the certificate does not include all the necessary information, or it was not given to the Requested Person as soon as practicable after arrest, the defence can make an application under s.74D(10), which gives the District Judge a **discretion** to order discharge.

But the judge is **required** to discharge the Requested Person if there were no reasonable grounds for issuing the certificate or s/he was not brought before the court quickly enough after arrest. This would clearly require a more substantive argument than the discretionary grounds, most likely on the basis that the conduct is not sufficiently serious for the certificate to have been issued in the first place.

These new provisions provide a powerful new tool for the enforcement authorities, and both parties will need to be aware of the requirements so that the procedural safeguards are upheld and the Requested Person's rights are respected.

Mark is a barrister specialising in extradition, international family and immigration. Mark is an experienced extradition practitioner and regularly appears in the High Court (Admin) in relation to extradition appeals. He is instructed in relation to both import and export extradition, concerning request from both EU states and Part 2 countries. He has particular expertise in cases involving cross-border issues and parallel proceedings across multiple jurisdictions.