
Changes to legislation: There are currently no known outstanding effects for the Extradition (Provisional Arrest) Act 2020, Paragraph 2. (See end of Document for details)

SCHEDULE

POWER OF ARREST FOR EXTRADITION PURPOSES

PART 1

MAIN AMENDMENTS TO THE EXTRADITION ACT 2003

2 After section 74 insert—

“Provisional arrest without warrant

74A Provisional arrest where certificate issued under section 74B

- (1) A constable, a customs officer or a service policeman may arrest a person without a warrant if a certificate has been issued under section 74B in respect of the person.
- (2) A copy of the certificate must be given to the person as soon as practicable after the arrest.
- (3) The person must be brought as soon as practicable before the appropriate judge (see further, section 74D).
- (4) A constable or a customs officer may arrest a person under subsection (1) in any part of the United Kingdom.
- (5) A service policeman may arrest a person under subsection (1) only if the person is subject to service law or is a civilian subject to service discipline.
- (6) A service policeman who has power to arrest a person under subsection (1) may exercise the power anywhere.
- (7) A person arrested under subsection (1) may not be arrested again in reliance on the same certificate.

74B Certificates enabling provisional arrest under section 74A

- (1) The designated authority may issue a certificate under this section in respect of a person if—
 - (a) it receives a valid request, made by an authority of a specified category 2 territory, for the person's arrest (for more about requests, see section 74C),
 - (b) it is satisfied that the request is made under arrangements which allow such a request to be made only if—
 - (i) a warrant for the person's arrest has been issued in the category 2 territory in respect of an offence, or
 - (ii) the person is alleged to be unlawfully at large after conviction of an offence by a court in the category 2 territory,
 - (c) it has reasonable grounds for believing that the offence specified in the request is a serious extradition offence, and

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- (d) it is satisfied that the seriousness of the conduct constituting the offence makes it appropriate to issue the certificate.
- (2) A certificate issued by the designated authority under this section must—
 - (a) state the category 2 territory in respect of which the request is made, the form of the request and the date on which the request was made,
 - (b) certify that the category 2 territory is a specified category 2 territory,
 - (c) certify that the request is a valid request,
 - (d) certify the matters in subsection (1)(c) and (d), and
 - (e) set out the statement and information mentioned in section 74C(1) (a) or (b) (as the case may be).
- (3) A certificate (or purported certificate) may be withdrawn and a new one issued on the basis of the same request at any time before the person has been arrested in reliance on it.
- (4) The “designated authority” is the National Crime Agency.
- (5) The Secretary of State may by regulations amend this section so as to change the meaning of “designated authority”.
- (6) Regulations made under subsection (5) may—
 - (a) designate more than one authority;
 - (b) designate different authorities for different parts of the United Kingdom.
- (7) A “specified category 2 territory” is a category 2 territory that is specified in Schedule A1.
- (8) The Secretary of State may by regulations—
 - (a) amend Schedule A1 so as to add, vary or remove a reference to a territory, and
 - (b) in consequence, amend section 74C so as to change what it means to make a request in the approved way for the purposes of that section.
- (9) The reference in subsection (1)(b) to a warrant for a person's arrest includes a reference to a judicial document authorising the person's arrest.
- (10) For the purposes of determining whether an offence is a “serious extradition offence”, sections 137 and 138 apply as if—
 - (a) a reference to an “extradition offence” were to a “serious extradition offence”,
 - (b) a reference to the relevant part of the United Kingdom were to any part of the United Kingdom (and, accordingly, each of sections 137 and 138 have effect as if subsection (8) were omitted),
 - (c) a reference to the request for the person's extradition were a reference to the request for the person's arrest,
 - (d) the references in sections 137(3)(b) and (4)(b) and 138(3)(b) to “12 months” were to “3 years”, and
 - (e) the references in section 137(3)(c) and (4)(c) to conduct that is “so punishable” were to conduct that is punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment.

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74C Section 74B supplementary: valid requests for arrest

- (1) For the purposes of section 74B a request for a person's arrest is valid if it is made in the approved way and it contains—
 - (a) the statement referred to in subsection (2) and the information referred to in subsection (3), or
 - (b) the statement referred to in subsection (4) and the information referred to in subsection (5).
- (2) The statement is one that—
 - (a) the person is accused in the category 2 territory of the commission of an offence specified in the request, and
 - (b) the request is made with a view to the arrest and extradition of the person to the category 2 territory for the purpose of being prosecuted for the offence.
- (3) The information is—
 - (a) particulars of the person's identity;
 - (b) particulars of the circumstances in which the person is alleged to have committed the offence, including the conduct alleged to constitute the offence, the time and place at which the person is alleged to have committed the offence and any provision of the law of the category 2 territory under which the conduct is alleged to constitute an offence;
 - (c) particulars of the sentence which may be imposed under the law of the category 2 territory in respect of the offence if the person is convicted of it.
- (4) The statement is one that—
 - (a) the person has been convicted of an offence specified in the request by a court in the category 2 territory, and
 - (b) the request is made with a view to the arrest and extradition of the person to the category 2 territory for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence.
- (5) The information is—
 - (a) particulars of the person's identity;
 - (b) particulars of the conviction;
 - (c) particulars of the sentence which may be imposed under the law of the category 2 territory in respect of the offence, if the person has not been sentenced for the offence;
 - (d) particulars of the sentence which has been imposed under the law of the category 2 territory in respect of the offence, if the person has been sentenced for the offence.
- (6) A request is made in the approved way for the purposes of this section if it is made by an authority of the category 2 territory which the designated authority believes has the function of making such requests in that territory.

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74D Person provisionally arrested under section 74A

- (1) The judge before whom a person is brought following arrest under section 74A must decide, on the basis of any evidence or information produced to the judge, whether a warrant would be issued under section 73 if the person were not already under arrest.
- (2) If the judge decides the question in subsection (1) in the negative, the judge must order the person's discharge.
- (3) If the judge decides that question in the affirmative, the judge must proceed under section 74E.
- (4) The judge may adjourn the proceedings to allow more evidence or information to be produced if—
 - (a) an application for the adjournment is made in accordance with rules of court, and
 - (b) the judge is satisfied, on the balance of probabilities, that evidence or information could not reasonably have been produced in time to avoid the need for the adjournment.
- (5) If the judge grants an adjournment under subsection (4), the judge must remand the person in custody or on bail.
- (6) If the person is remanded in custody, the judge may later grant bail.
- (7) More than one adjournment may be granted under subsection (4) but the total period of any adjournments must not exceed 72 hours.
- (8) In calculating that 72-hour period, no account is to be taken of any day falling within section 6(8A)(a) to (d) (weekends, bank holidays etc).
- (9) If the judge has granted an adjournment or further adjournment, the question in subsection (1) must be decided by the appropriate judge on the next occasion when the person is brought or appears before the appropriate judge (unless a further adjournment is granted on that occasion).
- (10) If the person applies to the judge to be discharged—
 - (a) the judge may order the person's discharge if—
 - (i) section 74A(2) (copy of certificate to be given to arrested person) was not complied with, or
 - (ii) the certificate did not comply with section 74B(2);
 - (b) the judge must order the person's discharge if—
 - (i) the judge is satisfied that there were no reasonable grounds on which the designated authority could have issued the certificate under section 74B(1), or
 - (ii) section 74A(3) (person to be brought before judge as soon as practicable after arrest) was not complied with.

74E Person provisionally arrested under section 74A: next steps

- (1) If the appropriate judge is required by section 74D(3) to proceed under this section, the judge must—

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- (a) inform the person that they are accused of the commission of an offence in a category 2 territory or are alleged to be unlawfully at large after conviction of an offence by a court in a category 2 territory,
 - (b) give the person the required information about consent, and
 - (c) remand the person in custody or on bail.
- (2) The required information about consent is—
- (a) that the person may consent to extradition to the category 2 territory in which the person is accused of the commission of an offence or is alleged to have been convicted of an offence;
 - (b) an explanation of the effect of consent and the procedure that will apply if the person gives consent;
 - (c) that consent must be given in writing and is irrevocable.
- (3) If the person is remanded in custody, the appropriate judge may later grant bail.
- (4) The judge must order the person's discharge if the documents referred to in section 70(9) are not received by the judge within the required period as defined by section 74(11).”

Commencement Information

II Sch. para. 2 in force at 31.12.2020 by S.I. 2020/1652, reg. 2(1)(b)

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