

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT EXTRADITION ACT 2003 (AMENDMENTS
TO DESIGNATIONS) ORDER 2020

Monday 2 March 2020

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The Committee consisted of the following Members:

Chair: GERAINT DAVIES

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| † Brokenshire, James (<i>Minister for Security</i>) | † Osborne, Kate (<i>Jarrow</i>) (Lab) |
| Efford, Clive (<i>Eltham</i>) (Lab) | † Pawsey, Mark (<i>Rugby</i>) (Con) |
| † Elmore, Chris (<i>Ogmore</i>) (Lab) | † Pursglove, Tom (<i>Corby</i>) (Con) |
| Jarvis, Dan (<i>Barnsley Central</i>) (Lab) | † Richardson, Angela (<i>Guildford</i>) (Con) |
| Johnson, Dame Diana (<i>Kingston upon Hull North</i>)
(Lab) | † Smith, Greg (<i>Buckingham</i>) (Con) |
| † McCartney, Karl (<i>Lincoln</i>) (Con) | † Thomas-Symonds, Nick (<i>Torfaen</i>) (Lab) |
| † Mackrory, Cheryllyn (<i>Truro and Falmouth</i>) (Con) | † Wood, Mike (<i>Dudley South</i>) (Con) |
| † Mc Nally, John (<i>Falkirk</i>) (SNP) | Ian Bradshaw, <i>Committee Clerk</i> |
| † Mohindra, Gagan (<i>South West Hertfordshire</i>) (Con) | † attended the Committee |
| † Morrissey, Joy (<i>Beaconsfield</i>) (Con) | |

Fifth Delegated Legislation Committee

Monday 2 March 2020

[GERAINT DAVIES *in the Chair*]

Draft Extradition Act 2003 (Amendments to Designations) Order 2020

6 pm

The Chair: I call the Minister, and I wish Members a happy St David's day for yesterday.

The Minister for Security (James Brokenshire): I beg to move,

That the Committee has considered the draft Extradition Act 2003 (Amendments to Designations) Order 2020.

Thank you, Mr Davies, and a happy St David's day for yesterday to you too. It is a pleasure to serve under your chairmanship and to move the draft order. The order is required for the UK to fulfil its obligations under bilateral extradition treaties with Kuwait and Morocco and an extradition agreement between the European Union, Norway and Iceland, to which the UK is party during the transition period. I shall explain in a little more detail why the changes are being brought in at this time and the effect that they will have on our extradition arrangements.

First, the Extradition Act 2003 (Designation of Part 1 Territories) Order 2003 will replace the current designation of Norway and Iceland as part 2 territories based on the European convention on extradition. It will make clear that Norway and Iceland will become territories designated under part 1 of the Extradition Act 2003, based on the surrender agreement between the EU, Norway and Iceland, which entered into force on 1 November 2019. The agreement facilitates the exchange of warrants between judicial authorities, which are executed through a simplified system based on judicial decisions. Norway and Iceland will therefore be treated in a similar way to EU countries for the purposes of extradition. However, there are some differences—notably, parties can refuse to extradite their own nationals and can refuse extradition on the basis that the offence concerned is political. The agreement also allows parties to require that the relevant offence is an offence in both the requesting and the requested country—a rule known as dual criminality.

As the Committee is aware, during the transition period, the EU justice and home affairs tools that the UK has opted into, including this agreement, will continue to apply. The legislation will ensure that there is no disparity between our international obligations and domestic law, which could result in legal uncertainty and impunity for wanted fugitives.

The second part of the order will implement the extradition treaties concluded between the UK and Morocco in 2013 and the UK and Kuwait in 2016. The designation of these countries under part 2 of the 2003 Act will allow the UK to process extradition requests from Kuwait and Morocco in line with the obligations in the treaties. Both treaties set out a timeframe in which

a full extradition request must be provided to the UK by Kuwait and Morocco when an individual has been arrested on a provisional arrest warrant.

The order therefore ensures that that is reflected in our legislation, by setting out that, in the case of Kuwait and Morocco, the judge must receive the papers within 65 days of the person's provisional arrest, in line with standard practice. That will allow for the countries to provide the request to the Secretary of State within 60 days, as the treaty provides for, and for the Secretary of State to have five days to certify the request and send it to the appropriate judge. Once the designations have been made, the Kuwait and Morocco treaties will be ratified. Morocco and Kuwait are both important partners for the UK, and the treaties will enhance our ability to work in close co-operation with both on important issues.

The introduction of the formal bilateral basis for extradition for conduct covered by the treaties will lead to a more efficient and effective process for extradition between the UK and respective countries. I urge the Committee to consider favourably the amendments made by the statutory instrument, to ensure that the United Kingdom can comply with its obligations under the relevant international extradition arrangements.

When considering any request for extradition, our arrangements are balanced by provisions in the 2003 Act, which serve to protect an individual's rights where extradition is not compatible with our law. We must remember that extradition is a valuable tool in combating cross-border crime. Offenders should not be able to escape justice simply by crossing international borders; no one should be beyond the reach of the law. Having efficient extradition arrangements that are clear and effective is vital for safeguarding our security and preventing fugitives from escaping justice. I commend the order to the Committee.

6.5 pm

Nick Thomas-Symonds (Torfaen) (Lab): It is a pleasure to serve under you as Chair, Mr Davies. I also add my belated good wishes for St David's day, as a fellow Welsh Member of Parliament.

The Opposition do not oppose the statutory instrument. It is in the public interest to have appropriate extradition arrangements in place with as many countries as possible. It reduces the number of safe spaces there are in the world where those who harm us can hide, escape to and get beyond the reach of our law enforcement.

However, I have a number of points about these proposals, which I hope the Minister will be able to deal with in replying at the end of this short debate. I will begin with the addition of Norway and Iceland. As the Minister set out, Norway and Iceland already have an extradition agreement with the European Union, as set out in the surrender agreement, which came into force in early November last year. The aim of the agreement was to speed up the transfer of suspected and convicted persons and to ensure sufficient controls on the execution of arrest warrants. The aim, if I may say so, is very similar to the current structure of the European arrest warrant.

Now that the United Kingdom has left the European Union and is in the transition period, it is right that Norway and Iceland should be incorporated into our

current extradition process, and the Opposition of course support that principle. I would, however, be grateful if the Minister could give further clarity on the future security relationship in this regard with the European Union.

On Thursday, the Government published their negotiating mandate with the European Union, and today both parties sit down to start negotiations. I was alarmed by point 51:

“The UK is not seeking to participate in the European Arrest Warrant as part of the future relationship. The agreement should instead provide for fast-track extradition arrangements, based on the EU’s Surrender Agreement with Norway and Iceland which came into force in 2019, but with appropriate further safeguards for individuals beyond those in the European Arrest Warrant.”

Over the past few years in this role, I have argued for the Government to take the future security partnership extremely seriously. The European arrest warrant has proven to be an incredibly useful tool for fighting and preventing crime. In 2017-18, the last year for which there are statistics, 17,256 requests were made by UK law enforcement or EU counterparts, and the EU made 296 requests to UK law enforcement.

As we pass this arrangement today—if the Committee is minded to do so—can the Minister set out how the Government will create a structure similar to the European arrest warrant by the end of December this year? If they fail to have a future trade agreement in place, how will he assure UK law enforcement and UK citizens that the law in relation to some of the most serious criminals will not simply lapse? Stronger action is required, and I hope the Minister will give an assurance that he will be lobbying ministerial colleagues on how important this issue is.

I now turn to the addition of Kuwait and Morocco in part 2 of this statutory instrument. Both these countries are listed as category 2 countries; in other words, they still carry the death penalty. According to Human Rights Watch, in 2017, Kuwait carried out seven executions, the first since 2013, including of two Kuwaiti nationals, a member of the royal family, a woman from the Philippines, two Egyptian men and a Bangladeshi man. Similarly, three men were sentenced to death in Morocco in July 2019, although it is not clear whether the penalties have been carried out. The Labour party stands totally against the use of the death penalty. I understand the Government’s position is the same. However, it is important that there are reassurances today in that regard.

The treaty with Kuwait sets out that an extradition could be blocked

“if the Requested Party has serious grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person’s race, religion, nationality, sex or status, or political opinions, or that that person’s position may be prejudiced or his or her liberty restricted for any of those reasons”.

I am sure the Minister will share the view that there are worrying aspects of the Kuwaiti penal code—for example, article 193, which outlaws same-sex relations and carries a maximum prison sentence of up to seven years, and which also criminalises forms of gender expression.

I note that the Kuwaiti extradition treaty gives a carve-out if extradition would breach the human rights of the person sought, and of course there are safeguards that already exist in the extradition process. However, there remain concerns about the judicial system in Kuwait.

In 2018, Lord Collins of Highbury took part in a debate about that extradition treaty with Kuwait, and the then Government Minister, Baroness Goldie, stated:

“This Government are committed to upholding human rights and oppose the death penalty in all circumstances as a matter of principle. The safeguards available in the Extradition Act are strong and reliable in that respect. Extradition from the UK is not possible if it would be incompatible with a person’s human rights. The Home Secretary must not, in law, order an individual’s extradition if they have been, will be or could be sentenced to death.”—[*Official Report, House of Lords*, 30 October 2018; Vol. 793, c. 1286.]

I would be grateful if the Minister could repeat that assurance today.

There are also some wider issues about not just the criminal penalties that exist in Kuwait but the very nature of the system. Human Rights Watch has raised concerns that it is difficult for defendants to get a fair trial. With our proud tradition of an independent judiciary and the rule of law, I hope the Minister will be able to reassure me that, when considering cases under this treaty, there will be an emphasis on those who are extradited receiving due process and a fair trial, irrespective of what the penalty for that particular offence is.

Although the Opposition support the statutory instrument and the principle of having extradition treaties in place, I would at the same time be grateful for the Minister’s response to the observations I have made.

6.12 pm

John Mc Nally (Falkirk) (SNP): It is a pleasure to serve under your chairmanship, Mr Davies. I, too, wish you a belated happy St David’s day. I will be very brief as well.

The only conclusion I can make about the UK withdrawal from the European arrest warrant is that it will only bring benefits to criminals. The Government are making the current system, which is fairly straightforward, complicated. That will lead to an inevitable impact on public safety, stretching the use of public services, money and resources. That will be increased by increasing the delays in extraditions. This is actually a time for closer co-operation between neighbouring countries, rather than turning inwards and attempting to go it alone, which I think is a huge step in the wrong direction.

To finish, the system that we had was pretty fairly and honestly fixed, and all that the Government’s proposal today does is succeed in breaking that system up.

6.13 pm

James Brokenshire: I will respond briefly to the points that have been made. Equally, I welcome the support for the order.

The hon. Member for Torfaen raised the issue of our future relations in discussions regarding the position post-transition. Equally, he made reference to the negotiating mandate that has recently been published. I stress to the Committee that the safety and security of our citizens is the Government’s top priority, and we stand ready to discuss an agreement on law enforcement and criminal justice co-operation in criminal matters. That agreement should equip our operational partners—the police and other law enforcement agencies—on both sides with the capabilities that help to protect citizens and bring criminals to justice, promoting the security of

[James Brokenshire]

all our citizens. The hon. Member made reference to the negotiating mandate. That does underline that, although we do not intend to participate in the European arrest warrant, the agreement should provide for fast-track extradition arrangements with appropriate further safeguards for individuals.

The hon. Member asked what precedents we can point to. The order indicates that it is possible to create fast-track arrangements in the way that Norway and Iceland have. We go into these discussions in an even-minded fashion, as a shared endeavour and with a shared desire to have a system that works well, but, clearly, with the issues that we have set out in the negotiating mandate.

Nick Thomas-Symonds: What does the Minister believe is defective about the European arrest warrant arrangement?

James Brokenshire: It is important to understand that we will be in a fundamentally different relationship with the European Union, and that is the approach to the negotiations that we rightly take. We are seeking to enshrine further important safeguards in our extradition arrangements, including the ability for a judge in the UK to dismiss a warrant from an EU member state on the basis of proportionality, for example, or if there has not yet been a decision to charge and try the wanted person.

Judges will also be required to establish that the offence is also an offence in the UK—that is, the dual criminality issue. The order refers to Norway and Iceland having negotiated those arrangements with the EU, which underlines that doing so is entirely possible and practical. Indeed, on the issue of the EU court, Norway and Iceland have sought to manage that and to find a resolution in terms of dealing with disputes that does not take that into account. Therefore, the order practically underlines the way in which we should be positive about what can be secured through these negotiations.

The hon. Member has rightly highlighted concerns about human rights—an issue that he raised specifically in relation to Kuwait. I can categorically confirm the opposition of the UK to the death penalty in all circumstances as a matter of principle. The death penalty

undermines human dignity, and any miscarriages of justice are, by their nature, irreparable. The Extradition Act is clear: an individual cannot be extradited if

“he could be, will be or has been sentenced to death”.

It is important to underline that. The hon. Member may know that, under the category 2 process, which Kuwait and Morocco would fall within, there has to be satisfaction in relation to that point. If the individual

“could be, will be or has been sentenced to death”,

that bar clearly exists, unless there is an “adequate” assurance that

“a sentence of death—(a) will not be imposed, or (b) will not be carried out”.

That is understood in how this issue is approached.

To highlight some broader human rights issues, I reassure the Committee that, although this is not linked explicitly to the treaty, we have a regular dialogue with Kuwait, including about fair, open and transparent systems and the rule of law. Those are things that we in this country hold dear, and we will continue to underline their significance to our friends, allies and partners. Our ambassador and our Ministers regularly raise the issue of human rights with their Kuwaiti counterparts.

Nick Thomas-Symonds: On the subject of the Government’s commitment to human rights, can the Minister confirm that it is the Government’s policy to remain signatories to the European convention on human rights?

James Brokenshire: It is beyond a certainty that we are members of the European convention on human rights, which is a separate legal jurisdiction. Sometimes people conflate what is EU law and what is ECHR law, but, obviously, while we leave the European Union, we firmly remain subject to the jurisdiction of the European Court of Human Rights.

With those assurances, I will draw my comments to a close and seek the Committee’s approval for the order.

Question put and agreed to.

6.19 pm

Committee rose.

