

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Third Delegated Legislation Committee

DRAFT EXTRADITION ACT 2003 (CODES OF
PRACTICE AND TRANSIT CODE OF PRACTICE)
ORDER 2021

Wednesday 17 March 2021

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The Committee consisted of the following Members:

Chair: † MRS MARIA MILLER

Andrew, Stuart (*Treasurer of Her Majesty's Household*)

† Davies, David T. C. (*Parliamentary Under-Secretary of State for Wales*)

Davies, Geraint (*Swansea West*) (Lab/Co-op)

Docherty, Leo (*Aldershot*) (Con)

† Foster, Kevin (*Parliamentary Under-Secretary of State for the Home Department*)

Freer, Mike (*Comptroller of Her Majesty's Household*)

Harris, Rebecca (*Lord Commissioner of Her Majesty's Treasury*)

Hill, Mike (*Hartlepool*) (Lab)

Holmes, Paul (*Eastleigh*) (Con)

† McGinn, Conor (*St Helens North*) (Lab)

Osborne, Kate (*Jarrow*) (Lab)

† Owatemi, Taiwo (*Coventry North West*) (Lab)

† Pursglove, Tom (*Corby*) (Con)

† Tami, Mark (*Alyn and Deeside*) (Lab)

Thomson, Richard (*Gordon*) (SNP)

† Throup, Maggie (*Lord Commissioner of Her Majesty's Treasury*)

Tomlinson, Michael (*Lord Commissioner of Her Majesty's Treasury*)

Bradley Albrow, *Committee Clerk*

† **attended the Committee**

Third Delegated Legislation Committee

Wednesday 17 March 2021

[MRS MARIA MILLER *in the Chair*]

Draft Extradition Act 2003 (Codes of Practice and Transit Code of Practice) Order 2021

9.25 am

The Chair: Before we begin, I remind Members to observe social distancing and to sit only in the places that are clearly marked. I remind everyone that Mr Speaker has stated that Members should wear masks in Committee, except when speaking. *Hansard* colleagues would be grateful if Members could send their speaking notes by email, if at all possible.

The Parliamentary Under-Secretary of State for the Home Department (Kevin Foster): I beg to move,

That the Committee has considered the draft Extradition Act 2003 (Codes of Practice and Transit Code of Practice) Order 2021.

It is a pleasure to serve under your chairmanship in this type of Committee for the second week running, Mrs Miller. I wish the Committee—especially my good friend the hon. Member for St Helens North (Conor McGinn), the shadow Minister—a happy St Patrick's day.

The order will update our existing codes of practice for police powers under the Extradition Act 2003, and will introduce a new code of practice for non-UK extradition transit.

I will deal first with the codes covering the police powers. These revised codes of practice govern the way in which police use their powers under part 4 of the 2003 Act. They relate to search and seizure, applications for warrants and production orders, entry to premises, and the treatment of detained persons after arrest in extradition cases. The updated codes take account of changes that have been made to the relevant Police and Criminal Evidence Act 1984 codes of practice—commonly known as the PACE codes—on which extradition codes of practice are based.

The update codes also incorporate necessary changes brought about by the new power of arrest granted in the Extradition (Provisional Arrest) Act 2020, which, as Members may recall, was passed by the House last year with widespread support. The codes of practice currently in use were published in September 2011. The changes therefore bring the codes fully up to date, providing operational clarity for policing. Amendments have also been made to set out more clearly the procedural rights for individuals on arrest and throughout the subsequent extradition proceedings.

The code of practice for non-UK extradition transit will provide the basis for transit through the United Kingdom in extradition cases. That will enable the UK to fulfil certain treaty obligations, including those established as part of the new surrender arrangements with the

European Union. Extradition transit occurs when a country allows an individual who has been extradited to pass through its territory, while remaining in police custody throughout, when a direct route between the countries concerned by the extradition request is not possible, or other reasons make it undesirable.

For clarity, if the order is approved by Parliament, the codes will be brought into operation on 1 May 2021. I hope that I have clearly set out the purpose of the two codes, which I commend to the Committee.

9.28 am

Conor McGinn (St Helens North) (Lab): It is a pleasure to serve under your chairmanship for the first time, Mrs Miller. I thank the Minister for his good wishes for St Patrick's day, and I extend mine to all colleagues in the Committee.

The Opposition will not oppose the codes. They are functional and practical, clarifying roles, responsibilities, and the need for officers to understand and uphold rights. I thank the Minister and his private office for their customary courtesy in engaging with us on these matters. I do have some questions for him, however.

First, we welcome the fact that both codes have been duly strengthened by feedback from relevant agencies, organisations, operational partners and, indeed, devolved institutions where appropriate, during a process of consultation. It is our view that such consultation is not simply a tool of scrutiny and oversight; it often vastly improves policy. The changes made in the SI, such as greater clarity on procedural rights throughout the extradition process and more clarity on the new power of arrest, are testament to that.

On the consultation, the formal response paper published by the Home Office outlines that suggestions were put forward on the issue of search and seizure of provisions, and indeed on legal professional privilege material, but it then concluded that these concerns were already adequately reflected in the codes. Can the Minister give some additional assurances on that? Perhaps he could explain what the original concerns were and why they would be raised if they had already been addressed. As I have said in previous Committees on which we have served together, I understand that officials are not present and I am happy for the Minister to write to me, because these are technical matters.

Secondly, we also know that concerns were raised about the then unknown future provisions for extradition proceedings with EU member states post Brexit, and of course about the lack of clarity right up to the 11th hour. I have great sympathy with such concerns: they are an expression of similar ones outlined by Opposition colleagues and those across the House on many occasions. But now we know about the arrangements, however, so can the Minister update us on their implementation? What are the experiences of police and operational partners on their operational efficacy? In practical terms, are they working? In short, is extradition now working as frictionlessly as under the previous regime?

I can give the Minister some feedback, which perhaps he might pass on to his colleague the Prime Minister. It comes not from the Opposition but from some of his own colleagues, including former Cabinet Minister David Lidington and other esteemed and highly regarded Conservative Ministers, who said in February that the

Prime Minister was not being ambitious enough on security relations with our closest partners, and that the UK is less safe and secure as a result—not least given that, they say, some criminals will not be extradited under the current state of play. It is incumbent on the Minister to respond to some of those charges, because they are quite significant.

Finally, on the new power of arrest, we have always said that we would look studiously at the practical implementation and operational impact of the Extradition (Provisional Arrest) Act 2020 during its passage. Can the Minister give us an update on how it is functioning? Is it working, and what has been the feedback from operational partners?

To conclude, we will not oppose the SI. As I have said, the codes are practical and functional, and we do not wish to impede the measures or put operational clarity at risk for police working in this field, but we welcome the changes that have come out of the consultation.

As I have said on many occasions before, national security and the protection of families and communities is, and always will be, a top priority for the Labour party. On extradition, as elsewhere, our approach will always be one that supports our hard-working police and their strategic colleagues as they undertake vital tasks, while also ensuring that we place rights and freedoms at the heart of everything we do.

9.33 am

Kevin Foster: I thank the shadow Minister for the overall constructive tone of the comments that he has just made, and for the general support that he provides as shadow Minister to work in this area. We agree that people who have committed serious crimes that would be crimes in the United Kingdom should not escape to our shores as a way to avoid justice and facing cases that they are rightfully being asked to answer in foreign jurisdictions.

I will respond to the three specific questions that the hon. Gentleman asks. On the first one, I am happy to provide slightly more detail in writing. I can provide some reassurance that, in many cases, the codes of practice are very similar to the codes of practice under PACE. There is a lot of similarity, and in many cases the police would normally follow those as a default if there were any uncertainty about things such as legal access, the position with lawyers, and of course the very important principle of legal privilege and people being able to access legal advice during a process where potentially their liberty may be on the line.

On the operational positions with the European Union, our initial feedback is that they appear to be working fairly well. For clarity, those under the former European arrest warrant were carried over into the new system, and surrender requests have been issued under the new system. Our understanding from police operational colleagues is that they are working fairly well; of course, it is too early to have published detailed figures and analysis. I am sure that the shadow Minister will accept that we need to have had a period with them in place, and particularly a period without a global pandemic, which is inherently reducing people's ability to travel and therefore to attempt to come to or leave the UK, if they are wanted for an offence.

The shadow Minister will be aware that some EU states have fundamental bars on the extradition of their own nationals beyond the European Union. I have placed in the Library the list of countries that have given us those notifications. We continue to engage with them, but to be clear we do not have a principle of reciprocity. We believe quite firmly as a Government that if our nationals have a case to answer in a friendly democracy on a matter that would be an offence here in the UK, and we are satisfied that it is not a political crime or charge, they should go to that country and answer that case.

The shadow Minister rightly highlighted the new provisions that allow police officers to arrest someone where there is evidence that they are wanted for a serious crime by one of our key international partners, certified by the National Crime Agency. Again, we very much appreciated his support during the process for that legislation. As he will know, there have been incidents where a police officer with access to Interpol and certified alerts encountered someone here in the UK and, because of a loophole in the law, could not immediately detain them pending a formal request for extradition of that person being made—in one case, that resulted in a child sex offender literally being able to walk away from the police, even though they were wanted in a friendly jurisdiction.

Those measures are starting and they are working. Police officers already had the information that they needed on their systems. The best way of putting it is that it has cleaned up and made much simpler the process of quickly bringing someone into custody if they are wanted. For the benefit of the Committee, I should say that the countries that it affects are effectively our Five Eyes partners. They are the main ones that we have designated so far, and we could of course designate more friendly democratic countries whose criminal justice systems we are satisfied operate independently of any political or other concerns.

Finally, it is worth putting on the record that the two orders do not extend or change in any way the matters for which someone can be extradited from this country. To again reassure the Committee, we would permit transit only where it is between countries to which we would usually extradite. The Committee will be aware that we do not agree extradition to all countries in the world, given our concerns about human rights.

Conor McGinn: You do trade deals, though.

Kevin Foster: We are not proposing to do a trade deal with one or two countries, that is for sure. To reassure the Committee, we would not allow transit if, for example, the death penalty may be an issue, such as in the United States. We would seek our normal death penalty assurances if transit were happening through the United Kingdom, or for matters that were not crimes within the United Kingdom.

I think that this has been a productive session, and we look forward to getting the measures in place on 1 May.

Question put and agreed to.

9.38 am

Committee rose.

