EXPLANATORY MEMORANDUM TO

THE EXTRADITION ACT 2003 (AMENDMENTS TO DESIGNATIONS) ORDER 2020

2020 No.

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Extradition Act 2003 (Designation of Part 1 Territories) Order 2003 (S.I. 2003/3333) ("the Part 1 Order") to designate Norway and Iceland as Part 1 territories.

2.2 This instrument also amends the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003 (S.I. 2003/3334) ("the Part 2 Order") to designate Kuwait and Morocco as Part 2 territories, and to remove the designation of Norway and Iceland as Part 2 territories.

2.3 This instrument also provides the timeframes in which documents must be provided by Kuwait and Morocco in provisional arrest warrant cases.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes includes Scotland and Northern Ireland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 226 (Extent) of the Extradition Act 2003) and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is to the whole of the United Kingdom.

5. European Convention on Human Rights

5.1 Brandon Lewis, Minister of State has made the following statement regarding Human Rights:

"In my view the provisions of the Extradition Act 2003 (Amendments to Designations) Order 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The Extradition Act 2003 ("the 2003 Act") provides for two distinct sets of procedures to apply to incoming extradition requests. Part 1 of the 2003 Act implements mutual recognition instruments (in particular, the European Arrest Warrant Framework Decision) and is a more simplified and streamlined system which does not involve the Secretary of State. Part 2 of the 2003 Act covers other territories that the United Kingdom has extradition relations with which are not operating the simplified procedure. Part 2 of the 2003 Act requires decisions by both the Secretary of State and the courts. It is applied to territories which are outside mutual recognition instruments but with which the UK has extradition relations though either a bilateral treaty or multi-lateral treaty, such as the Council of Europe Convention on Extradition 1957.

6.2 The Part 1 Order (made under section 1 of the 2003 Act) designates territories for the purpose of Part 1 of the 2003 Act. This Order amends the Part 1 Order to designate Norway and Iceland under Part 1 of the 2003 Act following the implementation of the EU-Norway/Iceland Surrender Agreement ("the Surrender Agreement") which enters into force on 1 November 2019. The Surrender Agreement facilitates the exchange of warrants between judicial authorities through a mutual recognition instrument which operates in a similar way to the European Arrest Warrant Framework Decision. This enables Norway and Iceland to send and receive warrants through the Schengen Information System (SIS II) and for those warrants to be executed through a simplified mutual recognition system.

6.3 The designation of Norway and Iceland under Part 1 of the 2003 Act has been made subject to a modification of the 2003 Act in respect of extradition requests from Norway and Iceland. Section 64(5) of the 2003 Act specifies a condition which must be met to satisfy the dual criminality requirement (which is that the offence for which the person is wanted is an offence in both the requesting State and the State where the person is requested from). Section 64(5) refers to the European framework list, which is set out in Article 2 of the European Arrest Warrant Framework Decision, and which is a list of serious offences to which the dual criminality requirement does not apply. The UK has declined to take up the option of waiving the dual criminality requirement foreseen in the Surrender Agreement in respect of the list of offences and this provision will therefore not be applied.

6.4 The Part 2 Order (made under section 69 of the 2003 Act) designates territories for the purpose of Part 2 of the 2003 Act. The Part 2 Order also lists those territories which are afforded a longer period in which to provide full extradition papers in cases of provisional arrest. Those papers must normally be provided to the judge within 45 days of arrest (under section 74 of the 2003 Act) unless that period is extended by order of the Secretary of State, in accordance with section 74(11)(b).

6.5 This Order will amend the Part 2 Order to designate Kuwait and Morocco as Part 2 territories. The designations follow from the UK and Kuwait signing a bilateral extradition treaty on 15 December 2016 and the UK and Morocco signing a bilateral extradition treaty on 15 April 2013. The respective countries have confirmed completion of their formalities for ratifying the treaties. This took some time, particularly in respect of Morocco, as the treaty required royal agreement.

6.6 Additionally, this Order implements a statutory deadline of 65 days for Kuwait and Morocco to submit an extradition request in circumstances where an individual is

provisionally arrested pending the receipt of a full extradition request. The time limit reflects requirements in the treaties to submit the request to the Secretary of State within 60 days. It then allows for a further five days to enable the Secretary of State to certify a request and provide the documents to the appropriate judge

7. Policy background

What is being done and why?

7.1 Norway and Iceland are being designated as Part 1 territories under the 2003 Act in order to implement the Surrender Agreement. The designation of Norway and Iceland under Part 1 of the 2003 Act will replace their current designation under Part 2 of the 2003 Act. They are currently designated under Part 2 because they are signatories to the Council of Europe Convention on Extradition 1957. The designations under Part 1 of the 2003 Act have been made subject to a specified modification in respect of dual criminality because it is not government policy to waive dual criminality under the Surrender Agreement.

7.2 The Surrender Agreement was signed in 2014. However, the Agreement could not enter into force until Member States had made the necessary declarations to allow the European Council to proceed with its ratification. The final declaration was made on 29 August 2019 and the Surrender Agreement subsequently entered into force on 1 November 2019. The designation of Norway and Iceland under Part 1 of the 2003 Act will therefore enable the UK to implement the Agreement in accordance with our international obligations and provide the necessary legal basis for the processing of warrants from Norway and Iceland.

7.3 Kuwait and Morocco are being designated as Part 2 territories under the 2003 Act in order to implement bilateral extradition treaties with them. The designation of Kuwait and Morocco under Part 2 of the 2003 Act will allow the UK to process extradition requests from Kuwait and Morocco in line with the official obligations of the treaties.

7.4 The treaties with Kuwait and Morocco allow extradition to be requested for any offence punishable under the laws of both Contracting Parties by a sentence of at least 12 months imprisonment or another form of detention, or by a greater punishment. Extradition can also be sought where a person has been convicted and a sentence of imprisonment or another form of detention of a term of 4 months or more has been imposed and the conduct is punishable under the laws of the Requested Party by a maximum sentence of at least 12 months' imprisonment or another form of detention, or by a greater punishment. The evidential requirements set out in the respective treaties mean that the requesting state must establish a prima facie evidential case in respect of any person whom they wish to extradite. The treaties specifically refer to several grounds on which extradition may be refused; these include where extradition would breach the human rights of the person whose extradition is sought. Although the consideration of human rights is matter for the courts, the treaties set out the key standards and expectations which would have to be met before extradition could be progressed.

7.5 The treaties with Kuwait and Morocco will be ratified once the designations have been made.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 The Surrender Agreement was subject negotiations across all EU Member States and the UK has had the opportunity to make declarations on its operation under UK law.

10.2 The Home Office consulted across government before negotiating the treaties with Kuwait and Morocco. This included discussions with the Devolved Administrations, law enforcement partners and the Foreign and Commonwealth Office.

11. Guidance

11.1 None.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there is no additional impact on business, charities or voluntary bodies as this instrument applies to co-operation in judicial matters. The number of requests routinely exchanged with the countries concerned are such that no significant impact on public sector bodies is foreseen.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is for the Home Office to closely monitor the impact of this Order and as well as intermittently reviewing all relevant designations.

15. Contact

15.1 Amanda Shiels at the Home Office Telephone: 020 7035 1264 or email: Amanda.Shiels@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Lizzy Gummer at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Brandon Lewis, Minister of State at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.