EXPLANATORY MEMORANDUM TO

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

2021 No. 530

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 brings updated Extradition Act 2003 ("the 2003 Act") Police Powers Codes of Practice and the new Code of Practice for Non-UK Extradition Transit into operation. The Secretary of State is required to provide Codes of Practice for the exercise of these powers by the police.

2.2 The 2003 Act Police Powers Codes of Practice are made under section 173(1) of the Act and are an updated version of those currently in use. The updates reflect changes made to relevant Police and Criminal Evidence Act 1984 Codes of Practice ('the PACE Codes'), upon which the Extradition Codes of Practice are based, and take account of the new power of arrest introduced by the Extradition (Provisional Arrest) Act 2020. The revisions are necessary to provide operational clarity for police in extradition cases. These codes apply in England and Wales and Northern Ireland.

2.3 The Code of Practice for Non-UK Extradition Transit is issued by the Secretary of State in accordance with section 189D of the 2003 Act. The transit provisions, which are added as sections 189A-C to 2003 Act, apply to extradition cases when a person is being extradited from one territory to another and where neither territory is the UK. The provisions enable transit through the UK by providing the police with the appropriate powers to facilitate any transit agreed. The provisions cannot be enacted without this Code coming into operation in parallel. This code applies throughout the UK.

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 varies between provisions.

4. Extent and Territorial Application

4.1 The territorial application and extent of the Extradition Act 2003 Police Powers Codes of Practice includes England, Wales and Northern Ireland.

4.2 The territorial application and extent of the Extradition Act 2003 Code of Practice for Non-UK Extradition Transit is the whole of the UK.

5. European Convention on Human Rights

5.1 Kevin Foster, Parliamentary Under Secretary of State has made the following statement regarding Human Rights:

"In my view the provisions of the Extradition Act 2003 (Codes of Practice and Transit Code of Practice) Order 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 The Extradition Act 2003 Police Powers Codes of Practice are a revised version of existing Police Powers Codes. The Secretary of State is required to issue these Codes under section 173(1) of the 2003 Act to cover the exercise of police powers in extradition cases as set out under Part 4 of the Act. The powers relate to search and seizure of premises and persons, application for warrants and production orders, entry to premises and the treatment of detained persons after arrest in extradition cases.

6.2 Transit provisions were enacted through amendments to the Extradition Act 2003 made via section 168 of the Anti-Social Behaviour, Crime and Policing Act 2014. These are to be inserted under sections 189A-C of the 2003 Act and commenced by this Order. These provisions cannot be enacted without the Code of Practice for Non-UK Extradition Transit coming into operation in parallel. Section 189D of the Act requires the applicable Code be issued by the Secretary of State, setting out those powers for police under sections 189A - 189C of the Act. These govern provisions for the escorting, taking into custody and searching of persons who are subject to transit and the retention, use and return of anything seized in a search.

7. Policy background

What is being done and why?

7.1 The Secretary of State is required to issue Codes of Practice in respect of the use of police powers in extradition cases under the 2003 Act.

7.2 The 2003 Act Police Powers Codes of Practice are a revised version of existing Police Powers Codes which were published in 2011. (https://www.gov.uk/government/publications/extradition-act-2003-police-codes-of-practice). It is therefore necessary to update these codes to reflect the use of police powers in relation to the relevant updated PACE codes as well as the new power of arrest brought about by the Extradition (Provisional Arrest) Act 2020. The updated Codes of Practice will provide operational clarity for police in terms of how they operate in relation to PACE Codes and how arrests are to be carried out in relation to these new arrest powers. These codes do not apply to Scotland.

7.3 In accordance with Section 189D of the 2003 Act, the Transit Code of Practice issued by the Secretary of State sets out the powers for police during non-UK extradition transit under sections 189A to 189C of the Act. Extradition transit refers to a country allowing a person who is being extradited for the purpose of standing trial or serving a sentence to pass through its territory in custody. Transit provisions under sections 189A-C of the 2003 Act will enable transit through the UK by providing the police with the appropriate powers to facilitate any transit agreed. Section 189A of the 2003 Act allows a certificate to be issued to give the police the powers necessary to facilitate a transit through the UK by authorising a constable or other authorised officer to escort the person from one form of transportation to another, to take the

person into custody to facilitate the transit, and to search for any item which they may use to cause physical injury. Section 189B also provides powers for the police to detain a person for up to 72 hours or until a transit certificate is issued, if an unscheduled transit occurred. The executing authority has discretion as to whether to issue a certificate to permit transit.

7.4 The 2003 Act requires that where the Secretary of State intends to issue a Code, a draft is published and any representations made about the draft should be considered and modifications made, if appropriate. Revised 2003 Act Police Powers Codes were consulted on in 2015 and again in 2020 following changes arising from the new power of arrest brought about by the Extradition (Provisional Arrest) Act 2020. The draft Transit Code of Practice was published for consultation in 2015. Some modifications were made following consultation and further modifications were recently made via direct consultation with operational partners and the Devolved Administrations alongside consideration as to its practical operation.

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 Following consultation, the Extradition Act 2003 Police Powers Codes have been further amended to include greater clarity on procedural rights for people at the point of their arrest and within the ensuing proceedings. There have also been some minor clarificatory amendments relating to the new power of provisional arrest introduced by the Extradition (Provisional Arrest) Act 2020 for specified category two territories under section 74A of the Extradition Act 2003.

10.2 The Transit Code of Practice was published for consultation in 2015 and some modifications were made following this consultation. Further consultation has recently taken place with operational partners and the Devolved Administrations on this Code alongside considerations of how the transit provisions will operate in practice across the extradition system. This has resulted in some further minor modifications.

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. 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.

15. Contact

15.1 Amanda Shiels at the Home Office Telephone: 07776 361779 or email: Amanda.Shiels@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Andrew Cooke-Welling at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kevin Foster, Parliamentary Under Secretary of State at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.