The Coronavirus Act 2020 and the Extradition Act 2003

1. I have drafted this short note to explain the amendments to the Extradition Act 2003 brought about by the Coronavirus Act 2020.

2. The Coronavirus Act 2020 received royal assent on 25 March 2020. The provisions amending the Extradition Act 2003 came into force on that day (s.87).

3. The provisions of the 2020 Act expire at the end of 2 years from 25 March 2020 (s.89 subject to various savings provisions).

4. Section 54 of the Coronavirus Act extends the availability of live links in proceedings by bringing schedule 24 into force. S.54(b) applies that schedule to the Extradition Act 2003.

5. Schedule 24 (page 309 of the PDF version of the Act) expands the circumstances in which live links can be used in various criminal proceedings including preliminary hearings, sentencing hearings and enforcement hearings.

6. Paragraphs 8-10 of Schedule 24 (pages 323-324 of the PDF version of the Act) modify Sections 206A and 206C of the Extradition Act 2003 to permit extradition hearings to be conducted by live link under both parts 1 and 2 of the 2003 Act.

7. As amended, section 206A of the Extradition Act 2003 reads as follows:

   206A Use of live links at hearings
   (1) This section applies in relation to—
   (a) a hearing before the appropriate judge in proceedings under Part 1,
   (b) a hearing before the appropriate judge in proceedings under Part 2.

   (2) If satisfied that it is in the interests of justice to do so, the appropriate judge may give a live link direction.

   (3) A live link direction is a direction requiring a person to take part in the hearing through a live link.

   (3A) The power to give a live link direction under this section includes the power to give a direction to all or any of the following persons to take part in the hearing through a live link—
   (a) the appropriate judge,
   (b) the person affected by the extradition claim,
   (c) any other party,
   (d) the prosecutor or any other legal representative acting in the hearing,
   (e) any witnesses in the hearing, and
   (f) any interpreter or other person appointed by the court to assist in the hearing.

(4) Such a direction—
(a) may be given on the appropriate judge's own motion or on the application of a party to the proceedings, and
(b) may be given in relation to all subsequent hearings to which this section applies, or to such hearing or hearings to which this section applies as may be specified or described in the direction.

(5) […]

(6) A person affected by an extradition claim is to be treated as present in court when, by virtue of a live link direction, the person attends a hearing through a live link.

8. Section 206Cais amended now reads as follows:

206C Live links: interpretation
(1) This section applies for the purposes of section 206A and subsections (2) and (3) also apply for the purposes of section 206B.

(2) In relation to proceedings under Part 1, section 67 applies for determining the appropriate judge.

(3) In relation to proceedings under Part 2, section 139 applies for determining the appropriate judge.

(4) A person is affected by an extradition claim if—
(a) a Part 1 warrant is issued in respect of the person;
(b) the person is arrested under section 5;
(c) a request for the person's extradition is made; or
(d) a warrant under section 73 is issued in respect of the person.

(5) **[…]**

(6) "Live link" means an arrangement by which a person (P), is able—
(a) to see and hear all other persons taking part in the hearing who are not in the same location as P, and,
(b) to be seen and heard by all other persons taking part in the hearing who are not in the same location as P,
and for this purpose any impairment of eyesight or hearing is to be disregarded.

9. The amended sections 206A and 206C with the changes showing are as follows (deleted text is in red and new text is in blue unamended text is in black):

206A Use of live links at ~~certain~~ hearings
(1) This section applies in relation to—
(a) a hearing before the appropriate judge in proceedings under Part 1~~, other than —~~
~~(i) an extradition hearing within the meaning of that Part;~~
~~(ii) a hearing under section 54 or 56, and~~
(b) a hearing before the appropriate judge in proceedings under Part 2, ~~other than an~~

~~extradition hearing within the meaning of that Part.~~
(2) If satisfied that the ~~person affected by an extradition claim is likely to be in custody during the hearing~~, it is in the interests of justice to do so the appropriate judge may give a live link direction ~~at any time before the hearing~~.

(3) ~~A live link direction is a direction that, if the person is being held in custody at the time of the hearing, any attendance at the hearing is to be through a live link from the place at which the person is held.~~
A live link direction is a direction requiring a person to take part in the hearing through a live link.

(3A) The power to give a live link direction under this section includes the power to give a direction to all or any of the following persons to take part in the hearing through a live link—
(a) the appropriate judge,
(b) the person affected by the extradition claim,
(c) any other party,
(d) the prosecutor or any other legal representative acting in the hearing,
(e) any witnesses in the hearing, and
(f) any interpreter or other person appointed by the court to assist in the hearing.

(4) Such a direction—
(a) may be given on the appropriate judge's own motion or on the application of a party to the proceedings, and
(b) may be given in relation to all subsequent hearings to which this section applies, or to such hearing or hearings to which this section applies as may be specified or described in the direction.

(5) ~~The appropriate judge may give such a direction only if satisfied that it is not contrary to the interests of justice to give the direction.~~

(6) ~~A person affected by an extradition claim is to be treated as present in court when, by virtue of a live link direction, the person attends a hearing through a live link.~~
A person affected by an extradition claim is to be treated as present in court when, by virtue of a live link direction, the person attends a hearing through a live link.

206C Live links: interpretation
(1) This section applies for the purposes of section 206A and subsections (2) and (3) also apply for the purposes of section 206B.

(2) In relation to proceedings under Part 1, section 67 applies for determining the appropriate judge.

(3) In relation to proceedings under Part 2, section 139 applies for determining the appropriate judge.

(4) A person is affected by an extradition claim if—
(a) a Part 1 warrant is issued in respect of the person;

(b) the person is arrested under section 5;
(c) a request for the person's extradition is made; or
(d) a warrant under section 73 is issued in respect of the person.

(5) References to being in custody include —
(a) in England and Wales, references to being in police detention within the meaning of the Police and Criminal Evidence Act 1984;
(b) in Northern Ireland, references to being in police detention within the meaning of the Police and Criminal Evidence (Northern Ireland) Order 1989
(c) [...]

(6) "Live link" means an arrangement by which a person, (P) while absent from the place where the hearing is being held, is able—
(a) to see and hear the appropriate judge, and other persons, all other persons taking part in the hearing who are not in the same location as P, and
(b) to be seen and heard by the judge, other persons, all other persons taking part in the hearing who are not in the same location as P,
and for this purpose any impairment of eyesight or hearing is to be disregarded.

10. I hope this note is of use to extradition practitioners and judges in understanding the changes to the Extradition Act 2003 brought into force by the Coronavirus Act 2020.

11. If there are any errors or omissions in this document they are mine, please bring them to my attention.

Daniel Sternberg

26th March 2020