

Extradition Bill

Explanatory Notes

(These Notes need to be read in conjunction with the Bill)

1. Overview

Extradition is the process by which a person who has been convicted or accused of a serious offence in one country can be transferred from the country where they are present to face justice in the other country.

No one should be able to escape justice by simply crossing a border. The law should provide a quick and effective framework to extradite a person to the country where they are accused or have been convicted of a serious crime, provided that this does not breach their fundamental human rights.

Whilst there have been some high profile extradition cases that have been controversial, complex and sensitive, extradition is an important tool in the fight against serious crime and terrorism. Extradition is normally underpinned by international treaties and agreements and other reciprocal arrangements.

The extradition legislation that currently applies in the Isle of Man is the UK's [Extradition Act 1989](#) ("the 1989 Act"), which was essentially a consolidation of three earlier Acts of the UK Parliament: Part 1 of the Criminal Justice Act 1988, the Fugitive Offenders Act 1967 and the Extradition Act 1870 (as amended). The 1989 Act has been repealed by the UK for itself (and replaced by the [Extradition Act 2003](#)) but it continues to apply to the Island.

Historically, extradition was considered to be an issue where it was appropriate for the UK to legislate for the Crown Dependencies given the UK's constitutional responsibility for the Islands' international relations. It is still the case that the UK is responsible for the extension of international agreements relating to extradition to the Isle of Man. However, with the evolution of the constitutional relationship in recent decades it is now seen as more appropriate for the Crown Dependencies to deal with extradition through their own legislation. This is in line with the usual position for international treaties, conventions and agreements where the UK is responsible in international law but the Island is responsible domestically for implementation.

The UK's 1989 Act also used to apply to Jersey and Guernsey but they both now have their own legislation – the [Extradition \(Jersey\) Law 2004](#) and the [Extradition \(Bailiwick of Guernsey\) Law 2019](#) respectively.

The 1989 Act is out-dated and may not fully comply with modern standards¹. The purpose of this Bill is to provide an up to date framework in Manx primary legislation for extradition from and to the Island.

In drafting the Bill for consultation purposes the provisions of the UK's Extradition Act 2003, the Extradition (Jersey) Law 2004 and the Extradition (Bailiwick of Guernsey) Law 2019 have been taken into account. Where appropriate for the Island, equivalent or similar provisions have been included in the Bill, but elsewhere they have either been omitted or amended to fit the Island's circumstances.

¹ For example, in recent years there have been reviews of the UK's legislation which have led to increased protections in the extradition process.

The Bill is designed to ensure trivial offences do not lead to extradition proceedings. The conduct in question must constitute an offence under Manx law punishable with at least 12 months' custody if it occurred in the Island; that is to say, a fairly serious criminal offence. Even for serious offences, the Bill includes significant safeguards for circumstances that may result in a breach of human rights or not be in the interests of justice.

The extradition process begins with a request from the territory seeking a person's extradition. The person concerned is brought before the High Bailiff ("the court") on an extradition arrest warrant. At the extradition hearing, the court must decide whether the request papers are in order, and whether there are any legal bars to the person's extradition. The court must also consider whether extradition would infringe the person's human rights. If any of these circumstances apply, the court must discharge the person. The court in any case has discretion to discharge a person, or to postpone proceedings, on account of the person's health. If none of those considerations applies, the court must send the case to the Attorney General, who then has to decide whether to order the person's extradition.

A person whose extradition has been requested has a right of appeal to the High Court of the Isle of Man, and from there to the Privy Council² (if leave is given), against decisions relating to extradition from the Island.

Extradition can generally only take place between the Island and designated countries and territories, for example those that have signed up to the European Convention on Extradition or where a bilateral extradition agreement or arrangement is in place.

It is expected that any cases where extradition either from or to the Isle of Man is sought will be extremely rare but the Island should still have modern legislation in place for when any cases do arise. Bodies such as MONEYVAL expect all countries to have appropriate extradition legislation in place.

Readers of this document may wish to note that the 1989 Act does not deal with the transfer of a person within the British Islands (the UK, the Isle of Man and the Channel Islands), nor will the new legislation. Such transfers are not considered to be, and not treated as, extradition. There are very longstanding arrangements in the criminal justice legislation of each jurisdiction, such that an arrest warrant issued in one jurisdiction may be backed by a court in another jurisdiction and the person then sent to the jurisdiction that issued the warrant. In the Isle of Man, section 81 of the [Summary Jurisdiction Act 1989](#) is the current legal basis in Manx law for the backing of warrants issued in the UK or the Channel Islands.

The Bill will involve a change to the arrangements for the transfer of suspects between the Isle of Man and the Republic of Ireland. The legislation that currently deals with this matter is the UK's Backing of Warrants (Republic of Ireland) Act 1965 which extended directly to the Isle of Man and the Channel Islands. As with the Extradition Act 1989, this Act was repealed for the UK itself by the Extradition Act 2003 but it continues to apply to the Isle of Man. Under the Island's proposed Extradition Bill where a person residing in the Isle of Man was wanted in Ireland, or vice versa, the request would be dealt with under normal extradition provisions rather than on a simple backing of warrants basis. This is already the position between Ireland and the UK, and between Ireland and Jersey or Guernsey.

It is not considered that the Bill will require any additional financial or personnel resources.

It is considered the Bill is compatible with the Convention rights within the meaning of the [Human Rights Act 2001](#).

² The Judicial Committee of the Privy Council in the United Kingdom is the highest court for appeals from the Isle of Man.

2. Description of the Bill's provisions

Part 1 – Introductory Provisions

Clauses 1 to 3 deal with the short title, the commencement and the application provisions. The Act will come into operation on a day appointed in an order to be made by the Department of Home Affairs. Subject to a limited exception for genocide, crimes against humanity and war crimes the Act will only apply to extradition requests made after it comes into operation.

Clauses 4 to 11 contain provisions concerned with interpretation.

Clause 4 contains general definitions.

Clause 5 explains the expression "extradition offence" when used in relation to a person who is accused but not yet convicted of an offence in a designated territory, or who has been convicted of the offence but not yet sentenced for it. In those circumstances, it means any of the following –

- (a) conduct that occurs in the designated territory, which would be an offence if committed in the Island, and is punishable in both places by custody for at least 12 months,
- (b) conduct that occurs outside the designated territory, but that is punishable in the territory by detention for not less than 12 months, and in corresponding circumstances would in the Island be an extra-territorial offence punishable by custody for at least 12 months,
- (c) conduct that occurs outside the designated territory and the Island, and is punishable in the designated territory by custody for at least 12 months, and constitutes, or if committed in the Island would constitute an offence relating to genocide, crimes against humanity or war crimes.

However, this clause must be read subject to *clause 7 (military offences)*.

Clause 6 explains the expression "extradition offence" when used in relation to a person who has been sentenced in a designated territory for the offence for which their extradition is sought. In those circumstances, it means any of the following –

- (a) conduct that occurs in the designated territory for which they have been sentenced to custody or detention for at 4 months and which would if committed in the Island be an offence punishable by custody for at least 12 months,
- (b) conduct that occurs outside the designated territory, for which they have been sentenced in the designated territory to custody or detention for at 4 months and that would in corresponding circumstances be regarded in the Island as an extra-territorial offence punishable by detention for at least 12 months,
- (c) conduct that occurs outside the designated territory and the Island that constitutes in the Island or, if committed in the Island, would constitute an offence relating to genocide, crimes against humanity or war crimes and be punishable by custody for at least 12 months and for which they have been sentenced in the designated territory to custody or detention for at 4 months.

This clause is also subject to *clause 7 (military offences)*.

Clause 7 provides that if an offence under the military law of a designated territory is not an offence under the general criminal law of the Island, it will not be regarded in the Island as an extradition offence.

Clause 8 specifies the date (“the appropriate day”) from which time limits for the purposes of *clauses 43 (Attorney General’s consideration of case)* and *49 (Time limit for order for extradition or discharge)* are to be calculated.

Clause 9 explains when a request for extradition is taken to have been disposed of and **clause 10** explains when a charge is to be taken to have been disposed of.

Clause 11 explains what is meant by a person being unlawfully at large.

Clause 12 sets out the meaning of designated territories. These are the territories specified Part 1 and Part 2 of Schedule 1. Generally extradition can only take place between the Island and one of these territories. The different classes reflect the nature of extradition arrangements between the UK and the various countries involved, and the principal difference between them is that for some states the provision of information is sufficient whereas for others a prima facie case has to be demonstrated. These arrangements extend to the Isle of Man and so need to be reflected in the Island’s law. The list of territories in Schedule 1 follows those in the legislation of Jersey and Guernsey, which in turn were based on the list of category 2 territories under the UK’s Extradition Act 2003³.

The Council of Ministers may, by order with Tynwald affirmation, amend the list or description of designated territories set out in *Schedule 1* (for example, if a new extradition arrangement is entered into by the UK and extended to the Island).

Part 2 – Extradition from the Island

This Part sets out the procedures to be followed for requests to the Island for the extradition of a person to a designated territory.

Clause 13 requires the Attorney General, on receipt of a valid request for the extradition of a person in the Island to such a territory, to issue a certificate that a valid request has been received.

A request is valid if it states that the person is accused in the territory of an offence specified in the request, or is unlawfully at large after conviction by a court in the territory of such an offence, and it is made in the approved way. The request is made in the approved way if it is made by or on behalf of the appropriate authority in the territory.

On issuing a certificate, the Attorney General sends it with the request to the High Bailiff. However, this clause is subject to *clause 76*, under which the Attorney General may defer a request if there are competing requests for extradition. At this stage the Attorney General does not consider whether the extradition would be compatible with the Human Rights Convention rights, as that is considered fully by the court later in the process.

Arrest

Clauses 14 to 17 provide for the issue of an extradition arrest warrant, and the procedure to be followed on executing the warrant.

Clause 14 authorises the High Bailiff, after receiving the Attorney General’s certificate, to issue a warrant for the person’s arrest.

³ Category 1 territories under the UK’s 2003 Act were those to which the EU’s European Arrest Warrant extradition arrangements applied and are now those covered by the UK – EU Trade and Cooperation Agreement.

The High Bailiff may do so if they have reasonable grounds for believing that the offence is an extradition offence, and there is sufficient information (in the case of a Part 1 designated territory) or evidence (in the case of a Part 2 designated territory) to justify the arrest of a person accused of the offence or unlawfully at large after conviction for the offence. The warrant may be executed by any police officer.

Clause 15 provides that a person arrested under a warrant must be given a copy of the warrant as soon as possible. The person must also be brought before the High Bailiff as soon as practicable, unless the Attorney General decides under *clause 76* to defer the request because there is a competing request for the person's extradition.

If the person is not given a copy of the warrant promptly he or she may apply to the High Bailiff to be discharged. The High Bailiff has discretion to order the person's discharge. If the person is not brought before the High Bailiff as required under the clause he or she may apply to the High Bailiff to be discharged. In that event, the High Bailiff must order the person's discharge.

When the person is brought before the High Bailiff, they must be informed of the contents of the request for extradition. The High Bailiff must explain that the person may consent to being extradited, and what will happen if the person consents. The person must also be told that consent, once given, is irrevocable. The High Bailiff must remand the person in custody or on bail.

Clause 16 enables the High Bailiff to issue a provisional warrant for the arrest of a person even though a formal request for extradition has not been received, if the High Bailiff is satisfied that the person has been convicted of, or is accused of having committed, an offence that is an extradition offence, and the person is believed to be in the Island or on their way to the Island and there is written evidence that would justify the arrest of a person accused of the offence in the Island, or justify the arrest of a person who was unlawfully at law after conviction of the offence in the Island.

Clause 17 stipulates that a person arrested on a provisional warrant must be brought before the High Bailiff as soon as practicable.

However, if the High Bailiff does not receive a request for extradition and the Attorney General's certificate within 45 days after the person's arrest, the person must be discharged. The Council of Ministers may by order set a longer time limit than 45 days in respect of requests by any particular designated territory that is specified in such an order – this is to take into account longer time limits set out in the international arrangements with certain territories.

The extradition hearing

Clauses 18 to 36 deal with the procedure to be followed at the hearing before the High Bailiff.

Clause 18 provides that where a person is arrested under an extradition arrest warrant issued under *clause 14*, when the person first appears before the High Bailiff the High Bailiff must fix a date for the extradition hearing. This must be within 2 months of the person's first appearance. If the High Bailiff believes that it is in the interests of justice to do so they may fix a later date. If the extradition hearing does not commence by the date so fixed, and the person so requests, the High Bailiff must order that the person be discharged.

Under **clause 19**, the same provisions apply in the case of a person arrested on a provisional warrant, if the High Bailiff receives the formal request for extradition and the Attorney General's certificate within the time stipulated in *clause 17*.

Clause 20 provides that at the extradition hearing the High Bailiff has the same powers (as near as may be) as if the proceedings were a summary trial.

Clause 21 sets out what happens if a person is charged with an offence in the Island before the extradition hearing has begun. In this case, the High Bailiff must order further proceedings in respect of the extradition to be adjourned until either the charge is disposed of; the charge is withdrawn; or proceedings in respect of the charge are discontinued. And if a sentence of custody is imposed on the person, the High Bailiff may order further proceedings in respect of the extradition to be adjourned until the person is released from custody.

Clause 22 provides that if the High Bailiff is informed that the person is already serving a custodial sentence in the Island before the extradition hearing the High Bailiff may order further proceedings in respect of the extradition to be adjourned until the person is released from custody.

Clause 23 describes the initial stages of the extradition hearing. The High Bailiff must first consider whether the documents sent to them include the extradition request, the Attorney General's certificate, particulars of the person and of the offence and (where applicable) the authorisation in the designated territory for his or her arrest or a certificate of the person's conviction and sentence in that territory. If the High Bailiff decides that the documents do not include that information, the person must be discharged.

If the High Bailiff decides that the documents include the required information, the High Bailiff must then decide whether the person before them is the one whose extradition is requested, whether the offence is an extradition offence, and whether copies of the documents in support of the request have been given to the person. The question of whether the person is the one whose extradition is requested is to be decided on a balance of probabilities. If the High Bailiff decides any of the questions in the negative, the person must be discharged.

If all of the questions are decided in the affirmative, the High Bailiff must then decide whether there are any bars to extradition.

Clause 24 sets out the bars to the person's extradition. These are –

- (a) the rule against double jeopardy (see *clause 25*);
- (b) extraneous considerations (see *clause 26*);
- (c) the passage of time (see *clause 27*);
- (d) hostage-taking considerations (see *clause 28*); and
- (e) forum (see *clause 29*).

If the High Bailiff finds that any of these bars apply, the High Bailiff must discharge the person.

If the High Bailiff decides that there are no bars to extradition, they must proceed under *clause 34* if the person has not been convicted in the designated territory or under *clause 35* if the person has been convicted there and is alleged to be unlawfully at large.

Clause 25 sets out the rule against double jeopardy, which means that the person's extradition is barred where he or she would be entitled to be discharged by reason of previous acquittal or previous conviction if charged in the Island with the offence in question.

Clause 26 provides that a person's extradition is barred by reason of extraneous considerations if it appears the real motive for the extradition request is to prosecute or

punish the person for racial, religious, sexual or political reasons, or if the person might be prejudiced at trial or punished for those reasons.

Clause 27 provides that extradition is barred if it would be unjust or oppressive because of the passage of time.

Under **clause 28**, a person's extradition is barred in certain circumstances by reason of hostage-taking considerations. These are that the designated territory seeking extradition is party to the International Convention against the Taking of Hostages, and the person concerned might be prejudiced at trial because it would not be possible for him or her to communicate with the authorities in the territory who are entitled to exercise rights of protection in relation to that person. It must also appear that the alleged extradition offence constitutes an offence under section 1 of the Taking of Hostages Act 1982 of the United Kingdom (as applied to the Island) or an attempt to commit such an offence.

Clause 29 provides that a person's extradition is barred by reason of "forum". This applies if a significant part of the conduct alleged to constitute the extradition offence takes place in the Island and in view of all the circumstances specified in the clause it would not be in the interests of justice for the person to be tried for the offence in the designated territory.

The specified matters relating to the interests of justice: (i) where most of the harm or loss occurred; (ii) the interests of any victims; (iii) any belief of the Attorney General that the Island is not the most appropriate place to prosecute the person; (iv) whether evidence needed to prosecute the person is or could be made available in the Island; (v) any delay that may result in proceeding in one country rather than another; (vi) the desirability and practicality of all prosecutions relating to the offence taking place in one place; and (vii) the person's connections with the Island.

Clause 30 describes the effect of an "Attorney General's certificate (see *clause 31*) on the High Bailiff's consideration of an extradition is barred on the grounds of forum. If the Attorney General has issued such a certificate, subject to the questioning of the certificate (see *clause 32*), the High Bailiff must decide that the extradition is not barred because of forum. The Attorney General may apply to the High Bailiff for an adjournment of forum proceedings if this would assist consideration of whether or not to issue a certificate, or in giving or sending such a certificate.

Clause 31 explains what is meant by an "Attorney General's certificate". This is a document certifying that the Attorney General has considered the offences for which a person's extradition is sought and the corresponding offences for which the person might be prosecuted in the Island. The Attorney General has then decided and certified that the person should not be prosecuted in the Island for the corresponding offences because either:

- (a) there would be insufficient admissible evidence for a prosecution, or a prosecution in the Island would not be in the public interest; or
- (b) there are concerns about the disclosure of sensitive material in any proceedings.

In this context "sensitive material" means material that appears to the Attorney General to be sensitive, including material appearing to be sensitive on grounds relating to national security; international relations; or the prevention or detection of crime.

Clause 32 provides that an "Attorney General's certificate" can be challenged, but only as part of an appeal to the High Court under clause 52 or 57 of the Act against an order for the person's extradition. The High Court must apply the procedures and principles of judicial review by way of a dolence claim when reviewing a certificate. If the High Court quashes a certificate, it must then consider the issue of forum.

Clause 33 provides interpretation for clauses 29 to 32 in respect of forum.

Clause 34 applies if the person has not been convicted in the territory requesting extradition. If it is a Part 1 designated territory and the High Bailiff has decided that there are no bars to extradition, the High Bailiff must then proceed directly under *clause 37*, which requires the High Bailiff to decide whether the person's extradition would be compatible with the European Convention on Human Rights. If it is a Part 2 designated territory the High Bailiff must first decide whether there is sufficient evidence for the person to stand trial, before going on to consider his or her human rights. If there is not enough evidence, the High Bailiff must discharge the person. If there is sufficient evidence, the High Bailiff is required to proceed to considering the question of human rights under *clause 37*.

Clause 35 applies if the person has already been convicted in the territory requesting extradition and is alleged to be unlawfully at large. It applies whether the territory is a Part 1 or Part 2 designated territory, but the procedure for each category differs slightly.

The High Bailiff must decide whether the person was convicted in his or her absence. If the person was not present, the High Bailiff must also decide whether or not he or she was deliberately absent. If the person was absent but did not stay away deliberately, and would not be entitled to be retried, the High Bailiff must order his or her discharge. If the person was either present or deliberately absent, the High Bailiff must proceed directly to consider the issue of human rights under *clause 37*. If the person was absent but did not stay away deliberately, and the person would in any event be entitled to a retrial if convicted in absentia, the following procedure applies –

- (a) if the territory concerned is a Part 1 designated territory, the High Bailiff must proceed directly to consider the issue of the person's human rights under *clause 37*;
- (b) if the territory concerned is a Part 2 designated territory, the High Bailiff must first proceed under *clause 36 (conviction in person's absence)*.

Clause 36 requires the High Bailiff to decide whether there is sufficient evidence for the person to stand trial in the Part 2 designated territory. If the evidence is insufficient, the High Bailiff must discharge the person. If there is sufficient evidence, the High Bailiff must proceed under *clause 37*.

Clause 37 requires the High Bailiff to decide whether a person's extradition would be compatible with his or her rights under the European Convention on Human Rights. If it would not be, the High Bailiff must discharge the person. If it would be, the High Bailiff must then send the case to the Attorney General for the latter's decision as to whether the person is to be extradited.

Clause 38 provides that if the High Bailiff is informed on behalf of the Attorney General during an extradition hearing that the person is charged with an offence in the Island, the High Bailiff must adjourn the hearing until that case is disposed of. If the person is sentenced for the offence, the High Bailiff may adjourn the extradition hearing until the sentence has been served.

Clause 39 provides that if in the course of an extradition hearing the High Bailiff is informed that the person is already serving a custodial sentence in the Island, the High Bailiff may adjourn the hearing until the sentence has been served.

Under **clause 40** the High Bailiff must remand the person in custody or grant bail, if informed at any time during the extradition hearing that the Attorney General has ordered under *clause 76* that the hearing is to be deferred until a competing extradition request is disposed of.

Under **clause 41**, if it appears to the High Bailiff that it would be unjust or oppressive to extradite the person because of his or her physical or mental condition, the High Bailiff must either discharge a person or adjourn extradition proceedings if until such time as the condition no longer applies.

Clause 42 requires the High Bailiff, when sending a case to the Attorney General, to tell the person that there is a right of appeal to the High Court after the Attorney General has made a decision, and to remand the person in custody or grant bail pending that decision. The duty to inform the person of the right of appeal does not apply if the person has consented to extradition.

Attorney General's functions

Clauses 43 to 51 deal with the functions of the Attorney General after the court has sent a case, at the end of the extradition hearing, for the Attorney General's decision on whether the person is to be extradited.

Under **clause 43**, the Attorney General must consider whether he or she is prohibited from ordering the person's extradition by reason of any of the following considerations –

- (a) liability to face a death sentence (see **clause 44**);
- (b) specialty (see **clause 45**); or
- (c) earlier extradition to the Island from another territory (see **clause 46**).

If the Attorney General decides that any such prohibition applies, the person must be discharged. If the Attorney General decides that no prohibition applies, he or she must order the person's extradition unless –

- (a) the request is withdrawn;
- (b) the proceedings are deferred for a competing extradition claim; or
- (c) the person is discharged by the Attorney General on grounds of national security (see **clause 129**).

Clause 44 prohibits extradition if the person concerned is liable to the death penalty in the territory requesting his extradition, unless the Attorney General receives a written assurance that the person will not be executed and the Attorney General considers the assurance adequate.

Clause 45 deals with the speciality rule, which is a long-standing protection in extradition. It prohibits a person from being prosecuted after his or her extradition for an offence committed before his or her extradition, subject to certain exceptions.

This clause prohibits the Attorney General from ordering a person's extradition to a designated territory where there are no speciality arrangements in place but this does not apply if a person has consented to their extradition under clause 73. Subsection (3) explains that speciality arrangements are considered to be in place if the offence falls within subsection (4) or the person has first had the opportunity to leave the territory. The offences within subsection (4) are:

- the offence for which the person was extradited;
- an extradition offence disclosed by the same facts as that offence;
- an extradition offence for which the Attorney General has consented to the person being dealt with;

- an offence in respect of which the person has waived their right not to be dealt with.

Subsection (5) allows speciality arrangements with a Commonwealth country or a British overseas territory to be made either generally or for particular cases. A certificate issued by or under the authority of the Attorney General confirming the existence of such arrangements and stating their terms is conclusive evidence of those matters.

Clause 46 prohibits a person's extradition from the Island if he or she was extradited here from another designated territory the consent of which is required to the further extradition, and it has not given that consent.

Clause 47 requires the Attorney General to defer a decision on whether to extradite a person if the person is charged with an offence in the Island and the charge has not been disposed of or withdrawn, or if proceedings are otherwise discontinued. If the person is subsequently sentenced to custody in the Island in respect of the offence, the Attorney General has discretion to defer a decision on extradition until the sentence has been served.

Clause 48 gives the Attorney General discretion to defer a decision on extradition if the person concerned is already serving another custodial sentence in the Island.

Clause 49 requires the Attorney General to decide within 2 months whether to order a person's extradition. The period for decision will ordinarily begin on the day on which the High Bailiff sends the case to the Attorney General. If that time limit is not met the High Bailiff must order that the person be discharged. However, the High Bailiff may extend the time limit where an application has been received from the Attorney General to do so.

Under **clause 50**, the Attorney General must tell the person concerned whether he or she has ordered extradition, and that the person has a right of appeal to the High Court (although the requirement to inform the person about a right of appeal does not apply if the person has consented to the extradition). If the Attorney General has received an assurance in respect of the non-application of a death sentence a copy of that assurance must also be provided.

The Attorney General must inform a representative of the territory requesting extradition whether extradition has been ordered or that the person has been discharged.

Clause 51 provides that an order by the Attorney General for a person's extradition or discharge must be made in writing, and signed by the Attorney General.

Appeals

Clauses 52 to 64 provide for rights of appeal to the High Court, (with the definition of "High Court" in clause 4 of the Bill making clear that references to the High Court in Bill mean the Staff of Government Division of the High Court when sitting as an appellate court). There may also be the possibility of an appeal to the Judicial Committee of the Privy Council (the highest court of appeal for cases from the Island).

Clause 52 gives a person whose extradition is requested a right of appeal to the High Court against a decision by the High Bailiff at the end of an extradition hearing. The appeal may not be heard until the Attorney General has decided whether to order extradition, and may not proceed if he or she orders the person's discharge. This provision does not give a right of appeal to a person who has consented to being extradited.

Clause 53 sets out the High Court's powers on such an appeal by the person. It may allow the appeal, refer the case back to the court or dismiss the appeal. If it allows the appeal, the High Court must discharge the person and quash the extradition order.

Clause 54 enables an appeal to be made by the designated territory requesting a person's extradition against a decision by the High Bailiff at the extradition hearing that results in the person being discharged. An appeal under this clause may be brought on a question of law or fact but the leave of the High Court is required for such an appeal. Notice of an appeal under this section must be given in accordance with rules of court before the end of the period of 14 days starting with the day on which the order for the person's discharge is made.

Clause 55 sets out the powers of the High Court on such an appeal by a designated territory. It may allow it, refer the case back to the High Bailiff or dismiss the appeal. The appeal may only be allowed on the ground that the High Bailiff decided a relevant question wrongly, or that a new issue has been raised or that new evidence is available that would have led the court to make a different decision. If it allows the appeal, the High Court must quash the order by which the person was discharged, and remit the case back to the High Bailiff.

Clause 56 provides for the remand of a person, in custody or on bail, pending the determination of an appeal under *clause 54* on behalf of the territory seeking his or her extradition.

Clause 57 gives a person a right of appeal to the High Court if the Attorney General orders his or her extradition, and the person has not consented to the extradition order. Such an appeal may be on a question of law or fact but it requires the leave of the High Court. Notice of an application for leave to appeal should generally be given within 14 days of the person being told by the Attorney General that their extradition has been ordered but may be later (but before the extradition takes place) if the reason for the appeal is human rights grounds. The High Court must grant leave for a late application on human rights grounds only if it appears to the High Court that the appeal is necessary to avoid real injustice and the circumstances are exceptional and make it appropriate to consider the appeal.

Clause 58 sets out the High Court's powers on receiving an appeal against the Attorney General ordering a person's extradition. The High Court may allow or dismiss the appeal. The court may only allow the appeal if one of two conditions is met. The first condition is that the Attorney General should have decided a question before him or her differently and, if they had done so, they would not have ordered the person's extradition. The second condition is that:

- an issue or information is raised or available that was not raised or available to the Attorney General at the time;
- the issue or information would have resulted in the Attorney General deciding a question differently; and
- this would have resulted in a decision not to order the person's extradition.

If the court allows the appeal the person must be discharged and the extradition order quashed.

Clause 59 enables a designated territory to appeal against an order by the Attorney General that the person be discharged. Such an appeal may be brought on a question of law or fact but only with the leave of the High Court. Notice of the application to seek leave to appeal must be made before the end of the period of 14 days starting with the day on which the Attorney General informs a person acting on behalf of the designated territory that the discharge order has been made.

Clause 60 sets out the High Court's powers on an appeal by a designated territory against a person's discharge. The High Court may allow or dismiss the appeal. The court may only allow the appeal if one of two conditions are met. The first condition is that the Attorney General

should have decided a question before him or her differently and, if they had done so, would have ordered the person's extradition. The second condition is that:

- an issue or information is raised or available that was not raised or available to the Attorney General at the time;
- the issue or information would have resulted in the Attorney General deciding a question differently; and
- this would have resulted in a decision to order the person's extradition.

The High Court must quash the order to discharge the person and order their extradition if it allows the appeal.

Clause 61 provides that if the Attorney General orders the person's discharge under Part 2 of the Bill the remand order made by the High Bailiff under clause 42(4) remains in force until the end of the period of 3 days beginning with the day on which the person's discharge is ordered, and if within that period the Attorney General is informed in writing that the designated territory intends to appeal under clause 59, the remand order remains in force while the appeal is pending.

If the High Bailiff remands the person in custody, they may later grant bail to the person.

The clause defines an appeal being pending as meaning until whichever occurs first of:

- proceedings in respect of the appeal are discontinued;
- the High Court allows the appeal or dismisses the appeal and, on dismissing of the appeal, the High Court is not immediately informed of the designated territory's intention to apply for leave to appeal to the Privy Council;
- the end of the period of 28 days starting with the day on which leave to appeal to the Privy Council is granted, if no appeal to the Privy Council is brought before the end of that period; or
- no further step can be taken on behalf of the designated territory in relation to the appeal unless a High Court grants leave to take a step out of time (i.e. beyond the normal time limits).

Clause 62 provides that rules of court must prescribe the period within which the High Court must start the hearing of an appeal under clauses 52, 54, 57 and 59. However, the High Court may extend the period in a particular case if it believes it is in the interests of justice to do so.

If the High Court does not begin the hearing within that period:

- in the case of an appeal under *clause 52 (appeal against send of case to Attorney General)* or *clause 57 (appeal against extradition order by Attorney General)*, the appeal is taken to have been allowed by the High Court, the order for the person's extradition is taken as quashed and the person is discharged;
- in the case of an appeal under *clause 54 (appeal against discharge by High Bailiff)* or *clause 59 (appeal against discharge by Attorney General)*, the appeal is taken as having been dismissed by the High Court.

Clause 63 deals with the detention of a person while a further appeal is pending. If immediately after the High Court has ordered the discharge of a person on an appeal under clause 54 or 59 the High Court is informed of the designated territory's intention to appeal to the Privy Council under section 24 of the High Court Act 1991, the High Court must remand the person in custody or on bail. If the court remands the person in custody it can later grant bail.

The clause defines an appeal being pending as meaning until whichever occurs first of:

- proceedings in respect of the appeal are discontinued;

- the end of the period of 28 days starting with the day on which leave to appeal to the Privy Council is granted, if no appeal to the Privy Council is brought before the end of that period; or
- no further step can be taken on behalf of the designated territory in relation to the appeal unless a High Court grants leave to take a step out of time (i.e. beyond the normal time limits).

Clause 64 confirms that a decision by the High Bailiff or the Attorney General under Part 2 of the Bill may only be questioned in legal proceedings on appeal under that Part.

Time limit for extradition

Clauses 65 to 69 deal with the time limits for carrying out an extradition order.

Clause 65 provides that if the Attorney General orders a person's extradition, and no notice of appeal is filed within the time limit for doing so, the person must be extradited within 28 days. If extradition does not take place within that time the person may apply to the court to be discharged. The court must discharge the person unless there is reasonable cause for the delay. This clause is subject to *clause 69* (under which the Attorney General may in certain circumstances require an undertaking from the designated territory to return the person to complete a sentence in the Island).

Clause 66 provides that if there is an appeal to the High Court under clause 52, 57 or 59, and the decision of the relevant court is that the person is to be extradited, he or she must be extradited within 28 days. However, if extradition is postponed under *clause 67* (*High Bailiff informed after extradition order that person is charged with offence in the Island*) or *clause 68* (*High Bailiff informed after extradition order that person is serving sentence in the Island*) the time limit is 28 days from the postponed date. If the person is not extradited within the required time, he or she may apply to the High Bailiff to be discharged and the High Bailiff must discharge the person unless there is reasonable cause for the delay.

The relevant court for the purposes of this clause is either the High Court (if there is no appeal to the Privy Council or such an appeal is discontinued) or the Privy Council (if there is an appeal to the Privy Council that has not been discontinued).

This provision is also subject to *clause 69*.

Note: if the High Court refuses leave to appeal Privy Council, a direct application for special leave to appeal may be made to the Privy Council (see section 24 of the High Court Act 1991).

Clause 67 ensures that where the High Bailiff is informed after extradition has been ordered that the person to be extradited has been charged with an offence in the Island, his or her extradition must be postponed until the conclusion of the Isle of Man proceedings. This provision (and *clause 68*) means that, in such cases, the domestic case must be dealt with first. This is in line with the provisions that apply where such circumstances come to light before the end of the extradition hearing or before extradition is ordered.

Clause 68 provides that if the High Bailiff is informed after extradition has been ordered that the person is serving a custodial sentence in the Island, the High Bailiff may postpone extradition until the person is released from custody.

Clause 69 allows the Attorney General to make an extradition order subject to a condition that extradition will not take place until the Attorney General has received certain undertakings on behalf of the designated territory that submitted the extradition request. This clause only applies if the person is serving a custodial sentence in the Island.

The Attorney General can specify the terms of any such undertaking, including that the person is kept in custody during the entire proceedings in the territory and the Attorney General may also require the person to be returned to the Island to serve their Isle of Man sentence, on conclusion of the proceedings in the territory or after serving any sentence(s) imposed there.

Where the Attorney General imposes a condition on an extradition order under this clause, if no undertaking is received within 21 days and the person applies to the High Court, the High Court must order the person's discharge.

If the undertaking is received within 21 days and *clause 65 (time limit for extradition if there is no appeal)* applies, the 28-day period described in that clause begins on the day the Attorney General receives the undertaking. Where a condition is imposed and *clause 66 (time limit for extradition if there is an appeal)* applies, the 28 days start from the day on which the appeal decision becomes final or, if later, the day the Attorney General receives the undertaking.

Withdrawal of request for extradition

Clauses 70 to 72 provide for the discharge of a person on the withdrawal of a request for extradition.

Under **clause 70** the High Bailiff must discharge the person if informed by the Attorney General before the extradition hearing has ended that the request has been withdrawn.

Under **clause 71** the Attorney General must order the person's discharge if, after the case has been referred to the Attorney General but before the person is extradited, the Attorney General is informed that the request has been withdrawn.

Clause 72 applies if during the relevant period the High Court is informed by the Attorney General that an extradition request has been withdrawn.

If the application or appeal is under clause 52 or 57 (appeals by persons whose extradition is requested), the High Court must then order the person's discharge and quash the order for the person's extradition, if the Attorney General has ordered their extradition.

If the application or appeal is under clause 54 or 59 (appeals against discharge of persons whose extradition is requested), the High Court must dismiss the application or appeal.

In either case, if the person is not before the High Court at the time they must be informed of the decision as soon as practicable.

The relevant period for the purposes of this clause begins when notice of application for leave to appeal to the High Court is given by the person whose extradition is requested or by the designated territory to which the person's extradition is requested and ends:

- if the High Court refuses leave to appeal to it, the day on which the decision to refuse leave becomes final;
- if leave to appeal is given but proceedings on the appeal are discontinued, the day of discontinuance;
- if leave to appeal is given and proceedings on the appeal are not discontinued, the day on which the High Court makes its decision on the appeal.

Consent to extradition

Clause 73 provides that a person arrested under an extradition arrest warrant may consent to being extradited. Consent must be in writing. Once given, it is irrevocable.

Clause 74 provides that if the case has not yet been sent to the Attorney General for a decision as to whether to make an extradition order, the person's consent to extradition must be given to the High Bailiff in the way prescribed by rules of court.

However, a person may not give their consent under this clause unless the person has the assistance of an advocate to represent him or her before the High Bailiff, or the person has refused or failed to apply for legal aid (despite being informed of the right to apply for it and being given the opportunity to do so), or his or her application for legal aid has been refused, or legal aid has been withdrawn.

Clause 75 provides that if the case has been sent to the Attorney General for a decision as to whether to make an extradition order, the person's consent to extradition is to be given to the Attorney General.

Competing extradition requests

Clause 76 provides that if the Attorney General receives a request for the extradition of a person who is in the Island, and another request is then received for the same person's extradition before the first is disposed of, the Attorney General may defer one of the requests until the other is dealt with.

If an extradition order has already been made, but it has not been carried into effect, the Attorney General may defer the person's extradition.

In deciding which request to defer, the Attorney General must take into account the relative seriousness of each offence, the places where the offences were allegedly committed, the date of receipt of each request, and whether in each case the person concerned is accused of the offence or alleged to be unlawfully at large after conviction for the offences.

Post-extradition matters

Clause 77 enables the Attorney General to consent, in the case of a person who has already been extradited to another territory, to the person being dealt with there for an offence other than the one for which he or she was extradited. The Attorney General must first consider whether the other offence is also an extradition offence and if it is not consent must be refused.

If the other offence is an extradition offence, the Attorney General must consider next whether, if the person was in the Island, the High Bailiff would send the case to the Attorney General for a decision on whether the person should be extradited and if the High Bailiff would be required to consider any bars to extradition in respect of the offence for which the Attorney General's consent is requested.

If the Attorney General decides this question in the negative, they must refuse to give consent to the designated territory dealing with the other offence. If the Attorney General decides that question in the affirmative, they must decide whether, if the person were in the Island, the person's extradition in respect of the offence would be prohibited under clause 44 (death sentence), 45 (specialty) or 46 (earlier extradition to the Island from another territory).

If the Attorney General decides the answer to that question is yes, the Attorney General must refuse to give consent and the answer is no, the Attorney General may give consent.

Clause 78 deals with the case in which, after a person has been extradited to a designated territory from the Island, the Attorney General receives a request from the appropriate authority in that territory for their consent to that person's further extradition from the

territory to another designated territory. The Attorney General may consent to extradition, subject to the same requirements as apply under *clause 77*.

Clause 79 provides that if a person who is serving a sentence of custody in the Island is extradited to a designated territory, subsequently returned to the Island to serve the remainder of their sentence here, and they are not yet entitled to release pursuant to their Isle of Man sentence, the person is liable to be detained to complete the sentence in the Island. The time spent by the person abroad, in consequence of his or her extradition, will not count as time served as part of the sentence in the Island. However, this exclusion will not apply if the person was extradited to be prosecuted for an offence and they have not been convicted.

Costs

Clauses 80 and 81 provide for the award of costs, respectively, where extradition is ordered and where discharge is ordered.

Repatriation cases

Clause 82 applies when an extradition request is made in relation to a person who has been convicted of an offence in one territory (the convicting territory), is repatriated to another territory (the imprisoning territory) under an international arrangement to serve his or her sentence, and is unlawfully at large from a prison in that other territory.

The clause modifies the application of the relevant sections in this Part of the Bill to allow extradition of a person in these circumstances, where the request is made either by the convicting territory or by the imprisoning territory.

If the person's extradition from the Island is sought by either of those territories on the grounds that he or she is unlawfully at large, and the territory making the request is a designated territory, extradition proceedings may be pursued in the Island.

Part 3 – Re-extradition from the Island

Clause 83 sets out five conditions for a re-extradition hearing. In particular, the person concerned must have been extradited under Part 2 of the Bill to the designated territory. At the time of extradition, he or she must have been serving a sentence of custody in the Island. The person must also have been sentenced to at least 4 months' detention in the designated territory for an offence committed there before his or her extradition, and before serving that sentence in the designated territory the person must have been returned to the Island to serve the remainder of his or her sentence here.

Clause 84 provides for a re-extradition hearing before the court. The person concerned must be brought before the High Bailiff as soon as possible after the time at which he or she is due to be released in the Island.

The High Bailiff must decide whether the territory in which the overseas sentence was imposed is a designated territory. If the High Bailiff decides that it is not and the person applies for his or her release, the High Bailiff must order the person's discharge.

Clause 85 sets out how the provisions of Part 2 of the Bill apply, with the modifications set out in Schedule 2, to the re-extradition process, if the High Bailiff has decided under *clause 84* that the territory in which the overseas sentence was imposed is a designated territory.

Clause 86 confirms that a person's discharge as a result of clause 84 or 85 does not affect any conditions of his or her release pursuant to the Manx sentence.

Part 4 – Extradition to the Island

This Part of the Bill sets out the procedure to be followed for requests to a designated territory to extradite a person to the Island.

Under *clause 87*, the Attorney General may, either directly or through a UK Secretary of State, request the extradition of a person from any other territory.

Clause 88 sets out the conditions on which the Island may deal with a person who is extradited here from a Commonwealth country, British overseas territory or Hong Kong. The person may be dealt with only for –

- (a) the offence for which he or she was extradited,
- (b) lesser offences disclosed by the information provided to the other territory in support of the Island's request for extradition, and
- (c) other offences for which the other territory consents to the person being dealt with here.

However, these conditions do not prevent the person being prosecuted for offences committed in the Island after his or her extradition here. They cease to apply in any event on the expiry of a period of 45 days starting on the first day on which the person is given an opportunity to leave the Island after being extradited here.

Clause 89 deals with situations where the Island would want to deal with an offence committed by a person previously extradited to the Island for the purposes of prosecution for a different offence. Subsection (1) sets out that this provision applies to any territory which is not a territory listed under clause 88(1)(b), i.e. Commonwealth countries, British overseas territories and Hong Kong.

Subject to *clause 90*, a person may be dealt with in the Island for an offence committed before the person's extradition only if the offence is:

- the offence in respect of which the person is extradited;
- an offence disclosed by the information provided to the extraditing territory in respect of that offence;
- an offence in respect of which the extraditing territory has given its consent to the person being dealt with.

However, a person may be dealt with in the Island for an offence committed before the person's extradition if they have returned to the territory from which they were extradited or they have been given an opportunity to leave the Island.

Clause 90 implements Article 3 of the Fourth Additional Protocol to the European Convention on Extradition, a multilateral treaty that governs extradition between Council of Europe Member States, other than where the European Arrest Warrant applies. The UK Government ratified this protocol in 2015.

The clause provides that a person may be detained whilst a request to waive the rule of speciality is being considered by the State that originally extradited him or her to the Island, provided certain conditions are met. Both countries must have made the relevant declaration under the European Convention on Extradition (the UK made such a declaration) and those declarations must still be in force. The Attorney General must also give notification of the date on which detention is to begin and such notification must be explicitly acknowledged by the other territory. The period of detention may not exceed 90 days beginning on the day the request to waive the rule of speciality is received.

Clause 91 provides that if a person who is extradited to the Island from a designated territory was before his or her extradition convicted in the Island for an offence other than the one for which he or she was extradited, the sentence for the earlier offence must be treated as served, but the person's conviction for the offence is to be treated as a conviction for all other purposes.

Clause 92 requires the Attorney General to arrange the free repatriation of a person who has been extradited to the Island, where –

- (a) the extradition proceedings have not commenced here within 6 months, or
 - (b) the person is acquitted or discharged,
- and the person asks for repatriation.

Clause 93 allows the Attorney General to give an undertaking that someone who has been extradited to the Isle of Man will be returned to the requested territory to serve any custodial sentence imposed in the Island. The clause establishes that where such an undertaking has been given the person must be returned to the requested territory as soon as is reasonably practicable after the sentence has been imposed and once any other proceedings in respect of the offence have been concluded. Where a person is returned to the territory to serve an Isle of Man sentence, the clause provides that the sentence for the offence is to be regarded as having been served. This is to ensure that someone does not remain liable to custody pursuant to their Isle of Man sentence despite having served it overseas.

The clause confirms that it does not require the return of a person where the Attorney General is not satisfied that their return would be compatible with their Human Rights Convention rights.

Under **clause 94** if the Attorney General has given an undertaking in connection with a person's extradition to the Island that includes terms that he or she be kept in custody until the conclusion of proceedings for an offence here, bail can be granted only in exceptional circumstances.

Part 5 – Police powers

Warrants and orders

Under **clause 95** the High Bailiff may, on the application of a constable, issue a search and seizure warrant. A search and seizure warrant authorises a police officer to enter and search specified premises and seize material that may be used in evidence.

This provision does not authorise the seizure of "special procedure material" or "excluded material" within the meaning of the Police Powers and Procedures Act 1998.

Searches under search and seizure warrants must be conducted solely for the purpose of obtaining evidence for the prosecution of the extradition offence, and must not be used for an investigation as to whether or not the extradition offence has been committed.

Under **clause 96** the High Bailiff may, on the application of a constable, issue a production order. A production order requires a specified person to produce special procedure material or excluded material to a constable, or to give a constable access to it, within a specified time. Production orders have effect as if they were orders of the High Court.

Clause 97 sets out the grounds on which a production order may be made.

For a production order to be made there must be reasonable grounds to believe that:

- the offence in question has been committed by the person named;
- that person is in the Island or on his or her way to the Island;
- the offence in question is an extradition offence, as defined in the Bill;
- there is material which is special procedure material or excluded material on the premises involved; and
- the material could be used as evidence in a trial in the Island for the specified offence in question.

In addition, it must appear to the High Bailiff that:

- other ways of obtaining the material have already failed; or
- other ways of obtaining the material have not been tried because they would be bound to fail.

Finally, it must be in the public interest for the material to be produced or for access to it to be given.

Clause 98 stipulates the way in which special procedure material or excluded material that is stored electronically must be made available to comply with a production order.

Clause 99 sets out the procedure for the application for and issue of a search and seizure warrant relating to special procedure material or excluded material in an extradition case.

The High Bailiff has the power to issue such a warrant, on the application of a police constable, if the High Bailiff is satisfied that the conditions for issuing a production order and the other necessary additional conditions are met, which are:

- that it is not practicable to communicate with someone who is entitled to allow entry to the premises;
- that it is not practicable to communicate with a person entitled to give access to the material in question; or
- that the material includes information classified as restricted or secret by statute and that it is likely to be disclosed in breach of that classification.

The application must state that the warrant is sought in connection with the extradition of a person under this Bill. It must also specify the premises and the special procedure material or excluded material for which the warrant is sought. In addition, the application must state that the person is accused of a specified extradition offence in a designated territory.

A warrant under this clause authorises a constable to enter and search the specified premises in question. He or she may seize and retain any relevant special procedure material and/or excluded material if the application states that the warrant is sought in relation to such material. Material is relevant if it could be used as evidence in a trial in the Island for the specified offence in question if conduct constituting the offence would constitute an offence in the Island.

Search and seizure without warrant

Under **Clause 100** if a constable has power to arrest a person under an extradition arrest warrant, and has reasonable grounds for believing that the person is on any premises, the constable may enter and search those premises for the purpose of exercising the power of arrest. However, the power to search is limited to the extent reasonably required for the purpose of exercising the power of arrest.

A constable who has entered premises in exercise of the power under this clause may seize and retain anything that is on the premises, if he or she has reasonable grounds for believing —

- that it has been obtained in consequence of the commission of an offence or it is evidence in relation to an offence (in each case this includes offences committed outside the Island); and
- that it is necessary to seize it in order to prevent its being concealed, lost, damaged, altered or destroyed.

In the situation where the premises in question include multiple dwellings, a constable is only allowed to enter and search the communal areas of the premises and any dwelling where the arrest took place, or in which the person was immediately before arrest.

Clause 101 gives a constable the power to enter and search premises where a person is arrested under an extradition arrest warrant other than at a police station.

A police constable may enter and search premises where the person is arrested, or in which the person was immediately before their arrest. This power applies where there are reasonable grounds to believe that there is evidence on the premises of the relevant offence (in accusation cases) or of the person's identity (in all cases). "Evidence" in this context does not include items subject to legal privilege. The relevant offence is one on the basis of which extradition has been or will be formally requested.

The constable may search premises only for evidence relating to the relevant offence and the person's identity, as appropriate, and only so far as is reasonably necessary to find such evidence. The constable may seize and retain anything discovered in exercise of this power.

In addition to the powers described above a constable may, having entered premises in exercise of this power, confiscate anything they find there if they have reasonable grounds to believe:

- that it has been obtained as the result of an offence or is evidence of an offence (including offences committed outside the Island); and
- that it is necessary to seize it to avoid the evidence being lost or interfered with in any way.

In the situation where the premises in question include multiple dwellings, a constable is only allowed to enter and search the communal areas of the premises and any dwelling where the arrest took place, or in which the person was immediately before arrest.

Clause 102 enables a constable to search a person who has been arrested on an extradition arrest warrant elsewhere than at a police station. The constable may do so if he or she has reasonable grounds for believing that the person presents a danger, or is concealing evidence or anything that might assist the person to escape. The constable may seize and retain anything relating to those considerations found on the person.

The clause sets out the limits of the search powers; the constable may not require a person to remove in public any clothes other than an outer coat, jacket or gloves. However, the constable is allowed to conduct a search of the person's mouth under these powers.

The provisions of this clause do not affect the powers of a constable to search a person suspected of terrorist offences under section 32 of the Anti-Terrorism and Crime Act 2003.

Clause 103 gives a police constable power to enter and search premises after a person has been arrested under an extradition arrest power.

The constable may enter and search premises occupied or controlled by the arrested person where there are reasonable grounds to believe that there is evidence on the premises of the

relevant offence (in accusation cases) or of the person's identity (in all cases). The relevant offence is one that is the basis of which extradition has been or will be formally requested.

The constable may use the power to search premises only for evidence relating to the relevant offence and the person's identity, as appropriate, and only so far as is reasonably necessary to find such evidence. This evidence may not include any items subject to legal privilege. A constable may seize and retain anything relevant that is discovered in exercise of this power.

Having entered premises in exercise of the power under this clause, a constable may seize and retain anything he or she finds there if he has reasonable grounds to believe:

- that it has been obtained as the result of an offence or is evidence of an offence; and
- that it is necessary to confiscate it to avoid the evidence being lost or interfered with in any way.

The powers to search premises and seize and retain evidence given in this clause may only be used with the written authorisation of a police officer of inspector level or higher. However, as an exception to this rule, the power to search may be carried out without this authorisation before the arrested person is taken to a police station if the holding of the person somewhere other than a police station is necessary for an effective search to occur.

Treatment following arrest

Clause 104 applies if a person is arrested under an extradition arrest power and they are detained at a police station. A police constable may only take fingerprints and non-intimate samples if the person has given their written consent or if they have the authorisation from a police officer of at least inspector level.

Clause 105 applies if a person is arrested under an extradition arrest power and detained at a police station. The person may be searched or examined for the purpose of ascertaining their identity with the authorisation of a police officer of the rank of inspector or above. Ascertaining identity includes establishing that they are not a particular person.

If, during the course of a search or examination, an identifying mark is found, it may be photographed with the person's consent. It may still be photographed if consent is withheld or it is not practicable to obtain consent. The only people allowed to conduct a search or examination or take a photograph under this section are police constables or persons designated for this purpose by the Chief Constable.

No one is allowed to conduct a search or examination or photograph any part of a person of the opposite sex (except the face). Furthermore, this clause does not allow an intimate search to be conducted.

Clause 106 applies if a person is arrested under an extradition arrest power and detained at a police station. The person may be photographed with the appropriate consent; they may still be photographed without that consent if it is withheld or it is impractical to obtain consent.

A person proposing to take a photograph under this section can require the person arrested to remove anything worn on the head or face. If the person arrested refuses, the person taking the photograph is allowed to remove such items from the head or face of the person arrested.

The only people allowed to take a photograph under this section are police constables or persons given this responsibility by the Chief Constable.

Clause 107 enables the Department of Home Affairs, by order, to apply modified provisions of the Police Powers and Procedures Act 1998 relating to searches of detained persons, intimate searches, the right to have someone informed on a person's arrest and access to legal advice. It is intended that the Department would exercise this power.

General

Clause 108 deals with the handing over of anything seized or produced under this Part of the Bill. A police constable may hand over any such items to a person acting on behalf of the relevant authority of a designated territory if they have reasonable grounds to believe that the authority's functions make it appropriate to hand the items over to it.

Clause 109 enables the Department of Home Affairs to make codes of practice in respect of matters arising from the exercise of powers under this Part of the Bill. If the Department proposes to do so, it must publish a draft of the code(s) and consider any representations. A code of practice is admissible in evidence in proceedings under the Bill, and is to be taken into account by a court when considering anything to which the code appears to it to be relevant. However, non-compliance with a code does not of itself give rise to criminal or civil liability. Codes of practice made under this clause must be laid before Tynwald and are subject to the negative procedure.

Clause 110 authorises the use of reasonable force, if necessary, in the exercise of powers conferred by the Bill.

Part 6 – Non-Island Extradition: Transit through the Island

This Part (clauses 111 to 115) deals with the situation where a person who is being extradited between two countries outside the Isle of Man transits through the Island. It is extremely unlikely that these provisions will need to be used (although it is conceivable that a person who is in transit might arrive in the Island on an unscheduled basis, for example if an aircraft carrying them had to make an emergency landing).

The main reason for including this Part is because some new international extradition arrangements include provision concerning the transit of a person who is being extradited and having these clauses in the Bill will ensure that the Island can be covered by such arrangements if the UK enters into them.

Clause 111 makes provision for the issue of certificates by the Attorney General to facilitate the transit through the Island of a person who is being extradited from one territory to another territory (where neither of those territories is the Isle of Man). A certificate will authorise 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/or to search the person (and any item in his or her possession) for (and seize) any item which the person may use to cause physical injury (or, in a case where he or she has been taken into custody, to escape from custody).

Clause 112 deals with cases where a person is being extradited from one territory to another (where neither of those territories is the Isle of Man) and he or she makes an unscheduled arrival in the Island. It allows a constable to take the person into custody, for a maximum period of 72 hours, to facilitate the transit of the person through the United Kingdom. There are similar search and seizure powers as appear in clause 111.

Clause 113 sets out that the powers in clauses 111 and 112 include power to use reasonable force where necessary. It also makes clear that the search powers in those clauses do not allow a constable or other authorised officer to require a person to remove any clothing other

than an outer coat, jacket, headgear or gloves. Finally, it allows any item seized under those sections to be retained while the person is in transit.

Clause 114 provides for the Department of Home Affairs to issue a code of practice governing the exercise of the extradition transit powers and the retention, use and return of anything seized under relevant search powers. Failure by a police constable or other authorised officer to adhere to any code issued under such a code will not of itself make the officer liable under either criminal or civil proceedings. A code of practice made under this section can be admitted in court as evidence. A code under this clause must be laid before Tynwald.

Clause 115 defines various terms used in clauses 112 to 114.

Part 7 – Other provisions

Clause 116 applies where a person's extradition has been deferred, due to a competing extradition request (see *clause 76*), the competing request is subsequently disposed of and the High Bailiff orders under *clause 117* that the deferred extradition is to go ahead.

Where these circumstances occur and no appeal is made (see *clause 65*, extradition where no appeal), the 28-day period described in clause 65 begins on the day the High Bailiff makes the order under *clause 118*. Where this situation occurs and there is an appeal (see *clause 66*, extradition following appeal), the 28 days start from the day on which the appeal decision becomes final or, if later, the day the High Bailiff makes the order under *clause 118*.

Clause 117 applies when an order has been made under the Bill on competing extradition requests from a designated territory and proceedings on one of them are deferred until the other has been disposed of. This clause sets out what is to happen with the deferred claim once the other claim has been disposed of in the person's favour. The High Bailiff may order that proceedings on the deferred claim be resumed, but only before the end of the period of 21 days starting on the day the competing extradition request was disposed of.

The High Bailiff also has discretion to discharge the person to whom the deferred proceedings relate. If the High Bailiff does not either order that the proceedings be resumed or discharge the person within the 21 day period, and he or she applies to be discharged, the High Bailiff must then discharge the person.

Clause 118 contains corresponding provisions to those in *clause 117* where an extradition order has already been made, but has been deferred until a competing extradition claim has been disposed of.

Clause 119 enables proceedings to be taken in the Island for the extradition of a person to a territory that is not a designated territory, if special arrangements have been made on behalf of the Island with that territory. A certificate by the Attorney General that the arrangements have been made, and that the territory is not a designated territory, is conclusive evidence of those matters. Extradition proceedings may then be taken as if the territory were a Part 2 designated territory, and the Bill applies accordingly with certain modifications. In giving the certificate, the Attorney General may specify further modifications to provisions of the Bill, if the special arrangements so provide.

Clause 120 ensures that genocide, crimes against humanity, war crimes and related offences are included as extradition offences. Conduct that would be punishable in the Island, if committed in the Island, as a war crime or any conduct that is punishable in the Island as an offence under section 1 of the Geneva Conventions Act 1957 (of Parliament)⁴ is an extradition

⁴ As that Act has effect in the Island by virtue of The Geneva Conventions Act (Isle of Man) Order 2010.

offence even if it would not have been an offence at the time when and the place where it occurred.

Under **clause 121** an extradition hearing relating to a person under the age of 18 years will not be open to the public unless the High Bailiff orders otherwise.

Clause 122 provides for the custody of persons who are remanded without bail under the Bill. They are to be held in the appropriate institutions to which they would be sent if charged with offences in the Island. However, if it would be inappropriate because of the nature of an extradition offence or a young person's circumstances to send that person to a place ordinarily required for persons of his or her age, the court may remand the person to some other suitable place of custody.

Clause 123 provides that if an order is made under Part 2 of the Bill for the extradition of a person who is serving a custodial sentence in the Island the extradition order is sufficient authority for the person to be removed from custody.

Clause 124 makes provision for extradition for more than one offence. The Department of Home Affairs may by order provide for the Bill to have effect with specified modifications where a request for extradition is made in respect of more than one offence. Such an order requires Tynwald approval.

Clause 125 enables the Council of Ministers to designate international Conventions and specify conduct in relation to those conventions for the purposes of the Bill. Such a designation order will require Tynwald approval.

Many important international conventions relating to crime, terrorism, corruption, etc. contain provisions on the extradition of offenders. Examples of such conventions are: the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, UN International Convention for the Suppression of the Financing of Terrorism, UN Convention against Transnational Organised Crime, the UN Convention against Corruption, the UN Convention against Transnational Organised Crime and the Council of Europe Convention for the Prevention of Terrorism.

The Council of Ministers will only be able to designate Conventions to which the UK is a party and which have been extended to the Island and only specify conduct to which the relevant Convention applies. In the event that a Party to one of those Conventions makes an extradition request for a person, it would be open to the Attorney General to certify that: (i) the requesting State was a party to a Convention designated under this clause; and (ii) the conduct in the request was conduct specified in the designation order for the relevant convention. The effect is to apply, with certain modifications, the Bill to the person's extradition as if the requesting territory were a territory designated under Part 2 of the Bill.

Clause 126 provides for use live links in extradition proceedings if the court considers that it is in the interests of justice to do so.

Clause 127 allows the court to rescind a live link direction at any time before or during a hearing. However, the court must not give or rescind a live link direction if both parties have not been afforded the opportunity of making representations. The clause provides that representations on the giving or rescinding of the live link direction can be made via live link. If the court can give a live link direction but does not do so the reasons must be stated in open court.

Clause 128 provides some interpretation in respect of live links.

Clause 129 enables the Attorney General to prevent a person's extradition where it would be against the interests of national security.

If satisfied that the necessary conditions are met, the Attorney General can issue a certificate to this effect and, having issued such a certificate, to direct that the relevant extradition request is not to be proceeded with for the offence in question. The Attorney General may also, in addition to or in place of a direction to that effect, order the person's discharge.

In exercising functions under this clause the Attorney General may (but is not required to) consult the Secretary of State in the UK.

If the Attorney General issues a direction under this clause that a request for the person's extradition in respect of the offence is not to be proceeded with, then:

- the Attorney General is not required to issue a certificate under clause 13 (extradition request and certificate) if they have not already done so;
- the person is not required to be brought before High Bailiff under clause 14 (arrest warrant following extradition request) and must be discharged if he has already been arrested;
- the High Bailiff is not required to proceed with the case if the person has already been brought before them;
- the High Bailiff is not required to continue proceedings if they have already begun;
- if the person has consented to his extradition the High Bailiff is not required to send their case to the Attorney General;
- the court is not required to deal with an appeal if one has been brought to the High Court or the Privy Council; and
- the person is not required to be extradited if their extradition has been ordered.

Any certificate, direction or order issued under this clause must be in writing and signed by the Attorney General.

Clause 130 allows documents relating to proceedings under the Bill to be sent by fax and email and for faxed and emailed documents to be receivable in evidence. This clause is without prejudice to the Electronic Transactions Act 2000.

Clause 131 provides that documentation issued by a designated territory may be received in evidence, in proceedings under the Bill, when certain conditions are met. Any documentation issued in a designated territory is receivable. It is duly authenticated only if it purports to be:

- signed by a judge, magistrate or other judicial authority of the relevant territory;
- certified, whether by seal or otherwise, by the Ministry or Department of the territory responsible for justice or for foreign affairs or
- authenticated by the oath or affirmation of a witness.

However, a document that is not duly authenticated is not prevented from being received in proceedings under this Bill.

Clause 132 applies to extradition proceedings the provisions of the Criminal Law Act 1981 relating to admissions of fact and the admissibility of written statements in evidence.

Clause 133 applies the criminal burden and standard of proof to extradition proceedings, except where the Bill expressly provides otherwise.

Clause 134 enables the Treasury, by order, to extend the provisions of the Bill relating to constables to customs officers. This power is subject to Tynwald approval.

Clause 135 enables the Council of Ministers, by order, to modify the Bill to give effect to international obligations that apply to or bind the Island. This power is subject to Tynwald approval.

Clause 136 contains general provisions relating to the power of the Department of Home Affairs to make orders for certain matters under the Bill; such orders may not have effect unless they are approved by Tynwald. This clause also provides that rules of court under section 25 of the High Court Act 1991 may make provision as to the practice and procedure to be followed in connection with proceedings under the Bill – until such rules have been made the court may adopt such practice and procedure as it thinks fit.

Clause 137 gives effect to *Schedule 3* which consequentially amends certain Acts of Tynwald.

Schedule 1 lists the countries which fall into the two categories of designated territories for the purposes of the Bill. The list of territories in this Schedule follows those in the legislation of Jersey and Guernsey, which in turn were based on the list of category 2 territories under the UK's Extradition Act 2003.

Schedule 2 sets out modifications to Part 2 of the Bill when dealing with a re-extradition case under Part 3 of the Bill.

Schedule 3 contains consequential amendments to other enactments, these being –

- Bail Act 1952 (court may grant bail to a person held in custody who is facing extradition proceedings);
- Legal Aid Act 1986 (court may grant legal aid to a person facing extradition proceedings);
- Police Powers and Procedures Act 1998 (amendments to Part V of the Act concerning the questioning and treatment of persons by the police to take account of persons arrested under an extradition arrest warrant);
- Children and Young Persons Act 2001 (amendments to Part 8 of the Act to allow for proceedings where the extradition of a young person is requested);
- International Criminal Court Act 2003 (amendment of Schedule 2 to the Act to take account of the replacement of existing UK extradition legislation applying to the Island with this legislation).

DEPARTMENT: Cabinet Office (External Relations) on behalf of the Department of Home Affairs		
IMPACT ASSESSMENT OF: Draft Extradition Bill		
Stage: Pre-public consultation	Version: 1.0	Date: 29/11/2024
Related Publications:		
Responsible Officer: Anne Shimmin		
Email Address: anne.shimmin@gov.im		Telephone: 685202

SUMMARY: INTERVENTION AND OPTIONS
Briefly summarise the proposal’s purpose and the intended effects
<p>The Extradition Bill is intended to provide the Isle of Man with a modern legislative framework to deal with extradition from, or to, the Isle of Man to ensure that the Island meets international standards.</p> <p>The Bill will replace the outdated Extradition Act 1989 (of the UK Parliament) that continues to apply to the Island despite its repeal and replacement by the UK for itself.</p> <p>It will ensure that decisions about any extradition cases will rest in the Isle of Man rather than in the UK as is presently the case.</p>
What are the options that have been considered [Note A]
<p>Option 1: Do nothing. The Island would continue to rely on UK legislation, which is in itself out of date (and will not be updated) and not fully in line with modern international standards, with the consequent risk to the Island’s reputation.</p> <p>Option 2: Progress to the extension of the Extradition Act 2003 (of the UK Parliament) to the Island by Order in Council. The Extradition Act 2003 includes a “permissive extent provision” that would allow it to be extended to the Island, with any appropriate modifications, by an Order in Council. However, the Isle of Man Government’s policy is that wherever possible Manx primary legislation is preferable to the extension of an Act of Parliament. Although extradition was formerly considered to be an international issue for which the UK would be responsible, it is now considered the Island and the other Crown Dependencies are competent to deal with this issue themselves. Indeed, Jersey has had its own primary legislation on extradition – the Extradition (Jersey) Law 2004 – for a number of years and Guernsey has since brought in the Extradition (Bailiwick of Guernsey) Law 2019.</p> <p>Option 3: (preferred option) Progress the Island’s own Extradition Bill. This would provide the Island with its own modern legislative framework for extradition in an Act of Tynwald, placing the extradition process in the Island’s hands. Whilst it is advisable for this important legislation to be generally in line with that of the United Kingdom, which is responsible for the Island’s international relations, it may be adapted for the Island’s particular circumstances, as has been done in Jersey and Guernsey.</p>
<p>Link to Our Island Plan Included in the Island Plan Legislative Programme. It links to the “Secure” strategic objective</p> <p>Link to Department/Statutory Board/Office Aims and Objectives Links to the Department objective “To ensure that we are delivering an efficient and effective programme of Legislative reform”</p>
Responsible Departmental Member

Ministerial sign off [Note B]

I have read the Impact Assessment and I am satisfied that the balance between the benefit and any costs is the right one in the circumstances.

Signed by the Responsible Minister

..... Date:

SUMMARY: ANALYSIS AND EVIDENCE

IMPACT OF PROPOSAL

Resource Issues - Financial (including manpower) [Note C]

Statement

It is considered the Extradition Bill has no quantifiable financial implications and if there are any resource requirements, it is expect that these can be met from within existing resources.

Likely Financial Costs [Note D]

One Off N/A

Average Annual (excluding one off) N/A

Likely Financial Benefits [Note D]

One Off N/A

Average Annual (excluding one off) N/A

If the proposal introduces provisions that will require another Department, Board, Office or Body to take on additional work or responsibility please ensure that they have been consulted with early on in your considerations. Please provide a brief statement as to who they are and the consultation that has taken place.

In the event that there is a future Isle of Man extradition case some resource in the form of the time of the Attorney General (as the key decision maker under the Bill) and the Isle of Man Courts will be required. As it is expected that any such cases will be extremely uncommon (there have been no known cases in at least the last 30 years), it is envisaged that it will be possible to deal with an Isle of Man extradition case within existing resources.

HM Attorney General has been sighted throughout the process of drafting the Bill and was a key driver for the updating of a previous draft of an Extradition Bill from 2011.

The Isle of Man Courts were specifically consulted on the Bill as a key stakeholder during its drafting. The Courts submitted some comments and questions that have been addressed or taken into account in finalising the Bill for public consultation. The Courts will have a further opportunity to consider the Bill during the public consultation.

Are there any costs or benefits that are not financial i.e. social [Note E]

The Bill is part of an ongoing process of ensuring the Island’s legislation complies with modern international standards for the purpose of seeking to protect the Island’s international reputation.
Which Business sectors/organisations will be impacted, if any, and has any direct consultation taken place? It is not expected that the Extradition Bill will have any direct impact on businesses and organisations.
Does the proposal comply with privacy law? Please provide a brief statement as to any issue of privacy or security of personal information. [Note F] The Bill will be compatible the rights under the European Convention on Human Rights, as they have effect in the Island under the Human Rights Act 2001, including Article 8 (Right to respect for private and family life).
Has Treasury Concurrence been given for the preferred option [Note G] No, as the provisions are not expected to increase the expenditure of Government, reduce its income, or require any additional public service human resources. Date of Treasury Concurrence N/A
Key Assumptions / Sensitivities / Risks [Note H] The key assumption is that failure to ensure the Island has a modern legislative framework to deal with the extradition of people who are present in the Island (whether foreign nationals or Isle of Man residents) who have been convicted of, or who are alleged to have committed, serious crimes, terrorism, corruption, etc. in another country can damage the Island’s reputation and result in a failure to comply with relevant international obligations. However, as evidenced by some cases in the UK over the years, extradition can be a sensitive and at times controversial matter. Nevertheless, extradition is a vital part of the criminal justice system. Where a person has been charged with a serious offence in another country, and it is not possible or appropriate for them to be tried in the jurisdiction where they live, it should not be possible for the person to avoid the consequences of their actions simply by refusing to return to that country. It is important, however, for the person’s human rights to be respected throughout the process.
Approximate date for legislation to be implemented if known [Note I] Not known, but if introduced for at least 1 st Reading in the House of Keys before the end of the 2024/25 session, and if the Bill is subsequently passed by the Branches before the next General Election, it is possible that the legislation could be brought into operation in the first half of 2027.

SUMMARY: CONSULTATION [Note J]
Consultation in line with Government standard consultation process Yes/No
Date 1 st Consultation 2 nd Consultation
Summary of Responses:

EVIDENCE BASE

Use this space to set out any further evidence, analysis and detailed narrative from which you have generated your policy options or proposal.

Extradition Act 2003 (of the UK Parliament) –
<https://www.legislation.gov.uk/ukpga/2003/41/contents>

Extradition (Jersey) Law 2004 – <https://www.jerseylaw.je/laws/current/Pages/17.325.aspx>

Extradition (Bailiwick of Guernsey) Law, 2019 –
<https://www.guernseylegalresources.gg/CHttpHandler.ashx?documentid=84454>

Extradition Act 1989 (of the UK Parliament) as it had effect before its repeal for the UK and as it continues to have effect in the Isle of Man – <https://www.legislation.gov.uk/ukpga/1989/33/2003-02-24>

UK Extradition Treaty list - <https://www.gov.uk/government/publications/international-mutual-legal-assistance-agreements/mutual-legal-assistance-and-extradition-treaty-list-accessible-version>

CPS Guidance on Extradition from the UK: <https://www.cps.gov.uk/legal-guidance/extradition-from-uk>

A Review of the United Kingdom's Extradition Arrangements 2011 by Rt Hon Sir Scott Baker
<https://assets.publishing.service.gov.uk/media/5a7a2b74ed915d6eaf154411/extradition-review.pdf>

UK Government Response to Sir Scott Baker Review:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228566/8458.pdf

House of Lords Extradition Law Committee Report 2015
<http://www.publications.parliament.uk/pa/ld201415/ldselect/ldextradition/126/126.pdf>

UK Government response to the House of Lords Report:
<https://www.parliament.uk/globalassets/documents/lords-committees/extradition-law/2015-07-16%20-Cm9106-ExtraditionEMBARGOED.PDF>