

## **Arrest Warrants**

### **What does the clause do?**

The effect of the clause is to require the consent of the Director of Public Prosecutions before an arrest warrant can be issued in private prosecutions for offences where universal jurisdiction applies.

### **What is Universal Jurisdiction?**

The jurisdiction of our courts is generally territorial, which means that it applies to acts committed in England and Wales. A few offences, such as murder, can be tried here if they were committed abroad by a British national.

There are some offences however that attract universal jurisdiction, which means that they can be tried in the courts of England and Wales whatever the nationality of the alleged perpetrator and even though the crime took place outside the United Kingdom.

There are very few of these offences, and universal jurisdiction is usually claimed only as a result of international Treaty obligations.

### **When does Universal Jurisdiction apply?**

Examples of universal jurisdiction offences are torture; the taking of hostages; and grave breaches of the Geneva Conventions Act 1957. The consent of the Attorney General is required before a prosecution for these offences can proceed.

### **What do you mean by a private prosecutor?**

While the great majority of prosecutions in England and Wales are conducted by the Crown Prosecution Service and a few other official prosecutors, it is possible for private citizens to commence a prosecution by applying to a court for a summons or an arrest warrant. This is a right expressly preserved by statute.

### **What is the problem this provision is designed to solve?**

The problem is that the evidence required for the issue of an arrest warrant is a good deal less than what would be required for a prosecution to be allowed to proceed. Alongside this a court is able to issue an arrest warrant before the Attorney is given the chance to consent to prosecution. So a person might be at risk of arrest and being brought to court even though there was no realistic prospect of a viable prosecution.

### **Does it matter if a warrant is issued in a case that is not ultimately prosecuted?**

It risks damaging our ability to help in conflict resolution or to pursue a coherent foreign policy. It is known that some foreign dignitaries who would otherwise come to the UK to conduct business with the Government or others do not do so for fear of arrest at the instigation of a private prosecutor whose motive may simply be to create publicity.

In cases of this kind we think it is right that foreign visitors should not face being arrested and brought to court on the application of a private prosecutor unless there is sufficient evidence to prosecute them.

### **What does a private prosecutor have to do to get an arrest warrant in these cases, and who decides if they get one?**

Applications in these cases, which are reserved to the Chief Magistrate or one of the other designated District Judges, are made to the City of Westminster Magistrates' Court. The court must be satisfied there are some grounds to show that an offence may have been committed by the person named, and that it is not vexatious or improper to issue. The judge has the final decision.

### **If the magistrates' court has discretion, isn't that sufficient protection?**

The problem is the nature of the threshold in these cases. It is a lower test than the normal test for beginning a criminal prosecution (namely a realistic prospect of successful conviction on the evidence). As the Director of Public Prosecutions said in his evidence to the Bill Committee, the court has to ask the question 'Looking at this written allegation, are the elements of the offence made out and, if proven, would that be a prima facie case?'

But the court does not have to examine the evidence itself. We believe that, for these serious crimes where no connection to the UK is required, it is right to add a further safeguard in private prosecutions.

### **Won't the proposal lead to unnecessary delay when urgent action may be required to apprehend suspects?**

The Director of Public Prosecutions (DPP) is well aware that speed is important in dealing with applications of this kind. He explained in his evidence to the Bill Committee that the Crown Prosecution Service has suitably trained staff available around the clock, and they stand ready to act immediately in emergency cases.

The DPP went on to indicate that it was not necessary to wait until a suspect was present -

'Our much preferred route is that, if anyone wants to pursue a crime of universal jurisdiction as set out in the clause, they should engage us very early in the process. They should come to us with whatever evidence they have, and we will undertake to look at it and to advise.'

**Aren't Ministers already protected by immunity?**

Serving Heads of State and of Government and Ministers of Foreign Affairs have immunity from criminal jurisdiction, and immunity can attach to other senior ministers who travel by virtue of their office. But it does not extend to all ministers; and warrants have been sought against persons who are not serving ministers.