

<b>Title:</b> Extradition Provisional Arrest Power <b>IA No:</b> HO0355  <b>RPC Reference No:</b> N/A  <b>Lead department or agency:</b> Home Office <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 01/10/2019		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Primary legislation		
<b>Contact for enquiries:</b> ExtraditionPolicy@homeoffice.gov.uk			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> Not Applicable

Cost of Preferred (or more likely) Option (in 2016 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
£0 million	£0 million	£0 million	Non qualifying provision

**What is the problem under consideration? Why is government intervention necessary?**

In the UK when a person is wanted for a serious crime by an international partner under Part 2 of the Extradition Act, but not subject to a provisional arrest or extradition request, the police cannot make an arrest without a warrant from a UK court. Individuals who are requested for extradition by international partners may pose a risk to public safety. It is resource intensive to capture an individual who may abscond after being identified. This gap in law enforcement capability requires primary legislation to create the power for UK police to arrest immediately if an individual is wanted by a trusted partner.

**What are the policy objectives and the intended effects?**

The objectives are to create a new extradition arrest power by amending Part 2 of the Extradition Act 2003. The power would only be available for arrest on behalf specified countries under Part 2 of the Act and only for serious offences. The policy is designed to bring a wanted person into Part 2 extradition proceedings in an expedited way. The intended effect is to reduce re-offending by serious and organised criminals as well as bringing about efficiency improvements for law enforcement, the UK Competent Authority and the Crown Prosecution service.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

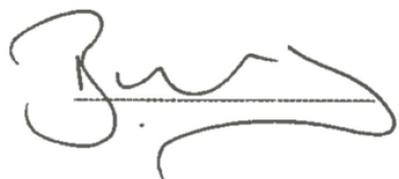
**Option 1:** Do nothing and make no changes and retain the deficiency in the UK statute book. This does not meet the Government's objectives.

**Option 2:** Create an exception to the current rules which govern provisional arrest under the Extradition Act (Part 2) to create a new extradition arrest power in Part 2. **This is the Government's preferred option.**

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** October 2024

Does implementation go beyond minimum EU requirements?		N/A		
Is this measure likely to impact on trade and investment?		Yes		
Are any of these organisations in scope?	<b>Micro</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		<b>Traded:</b> N/A	<b>Non-traded:</b> N/A	

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:  Date: 15/10/19

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** Amend Part 2 of the Extradition Act 2003 creating a new extradition arrest power

## FULL ECONOMIC ASSESSMENT

<b>Price Base</b> Year 18/19	<b>PV Base</b> Year 18/19	<b>Time Period</b> Years 10	<b>Net Benefit (Present Value (PV)) (£m)</b>		
			<b>Low: 0</b>	<b>High: 0</b>	<b>Best Estimate: 0</b>

<b>COSTS (£m)</b>	<b>Total Transition</b> (Constant Price) Years	<b>Average Annual</b> (excl. Transition) (Constant Price)	<b>Total Cost</b> (Present Value)
Low	0		
High			
Best Estimate		0	0

### Description and scale of key monetised costs by 'main affected groups'

There are no familiarisation costs associated with this piece of legislation as there is no new training or informational requirements. There are no ongoing costs associated with this option as the offenders affected by this proposal represent individuals entering the CJS more quickly and efficiently, rather than genuinely additional volumes for the CJS to process.

### Other key non-monetised costs by 'main affected groups'

There are no non-monetised costs associated with this option.

<b>BENEFITS (£m)</b>	<b>Total Transition</b> (Constant Price) Years	<b>Average Annual</b> (excl. Transition) (Constant Price)	<b>Total Benefit</b> (Present Value)
Low	0		
High			
Best Estimate		0	0

### Description and scale of key monetised benefits by 'main affected groups'

There are no monetised benefits associated with this option. Monetisation of the benefits is not possible due to a lack of available data. For example, the cost of obtaining an arrest warrant for a Part 2 extradition case is unknown.

### Other key non-monetised benefits by 'main affected groups'

UK society - expediting the arrest of these offenders may reduce the harm to UK society, in terms of crimes that individuals could have committed had those individuals remained active. The policy is expected to result in 6 individuals entering the CJS more quickly than would otherwise have been the case.

CJS - Police forces will spend less time and resource on investigating, pursuing and obtaining warrants for serious offenders within scope of part 2 of the Extradition Act. HMCTS will also spend less initial resource determining whether to grant warrants for the arrest of these offenders.

### Key assumptions/sensitivities/risks

**Discount rate (%)**

3.5

The analysis assumes that there are no additional costs to police forces, such as from familiarisation or other transitional impacts. The analysis also assumes that the piece of legislation will not add volumes for the CJS.

## BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m: N/A</b>
<b>Costs: N/A</b>	<b>Benefits: N/A</b>	<b>N/A</b>	

# Evidence Base (for summary sheets)

## A. Strategic Overview

### A.1 Background

1. The Extradition Act, Part 1<sup>1</sup> governs the procedures for the arrest and extradition of suspects requested by Part 1 territories. The EU Member States and Gibraltar are currently the territories listed in Part 1 of the Act. The mechanics of these extradition proceedings under Part 1 are enabled by (and designed for) the European Arrest Warrant (EAW) although the EAW is not specifically referenced. Once an arrest has been made on the basis of an EAW then the requested person is the subject of extradition proceedings under Part 1 of the Act until the individual is either discharged or surrendered. The Act requires any suspect arrested under an EAW to be produced before the appropriate judge and suspects can be produced within a matter of hours (depending on the time and location of the arrest). There is therefore judicial scrutiny of the arrest on an EAW shortly after the arrest takes place.
2. The Extradition Act, Part 2 governs the procedures for the arrest and extradition of suspects requested by Part 2 territories. Non-EU Territories (other than Gibraltar) are governed by this part of the Act. The mechanics of these extradition proceedings do not include the use of the EAW. There is no similar mutual recognition instrument which the UK uses with Part 2 territories. Part 2 requests do not carry the power of arrest once the requests are certified until a judge has issued an arrest warrant. Again, after arrest the suspect must be brought to court as soon as practicable as described above.
3. There is a fundamental difference between Part 1 and Part 2 of the Extradition Act. Under Part 2 the police must obtain an arrest warrant from a UK court before being given the power to arrest a suspect who is the subject of an existing extradition request. As a result, a capability gap exists between Part 1 and Part 2 in terms of real time decision making and arrest powers for UK law enforcement.

### A.2 Groups Affected

4. Groups affected by this policy include:
  - a. Serious offenders extradited under Part 2 of the Extradition Act, where the request is made by a 'specified country' (likely Five Eyes countries and EFTA states)
  - b. The Criminal Justice System (including law enforcement bodies and courts)
  - c. The general public, whose safety and security is impacted by the threat of serious criminals

## B. Rationale for intervention

5. Currently, law enforcement agencies are not able to arrest individuals who are wanted by non-EU countries without first obtaining a warrant, leading to a capability gap. For example, if France have issued an EAW for an individual who is wanted for murder and whose whereabouts are unknown, and the individual is encountered by a police officer in the UK, the individual can be immediately lawfully arrested and detained using the French EAW that has been circulated across the EU and is available to the UK police.
6. If Canada has a suspect in a murder and the individual is encountered by a police officer in the UK who is able to identify who the individual is and for what the individual is wanted for (because, for example, there is an Interpol red notice issued worldwide by Canada in respect of them) police do not have the power to arrest but would first need to apply for a domestic warrant, with

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<sup>1</sup> 'Extradition Act 2003', Legislation.gov.uk.

no guarantee that that police would be aware of the individual's whereabouts by the time that this was issued.

7. Additionally, if the EAW ceases to operate in the UK as a result of Brexit this existing risk will substantially increase. In a 'no deal' scenario or in the event of a Future Security Partnership which does not support the retention of EU Member States in Part 1 of the Extradition Act the current capability gap would extend to EU Member States. 15,540 requests were made under the EAW process in 2018/19. In that same year, 1,412 arrests were related to EAWs, and 919 to surrenders.
8. The power would also serve to manage a situation where, under a Future Security Partnership, the UK retains access to the Schengen Information System (SIS II) but does not have an extradition relationship with the EU Member States which supports their designation as Part 1 territories.
9. Unlike the UK at present, many countries already have the power of arrest on an Interpol Red Notice and will be able to rely on that power for UK extradition cases if the UK ceases to operate the EAW. Since some countries can only use that power reciprocally, there is an additional risk to the success of UK requests for extradition in the absence of this new power.

### C. Policy Objective

10. In practice, this primary legislation creates a power for law enforcement to arrest an individual where a designated agency has made an extradition arrest alert available to law enforcement without a UK warrant having been issued first. A triage process would take place to ensure that only alerts which conform to the legislative intention are certified and uploaded to UK systems for use by front line policing for the purposes of immediate arrest.
11. Under the proposed new power, the police could arrest a suspect who was wanted for extradition by a trusted partner country (those who respect the international rules based system and whose Red Notices and Criminal Justice Systems the UK trusts ) for a serious offence if that information has been properly certified. After arrest the suspect must then be produced at court within 24 hours. At that hearing the judge would scrutinise the information that formed the basis for the arrest, any additional information that would have been necessary for the issue of a provisional arrest warrant if one had been sought.
12. This policy is designed to bring a wanted person into the Part 2 extradition proceedings in an expedited way without in any way changing the likelihood of successful extradition or the extradition process itself.

### D. Options

13. **Option 1** is to make no changes (do nothing). In the absence of additional legislation, the police could become aware that an individual is wanted for a serious offence by a trusted international partner but be unable to act on the basis of the information. Continuing with current arrangements imposes security and public protection risks as well as a flight risk with significant consequences for international criminal justice outcomes and high levels of reputational risk.
14. **Option 2** is to create an exception to the current rules which govern provisional arrest under the Extradition Act (Part 2) which creates a new extradition arrest power in Part 2, enabling law enforcement officers to arrest individuals without warrant of arrest from a UK court in certain cases. The new extradition power only applies where an international arrest alert (such as an Interpol Red Notice) is issued by a trusted partner country and is in relation to a serious offence.

### E. Appraisal

#### GENERAL ASSUMPTIONS & DATA

15. The estimates draw from Home Office data on EAW requests, arrests and surrenders, as well as UK Extradition Act Part 2 extradition data for 2017.
16. The following assumptions are made:
- a. The legislation does not lead to any additional costs because it brings individuals into the CJS more quickly, rather than bringing additional individuals into the CJS.
  - b. The analysis assumes that there are no additional costs to police forces, such as from familiarisation or other transitional impacts. There are no significant new training or informational requirements as a result of this legislation, and any such requirements would be minor in scale.
  - c. The rate of encountering people with Interpol Red Notices will be proportionately the same as for EAWs at the moment (i.e. the more efficient circulation of EAWs using SIS II has no additional effect on the probability of encountering someone).
  - d. The proportion of Interpol Red Notices for people from trusted countries for indictable crimes is assumed to remain constant at the rate seen in 2017. The types of crimes individuals are extradited for is also assumed to match the 2017 breakdown.

## **COSTS**

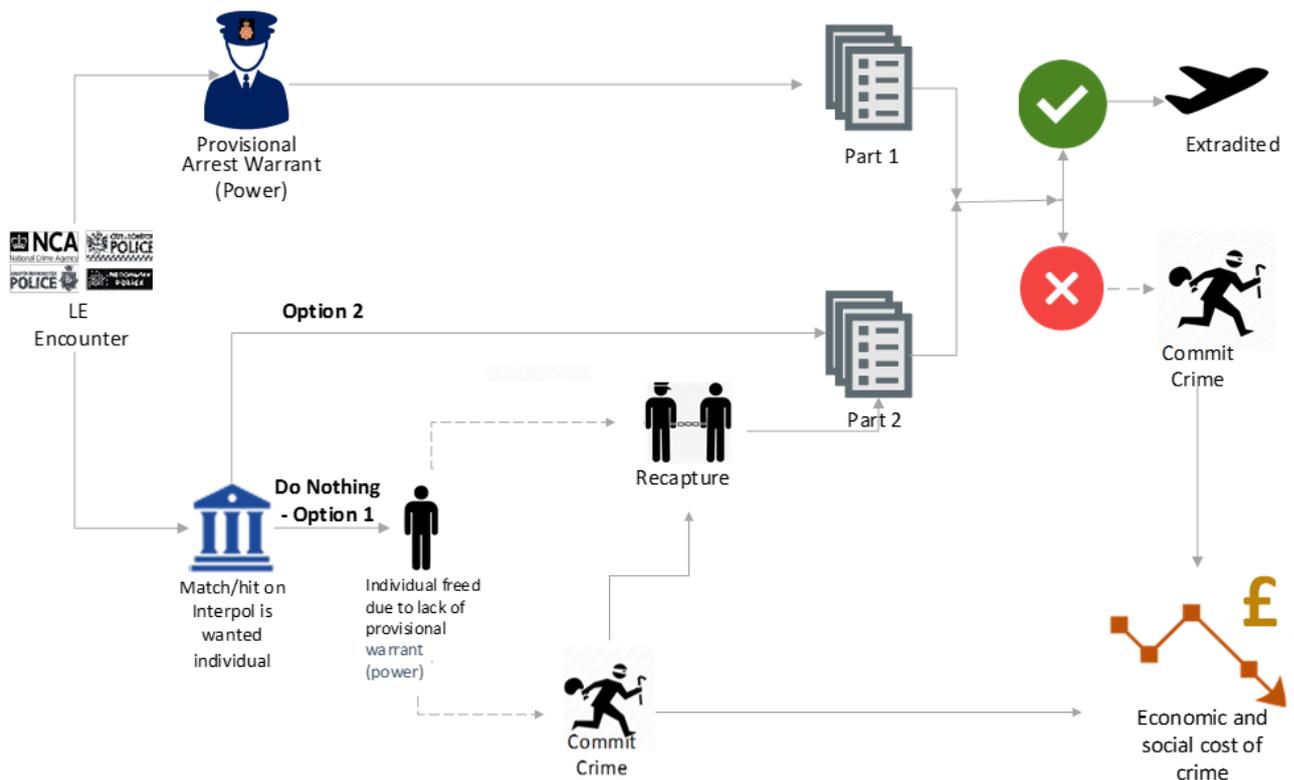
17. There are no costs associated with this option. The unit cost of a Part 2 extradition was estimated to be £62,000 in a previous HM Government Impact Assessment. The offenders extradited due to this legislation do not, however, reflect additional volumes beyond the baseline. Rather, these extraditions represent cases brought into the CJS more quickly and efficiently.<sup>2</sup>

## **BENEFITS**

18. Individuals who will enter the extradition process following this new legislation will be individuals who are already wanted for extradition. Without this new power to arrest, those suspects enter the court system at a different time, but the suspects are highly likely to be before the court in any event when the requesting state confirms that the suspect is at large in the UK.
19. There is a generally low volume (of around 100) of Part 2 extradition requests a year received in the UK. In terms of the number of cases that this power might affect, the figure is further reduced to those cases requested by 'trusted countries' (likely Five Eyes countries and EFTA states) and only those cases involving serious offences. This includes a post Brexit scenario where the number of countries who could use the power would extend to the EU Member States since any necessary additional court capacity would be created by the absence of EAW cases in the justice system and related agency processes.
20. Both parts of the Extradition Act require that a suspect should be brought before a judge after the suspect is arrested ('as soon as reasonably practicable' or, in the case of provisional arrest under Part 2, within 48 hours) so that the individual's extradition proceedings can begin with proper judicial scrutiny and safeguarding and the same legal obligations will exist with regard to cases where the suspect has been initially arrested under this legislation.
21. The following diagram sets out the process in option 2, compared with the do-nothing (option 1), in more detail:

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<sup>2</sup> 'Decision pursuant to Article 10(5) of Protocol 36 to The Treaty on the Functioning of the European Union', HM Government, July 2014. (pg 55)



Source: Home Office

22. Under the 'do nothing' option (option 1), an individual subject to an Interpol Red Notice cannot be arrested upon an initial encounter with law enforcement without a warrant. The arresting officer would first be required to physically seek an arrest warrant and initially not detain the subject. This provides an opportunity for the subject to escape and potentially commit further crime, which may lead to an economic and social impact upon society.
23. Under option 2, an individual subject to an Interpol Red Notice (having committed a serious offence and from a specified country) **can** be arrested upon an initial encounter with law enforcement without a warrant. This avoids the risk of the individual temporarily absconding and committing further crime before recapture, thereby avoiding the potential economic and social impact of that crime.
24. When law enforcement comes across a subject with an EAW out against them, the subject is arrested. Therefore, the numbers of arrests is equal to the number of encounters. Under option 2, the same will be true for Interpol Red Notices - but only for (i) people from trusted countries who (ii) have a Red Notice for a serious offence. With EAW, arrests are converted into surrenders (extraditions) at a certain rate. This information is set out in Table B below.

Table A – EAW request, arrest and surrender data

Part 1 EAWs - Fiscal Year	2009- 10	2010- 11	2011- 12	2012- 13	2013- 14	2014- 15	2015- 16	2016- 17	2017- 18	2018- 19	Total
Requests	3,870	5,770	5,641	6,263	7,881	12,134	14,279	16,598	17,256	15,540	<b>105,232</b>
Arrests	1,057	1,295	1,394	1,438	1,660	1,586	2,102	1,735	1,453	1,412	<b>15,132</b>
Surrenders	772	1,100	1,076	1,057	1,067	1,093	1,271	1,390	1,027	919	<b>10,772</b>
Conversion rate	73.0%	84.9%	77.2%	73.5%	64.3%	68.9%	60.5%	80.1%	70.7%	65.1%	<b>71.2%</b>

25. The EAW data in Table B can be used as a proxy to estimate the impact of the legislation. Under option 2, this rate will be the same for Interpol Red Notices. The average rate of EAW conversions of arrests to surrenders over the past 10 years is calculated as 71.2%. For every 1 EAW surrender, 1.4 arrests would be expected (or 'encounters' for Interpol Red Notices). Under option 1, the ratio of arrests to surrenders under the Part 2 procedure is 1. Option 2 will bring the Red Notice procedure in line with EAW for trusted countries and indictable crimes. Around 0.4, or **40%**, of future Interpol Red Notice surrenders would be expected to be affected by this legislation. This provides a central estimate of the number of affected surrenders per year of **6** (with a range of 3 to 8).<sup>3</sup>
26. Under the do-nothing option, these individuals may have gone on to re-offend in the absence of an arrest upon their initial encounter with law enforcement. Option 2 will remove the opportunity for this re-offending, thereby avoiding the associated economic and social cost. Offences for which people were extradited in 2017 (under Part 2 of the Extradition Act) include murder, child sexual exploitation, drugs offences, rape and other serious offences. Re-offending rates for a group of relevant offences are provided in Table A below.

**Table B – Recidivism rates by offence type<sup>4</sup>**

<b>Offence type</b>	<b>One-Year Reoffending %</b>
Drug offences	25.3%
Sexual offences	13.6%
Violence against the person offences	25.3%
Theft offences	52.4%
Fraud offences	19.7%
Sexual offences	13.6%
Fraud offences	19.7%
Micellaneous crimes against society	26.0%

27. These reductions represent very small annual volumes. Taken over a 10 year appraisal period, however, the probability of an individual subject to an Interpol Red Notice re-offending (in any given year) increases significantly. Some of these crimes represent the most serious, harmful crimes to society, and so the associated impacts are significant. For example, the economic and social impact of a child sexual exploitation offence is £348,410<sup>5</sup> and the cost of a rape offence is £39,360.<sup>6</sup> Preventing even low volumes of re-offending in these areas could therefore have significant benefits to UK society. On the other hand, some of the offences entail relatively low unit costs, such as theft from person offences (£1,380) and fraud (£1,290). It is not possible to give a precise estimate of the impact of the legislation, as it is unclear how much re-offending will be prevented.
28. Other benefits of the legislation may include:
- a. Efficiency improvements for law enforcement agencies. For example, less police time will be required to process each case in the absence of a pre-arrest requirement for a warrant.
  - b. Less processing time for the UK Central Authority to deal with extradition following the arrests that are made.

<sup>3</sup> See Annex A for further details.

<sup>4</sup> 'Proven reoffending statistics: July to September 2017', Ministry of Justice, July 2019.

<sup>5</sup> 'Understanding organised crime 2015/16 Estimating the scale and the social and economic costs Second edition', Home Office, February 2019.

<sup>6</sup> 'The economic and social costs of crime Second edition', Home Office, July 2018.

- c. Some time savings for the Crown Prosecution Service, although this may represent time transferred rather than time saved.

29. If the European Arrest Warrant ceases to operate in the UK as a result of Brexit, the impact of this legislation will substantially increase. In a ‘no deal’ scenario or in the event of a Future Security Partnership which does not support the retention of EU Member States in Part 1 of the Extradition Act the current capability gap (which this legislation corrects) would extend to EU Member States.

30. Table C below outlines the costs and benefits of the proposed changes.

<b>Table C Costs and Benefits</b>		
<b>Option</b>	<b>Costs</b>	<b>Benefits</b>
<b>2</b>	None identified	Reduced re-offending by serious and organised criminals Efficiency improvements for law enforcement Less processing time for the UK Competent Authority Time savings for the CPS

31. Option 2 is the preferred option and corrects a deficiency in the UK statute book, thereby avoiding harm associated with potential re-offending and enabling more efficient working for law enforcement.

### **Net present value**

32. As this policy has no quantifiable costs or benefits, its net present value is £0.

### **F. Proportionality**

33. The policy has no monetised costs or benefits. No costs associated with the legislation have been identified. The data required to monetise the benefits, such as the cost of obtaining an arrest warrant, is unavailable. As such, there is limited scope for detailed analysis. The legislation is intended to correct a deficiency in the UK statute book.

### **G. Risks**

34. No risks which would have a significant impact on this analysis have been identified.

### **H. Direct costs and benefits to business calculations.**

35. This legislation is not expected to have any impact on business and a SaMBA has therefore not been conducted.

### **I. Wider Impacts**

36. Expediting the arrest of offenders through this legislation may reduce the harm to UK society, in terms of crimes that individuals could have committed had those individuals remained active. The policy is expected to result in 6 individuals entering the CJS more quickly than would otherwise have been the case. These individuals will no longer have the opportunity to re-offend while law enforcement obtains an arrest warrant.

### **J. Trade Impact**

37. This policy has the potential to impact on trade and investment. There is a limited risk that countries not being placed on the “trusted countries” list could affect diplomatic relations between

the UK and that country, with a resulting impact on trade and investment. This scenario is not expected to be likely. This scenario is uncertain and cannot be quantified.

**K. Implementation date, monitoring and evaluation (PIR if necessary), enforcement principles.**

38. The Government plans to commence these changes on a date to be specified in regulations. It will also be necessary to make consequential amendments to codes of practice and court rules. Implementaiton is envisaged before the end of 2020.
39. The designated authority will monitor the use of the power, gathering date on the number of arrest alerts certified and the number of arrests made on that basis. The data will be collated and analysed to indicate the impact of any legislation.
40. The Government has existing structures to seek continuous feedback from UK authorities involved in extradition, including the Devolved Administrafions. The Department will continue to engage with these stakeholders throughout the passage of the bill and beyond implementation.

## Impact Assessment Checklist

The impact assessment checklist provides a comprehensive list of specific impact tests and policy considerations (as of October 2015). Where an element of the checklist is relevant to the policy, the appropriate advice or guidance should be followed. Where an element of the checklist is not applied, consider whether the reasons for this decision should be recorded as part of the Impact Assessment and reference the relevant page number or annex in the checklist below.

The checklist should be used in addition to [HM Treasury's Green Book guidance](#) on appraisal and evaluation in central government.

### Economic Impact Tests

<b>Justice Impact Test</b> The justice impact test is a mandatory specific impact test, as part of the impact assessment process that considers the impact of government policy and legislative proposals on the justice system. [ <a href="#">Justice Impact Test Guidance</a> ]	YES
<b>Statutory Equalities Duties</b> The public sector equality duty requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations in the course of developing policies and delivering services. [ <a href="#">Equality Duty Toolkit</a> ]	YES –

## Annex A – Uplift in Interpol Red Notice surrenders methodology

41. In 2017, there were a total of 37 extraditions under Part 2 procedure. In 2018, however, only 15 people were extradited under this procedure.<sup>7</sup> It is unknown how many extraditions will take place in future. A central estimate of total future extraditions is therefore taken as the average of the 2017 and 2018 figures (26). The 2018 figure (15) is used as a lower bound, and the 2017 figure (37) is used as an upper bound.
42. Under option 2, law enforcement will encounter the same number of individuals subject to an Interpol Red Notice, but will be able to arrest them more efficiently. It is unknowable exactly what crimes these individuals will have committed. An assumption is therefore made that the breakdown of offences is the same as those observed for Part 2 surrenders in 2017 (i.e. those currently extradited using this mechanism). In 2017, 21 people were extradited to trusted countries for indictable crimes (out of a total of 37 extraditions under the Part 2 procedure). This represents around 57% of the total. Applying this 57% proportion to the estimates of total extraditions in paragraph 25 above provides baseline low, central and high estimates of future Interpol Red Notice extraditions to trusted countries for indictable offences of around 9, 15 and 21 respectively.
43. The EAW data in Table B can be used as a proxy to estimate the impact of the legislation. Under option 2, this rate will be the same for Interpol Red Notices. The average rate of EAW conversions of arrests to surrenders over the past 10 years is calculated as 71.2%. For every 1 EAW surrender, 1.4 arrests would be expected (or 'encounters' for Interpol Red Notices). Under option 1, the ratio of arrests to surrenders under the Part 2 procedure is 1. Option 2 will bring the Red Notice procedure in line with EAW for trusted countries and indictable crimes. Around 0.4, or **40%**, of future Interpol Red Notice surrenders would be expected to be affected by this legislation. This provides a central estimate of the number of affected surrenders per year of **6** (with a range of 3 to 8).

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<sup>7</sup> Data on the breakdown of the 2018 extraditions by nationality and offence type is unavailable.