

THE HIGH COURT

RECORD NUMBER 2020/002 EXT

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

WESLEY DAVID PURSE

RESPONDENT

Judgment of Mr. Justice Paul Burns delivered on the 9th day of October, 2020

1. By this application the applicant seeks an order for the surrender of the respondent to the United Kingdom of Great Britain and Northern Ireland ("the UK") pursuant to a European arrest warrant dated 8th November, 2019 ("the EAW") issued by Judge David Fletcher, Circuit Judge of the Crown Court of England and Wales, as the issuing judicial authority.
2. The EAW seeks the surrender of the respondent for the enforcement of a court order dated 1st July, 2016 imposing a sentence of 12 years' imprisonment in respect of an offence regarding the supply of a controlled substance, and also seeks the surrender of the respondent for prosecution in respect of a number of other offences, viz. wounding with intent to cause grievous bodily harm, unlawful and malicious wounding (as an alternative to the preceding offence), affray and possession of an offensive weapon in a public place.
3. The EAW was endorsed on 20th January, 2020 and the respondent was arrested and brought before this Court on 27th January, 2020. The respondent was remanded in custody as he is currently serving a sentence of five years' imprisonment in this jurisdiction in respect of offences under the Misuse of Drugs Acts.
4. I am satisfied that the person before the Court is the person in respect of whom the warrant was issued. This was not put in issue by the respondent.
5. I am satisfied that the minimum gravity requirements of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003"), are met in respect of both the sentence, which has a remainder of 12 years to be served, and the alleged offences for prosecution referred to in the EAW which carry the following maximum penalties:-
 - (a) wounding with intent to cause grievous bodily harm – life imprisonment;
 - (b) unlawful wounding – five years' imprisonment;
 - (c) affray – three years' imprisonment; and
 - (d) possession of offensive weapons – four years' imprisonment.
6. No issue was taken in respect of correspondence between the offences referred to in the EAW and offences under Irish law. In any event, I am satisfied that such correspondence exists and was proven before the Court.

7. I am satisfied that none of the matters referred to in ss. 21A, 22, 23 and 24 of the Act of 2003 arise and that the surrender of the respondent is not prohibited for the reasons set forth therein.
8. The respondent delivered points of objection dated 2nd March, 2020 and a short affidavit of the same date in which the respondent averred, inter alia, as follows:-

"The warrant states that I was summonsed in person on the 18th of August 2015 and thereby informed of the date and place of trial. I say that I was before the court in relation to the Drugs offences since 2014 and had been before the court on several dates, however, I was not present at the hearing on the 1st July 2016 and was not aware it was on that day. I say that I do not know if any lawyer appeared on my behalf and I believe I was not represented at the hearing in which I was sentenced to a 12-year prison sentence. I say that the warrant does not refer to any right of an appeal or retrial in the absence of such right of appeal or retrial I object to my surrender."

9. At the initial hearing of this matter, counsel on behalf of the respondent indicated that he was only going to address the Court in respect of one of the points of objection, which reads as follows:-

"The proposed surrender of the Respondent, for the offences as set out in the European arrest warrant is in breach of section 45 of the European Arrest Warrant Act of 2003 because the Respondent was convicted and sentenced to 12 years imprisonment in his absence on the 1st July 2016 and was not legally represented at the hearing."

Later in the proceedings, counsel for the respondent reasonably expanded his arguments on foot of additional information provided.

The Contents of the Warrant and Additional Information

10. At part (d) of the warrant, where asked to indicate whether the person requested appeared in person at the trial resulting in the decision, the issuing judicial authority ticked box 2 as follows:-

"No the person did not appear in person at the trial resulting in the decision."

In response to the direction "3. If you have ticked the box under point 2, please confirm the existence of one of the following:", the issuing judicial authority ticked box 3.1a as follows:-

"the person was summoned in person on 18/08/15 (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial."

11. Pursuant to s. 20 of the Act of 2003, the Court furnished a copy of the respondent's affidavit to the UK authority seeking its comments in respect thereof and further requested as follows:-

"It is noted that at paragraph D3.1.a of the EAW it is stated that Mr Purse was summonsed in person on 18th August, 2015. Please state if he was informed of the hearing date of 1st July, 2016 on that date and if not, please clarify when he was informed of the hearing date of the 1st July, 2016."

12. A reply to that request was received from a senior district crown prosecutor dated 30th March, 2020. No issue was taken in relation to the source of the reply or as to its admissibility. The writer of the reply indicated that she did not have access to a copy of the EAW or the affidavit referred to in the letter. She indicated that she had access to the Crown Prosecution Service electronic case management system and had located the case papers relating to the respondent. She attached a copy of the brief-back sheet containing the management record of prosecution counsel at each hearing before the Crown Court. She stated that the respondent appeared before the Crown Court sitting on 18th August, 2015 when he was arraigned alongside his co-accused. He contested the allegations against him and a trial date was set for both defendants for 13th October, 2015. The respondent failed to surrender to the Court on the trial date and a bench warrant was issued. The trial was adjourned until 10th November, 2015 and, as no court was available that day, on 11th November, 2015, the case was adjourned to 5th January, 2016. The respondent was not present on those dates as the warrant remained unexecuted. The trial date for 5th January, 2016 was vacated and the matter was adjourned to 14th March, 2016. The respondent did not appear but it was ruled that the trial would proceed in his absence. A trial date was set for 27th June, 2016. The respondent did not appear on that trial date and the trial proceeded in absentia. The respondent was convicted in his absence on 1st July, 2016.

13. The handwritten notes upon the brief-back sheet confirmed that the respondent had appeared at the initial stages of the proceedings including 18th August, 2015, when he was arraigned and pleaded not guilty, with a trial date set for 13th October, 2015. The notes also confirmed that on 13th October, 2015 the respondent failed to attend and a bench warrant was issued. The entry for 13th October, 2015 contains the following:-

"Pros. seek leave to amend indictment. Count of being concerned in supply not appropriate as no evidence of a supply. Counsel to draft new indictment either 'production' or conspiracy to supply – serve by Friday 16th October. Leave given to amend Ind. (sic) – no prejudice to defs. Trial adjourned to 10th November."

14. The entry in the handwritten notes for 11th November, 2015 contains the following passage:-

"Wesley still not present and warrant not executed. Quare – whether there can be a trial on conspiracy count when he has not been arraigned on this count? Can court enter a plea of NG on his behalf."

15. The handwritten notes for the trial contain the following, *inter alia*:-

"day 3 – CT 2 added (guilty plea) – speeches/sum up/jury retire."

This plea clearly referred to a plea entered on behalf of the co-defendant as the respondent was not present. The entry for day 4 notes the jury returning at 11:35am (3 hours 33 minutes):-

"Wesley Purse – guilty – 12 years imp. – Sentenced in absentia (leading role)."

There then follows a very short indecipherable entry followed by "2*". The notes then set out that a majority direction was given in respect of the co-accused and that the jury returned at 12:19pm (4 hours 12 minutes):-

"Anthony purse- Ct I- Not Guilty. Ct II-Guilty (Being Concerned in Supply of Cannabis). Pleads guilty during the trial. 8 months imp."

16. By letter dated 25th June, 2020 the Court sought further additional information from the UK authorities as to whether the respondent had been represented at the trial which commenced on 26th June, 2016 and at the sentencing hearing, and whether he had been convicted of the same offence in respect of which he had been arraigned and pleaded not guilty on 18th August, 2015. Further information was also sought as to whether, if surrendered, the respondent would have an entitlement to a retrial or appeal in respect of the conviction and/or sentence, or an entitlement to appeal the conviction or sentence, and if so, what were the criteria to obtain such an extension. By reply dated 1st July, 2020, the senior district crown prosecutor for the West Midlands Crown Court Department confirmed that the respondent was represented throughout the trial and at the sentence hearing. As regards whether the respondent had been convicted of the same offence in respect of which he had been arraigned and pleaded not guilty, the reply stated:-

"The records not as clear than they should be for me to provide a categoric response to question 3. From the available information on 18 August 2015 Mr Purse was arraigned on a single count indictment for being concerned in supply of a Class A drug to another. Mr Purse's trial was for a single count of conspiring to supply Cocaine between the 1 April 2014 and the 17 July 2014. He was convicted of that offence."

The reply went on to indicate that the respondent had no right to apply for an extension of time to seek leave to appeal against the conviction or sentence, and that while short extensions of time to seek leave to appeal a conviction or sentence may be appropriate where there is merit in the grounds of appeal, it was unlikely that the Court of Appeal would grant extended leave to appeal given the substantial passage of time in the case of the respondent.

Respondent's Submissions

17. Counsel for the respondent submitted that the respondent was not present for the course of his trial or sentencing. He submitted that the documentation before the Court did not

show that he had been informed of the scheduled date and place of the trial which resulted in the decision, or that he was informed that a decision may be handed down if he did not appear for trial. The respondent had been informed on 18th August, 2015 of a trial date of 13th October, 2015 in relation to an offence of being concerned in the supply of a class A drug to another. No trial took place on 13th October, 2015 and at the trial which eventually took place in June/July 2016, the respondent was convicted and sentenced in respect of an offence of conspiracy to supply a class A drug to another. While the respondent was legally represented at the trial and sentence, it was submitted that there is no evidence that he had given a mandate to a lawyer to defend him. It was further submitted that the documentation raised sufficient concerns about the manner in which the proceedings against him had been conducted so that surrender on foot of the EAW would be incompatible with the State's obligations under the European Convention on Human Rights ("the ECHR") and/or the Constitution and was thereby prohibited pursuant to s. 37 of the Act of 2003. In particular, counsel for the respondent referred to the respondent's fair procedure rights under article 6 ECHR and submitted that the offence with which he was convicted appeared to be different to that which he was facing when he was last personally before the Courts; in effect that a new charge had been added or substituted in his absence. He further submitted that as the additional information indicated that the respondent had no right to a retrial, this raised concerns as to whether this extradition could be compatible with the State's obligations under the ECHR.

Applicant's Submissions

18. The applicant accepted that the respondent was not present at the hearing which decided his guilt, resulting in a sentence being imposed on him. That was clearly set out in the EAW. Having indicated such in the EAW at part (d)2, the issuing state was then obliged to complete part (d)3 and had done so by ticking box 3.1.a to the effect that the respondent had been summoned in person on 18th August, 2015, was thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision would be handed down if he or she did not appear for the trial. She submitted that the EAW was completed correctly and that there was not a sufficient evidential basis for the Court to look behind the details as set out in the EAW and in the additional information in that regard. It was submitted that s. 45 of the Act of 2003 had clearly been complied with on the face of the EAW, and that neither the Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States, as amended ("the Framework Decision"), nor the Act of 2003 confer any right to an appeal or retrial for persons who were personally on notice of the trial date but failed to appear for trial. While the trial did not in fact proceed on 13th October, 2015, which the respondent had been informed would be the trial date when he last appeared before the Court on 18th August, 2015, the respondent could not rely upon his own absconding to benefit from a submission that he had not been informed of the new trial date. There was no way of informing him of a new trial date as he had absconded, and although a bench warrant had been issued for his arrest, he had not been located. In relation to the respondent's concerns that he may have been convicted of an offence other than that of which he had been informed when last before the Court, she

submitted that there was no substantive difference between the two offences and that there was no automatic breach of any fair trial rights as the facts alleged remained the same and an alternative verdict was always a possibility. She emphasised that the Court had to have regard to the mutual trust and confidence between member states which underpinned the European arrest warrant system, including mutual trust and confidence between member states as regards respect for, and giving effect to, rights under the ECHR.

Analysis and Decision

19. Section 45 of the Act of 2003 provides as follows:-

"A person shall not be surrendered under this Act if he or she did not appear in person at the proceedings resulting in the sentence or detention order in respect of which the European arrest warrant was issued, unless the European arrest warrant indicates the matters required by points 2, 3 and 4 of point (d) of the form of warrant in the Annex to the Framework Decision as amended by Council Framework Decision 2009/299/JHA, as set out in the table to this section."

A table is then set out in the form of s. (d) of the EAW in this case. Table (d) in s. 45 of the Act of 2003 is derived from, and required by, the Framework Decision.

20. Similar issues to those raised in these proceedings were raised in *Minister for Justice and Equality v. Fiszer* [2015] IEHC 664 and *Minister for Justice and Equality v. Lipatovs* [2019] IEHC 126.
21. In *Fiszer*, the surrender of Mr. Fiszer was sought to serve a three-year prison sentence in circumstances where he had initially appeared for the trial and on a number of subsequent dates, and was also represented by court-appointed counsel. He was not personally served with notice of the next trial date although the service of the summons was deemed good. He did not appear for the trial but his legal counsel did. A subsequent date for the verdict was set and proceeded with, at which neither Mr. Fiszer nor his counsel attended. The issuing member state had, at the request of the High Court, completed a new table (d) indicating that Mr. Fiszer had not appeared in person at the trial resulting in the decision and also indicating that being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by the counsellor at the trial, which was the equivalent of table (d) 3.2 in s. 45 of the Act of 2003. Donnelly J. made an order for the surrender of Mr. Fiszer and stated as follows at paras. 28-29:-

"In ticking point (d) 3.2, the issuing judicial authority is relying upon the fact of the respondent's awareness of the scheduled trial and that he gave a mandate to a legal counsellor. In all of the information provided to this Court by the issuing judicial authority, which information is not contested by the respondent, it is demonstrated that the respondent was present throughout the trial proceedings from March 2007 up to and including 14th April, 2008. The information provided by

the issuing judicial authority establishes that this was an ongoing trial. It is also clearly established that the respondent was represented by legal counsel throughout that period and that he knew this counsel. In May 2008, he left the Polish Republic and came to the island of Ireland.

I have no doubt whatsoever on the basis of the information before me, provided by the issuing judicial authority and not contested by the respondent, that the respondent was aware that his trial was ongoing. The respondent was, therefore, aware that there was a scheduled trial – he was present at a trial that was being adjourned from time to time. He may not specifically have been specifically aware of the next date but he was aware that there was going to be a further trial date and was therefore aware of the scheduled trial.”

As regards the mandate to the legal counsellor, Donnelly J. stated at paras. 31-33:-

“I am satisfied that the respondent had undoubtedly given a mandate at the outset of the trial to the lawyer who appeared for him. Nonetheless, the respondent submitted that this trial lawyer had no mandate to appear for him. He relied upon his averment that he did not keep in touch with the lawyer ‘... who did not have any instructions to act after this date’. This averment is quite disingenuous in its careful obfuscation of the issue. It is not an indication that he withdrew his mandate to the lawyer. In fact, it is really stating the opposite, there was no positive withdrawal of the mandate, there was simply a failure on his part to keep in touch with his lawyer. The respondent’s statement concerning lack of instructions is inextricably linked to his statement that he did not keep in touch with his lawyer. In those circumstances, the claim that the lawyer did not have any instructions to act after that date is an inadequate response to the statement in the EAW that the lawyer did have a mandate to act and did indeed act.

This court must place, and does place, mutual trust and confidence in the statements in the EAW and accompanying documentation provided by the issuing judicial authority. These documents indicate that this respondent had given a mandate to the lawyer. Furthermore, the Court is entitled to take into account that a lawyer will, in the normal course, only act on instructions. The bare reference by the respondent to not keeping in touch with the lawyer leading to his implication that the lawyer had no longer any instructions to act, does not amount to a direct statement that the instructions were actually withdrawn.

The reality in this case is that the respondent was aware of the trial that was planned and that, on the information provided by the issuing judicial authority, was in being. He knew the trial was in being (he acknowledges in his own affidavit that he knew of the ‘proceedings’) and he left Poland. In those circumstances, I find that he deliberately chose to flee from Poland during the course of his trial. He had given a mandate to the lawyer who was acting for him during the course of that trial and I am quite satisfied from the evidence before me that that mandate continued throughout the trial. In those circumstances, the provisions of s. 45 of

the Act of 2003 have been complied with. There are no grounds for refusing to surrender him."

22. In *Minister for Justice and Equality v. Lipatovs* [2019] IEHC 126, the surrender of Mr. Lipatovs was sought by the UK to serve a five-year sentence of imprisonment in circumstances where he had been present at the initial stages of the criminal proceedings but failed to attend his trial, although he was represented throughout by counsel. He had been present on the occasion when the trial date was set. It was submitted on behalf of Mr. Lipatovs that a distinction was to be made between the trial resulting in a conviction and the imposition of a sentence so that the requirements of s. 45 of the Act of 2003 had to be established separately in respect of the trial and the sentence, respectively. It was submitted that he had not waived his right to be present at the sentence hearing. It was also argued that as no plea in mitigation had been put forward at the sentence hearing, there had been no effective representation at sentencing and this amounted to a breach of his fair trial rights under the ECHR. Donnelly J. ordered the surrender of Mr. Lipatovs and in the course of her judgment stated at para. 48:-

"This Court has not been furnished with any authority from the ECtHR or any national court, that has decided that the right to a fair trial means there must be a bifurcated process regarding notice of trial on the one hand and then notice of sentence as a separate event. Instead, the case law produced has implicitly, and on occasion explicitly, regarded the notification as to trial as a trial which will encompass a sentence hearing. In those circumstances, the concept of trial encompasses the sentence hearing. Therefore, if there has been a waiver of the right to be present at the trial, it can be said that there is a waiver of the right to be present at the sentence."

As regards the requirements of s. 45 of the Act of 2003, Donnelly J. held at para. 58:-

"In the circumstances, there is no breach of s. 45 as the respondent was informed of the scheduled trial and gave a mandate to his lawyer. The EAW also states that the respondent was represented throughout the trial by his instructed counsel who is so named..."

In relation to the lack of a plea in mitigation, Donnelly J. stated at para. 59:-

"The fact that no mitigation was given is not an indication that he was not represented at the sentence stage. On the contrary, that is an indication that no mitigation was presented to the court, as no mitigation had been forwarded by the respondent. Implicit within that is that the respondent was represented at the hearing but no plea in mitigation made. That confirms, rather than detracts from, the statement in the EAW that he was represented throughout the trial by counsel. Therefore, in the context where the respondent waived his right to be present at his trial but gave a mandate to his lawyer, there is no breach of s. 45 of the Act of 2003. He had given the mandate and was in fact defended at the trial."

Donnelly J. summarised the position as follows at paras. 62-63:-

"In the view of the Court, the respondent has not established that there has been a flagrant denial of justice in the UK court by proceeding to sentence him in circumstances where there was a clear waiver of his right to be present at the trial and where in fact he was represented at that trial. Therefore, it is not a breach of either the Convention or the Constitution to surrender him in those circumstances.

Furthermore, the court is satisfied that although he was absent from his trial which included the imposition of sentence on him, the matters required to be stated by s. 45 have been stated by the issuing judicial authority in point (d) of the European arrest warrant. Surrender is therefore not prohibited by s. 45 of the Act of 2003."

23. In the present case, the respondent was present at his arraignment and informed of the intended trial date. He had the benefit of legal counsel throughout the trial process including at sentencing. He clearly decided to abscond and not to attend the rest of the trial process including any sentencing. In such circumstances, he must be taken to have unequivocally waived his right to attend the trial including sentencing. Insofar as there was no plea in mitigation at the sentencing hearing, this was entirely due to the failure of the respondent to provide his legal representatives with any information in that regard. On the basis of the reasoning of Donnelly J. in *Fiszer and Lipatovs*, there has been no flagrant denial of justice in the UK by the Court proceeding to sentence the respondent in circumstances where there was a clear waiver of his right to be present at the trial, including sentence, and where he was represented at that trial. His surrender therefore would not be incompatible with the State's obligations under the ECHR or the Constitution.
24. As regards the requirements of s. 45 of the Act of 2003, the EAW indicates the matters required by points 2, 3 and 4 of point (d) of the table set out thereat. The appropriate boxes have been ticked at point 2 to indicate that the respondent did not appear in person at the trial resulting in the decision and at point 3.1(a) to indicate that the respondent was summoned in person on 18th August, 2015, was thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she did not appear for the trial. While the trial did not in fact proceed on that scheduled date, I am satisfied that the respondent was fully aware that this was an ongoing trial process and that he deliberately decided to absent himself from any further aspect of the process. In such circumstances, there is no reason to regard the completion of the EAW and in particular table (d) thereof as being manifestly in error so that the Court should not accept same. Furthermore, it is clear from the additional information furnished by the requesting authority that point 3.2 of table (d) has also been complied with in that being aware of the scheduled trial, the respondent had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him at the trial, and was indeed defended by that counsellor at the trial. In all the circumstances, I dismiss the respondent's objections based on s. 45 of the Act of 2003.

25. As regards the respondent's objection that his fair trial rights have been breached insofar as he was convicted of an offence other than the offence for which he was arraigned, it should be noted that the respondent was legally represented throughout the entirety of the proceedings. The difference in the wording between the alleged offence at arraignment and conviction does not appear to involve any significant difference in the facts as alleged against the respondent but rather appears to represent an amendment of the charge to more accurately reflect the facts as alleged against the respondent. Such an amendment or substitution of the charge against the accused appears to be allowed for under the procedures of the UK legal system where the trial is proceeding in the absence of the accused. The respondent was legally represented. In *Minister for Justice and Equality v. Brennan* [2007] 3 IR 732, it was held that the mere fact that the legal system or system of trial in another jurisdiction differed from that envisaged by our Constitution would not mean that surrender would contravene the Constitution. Murray C.J. stated at para. 51:-

"That is not by any means to say that a Court, in considering an application for surrender, has no jurisdiction to consider the circumstances where it is established that surrender would lead to a denial of fundamental or human rights. There may well be egregious circumstances, such as a clearly established and fundamental defect in the system of justice of the requesting State, where a refusal of an application for surrender may be necessary to protect such rights. It would not be appropriate in this case to examine further possible or hypothetical situations where this might arise. The sole matter which I wish to make clear here is that the mere fact that a trial or sentence may take place in a requesting State according to procedures or principles which differ from those which apply, even if constitutionally guaranteed, in relation to a criminal trial in this country does not of itself mean that an application for surrender should be refused pursuant to s. 37(2) of the Act."

26. In the cases of *Minister for Justice, Equality and Law Reform v. Marjasz* [2012] IEHC 233 and *Minister for Justice and Equality v. Rostas* [2014] IEHC 391, Edwards J. stressed that in cases where surrender is sought to enforce a sentence imposed following a criminal trial, the Court will in general be most reluctant to engage in any review of the trial process leading to the conviction upon which the European arrest warrant is based to determine whether it was fair and lawful. The default and starting position in all cases is that the Court must proceed upon a presumption that the trial leading to the conviction in question was fair in respect of the respondent's fundamental rights, and that in the event of him having some complaint in regard to the fairness of the trial that led to his conviction, that it was incumbent upon him, at the material time, to seek an effective remedy in regard to that before the courts of the issuing state.
27. Similarly, in *Minister for Justice v. Stapleton* [2008] 1 IR 699, the Supreme Court emphasised the principles of mutual trust and mutual recognition which lie at the heart of the European arrest warrant system. Fennelly J. pointed out that mutual confidence encompasses the system of trial in the issuing state, and it follows therefore that the courts of the executing member state, when deciding whether to make an order for

surrender, must proceed on the assumption that the court of the issuing member state will, as required by article 61 of the Treaty on the European Union, respect human rights and fundamental freedoms. In *Minister for Justice, Equality and Law Reform v. Koncis* [2006] IEHC 379, Peart J. stated at para. 9:-

"[a] respondent seeking to unsettle such a presumption and understanding has a heavy onus to discharge and a high hurdle to overcome before his/her surrender will be refused."

28. In the present case, the respondent has not adduced any authorities to support his proposition that the amendment or substitution of the original charge in the circumstances of this case amounts to a breach of his fundamental rights, and in particular his right to a fair trial. The amendment or substitution of a charge does not per se amount to a breach of a fair trial right. Procedures such as amendment or substitution of charges or the returning of an alternative verdict are common aspects of criminal trials. In the present case, the respondent had the benefit of legal representation throughout the trial process. Bearing in mind the reasoning of the Supreme Court in the cases of *Brennan* and *Stapleton*, I dismiss the respondent's objection that his surrender would be in breach of the State's obligations under the ECHR or the Constitution, by virtue of the subsequent amendment of the charge after he had absconded.
29. For the sake of completeness, I note the objection raised by the respondent in his notice of objection that surrender should be refused because the UK is leaving the European Union ("the EU") and the European arrest warrant system, and that the respondent will not be surrendered to the UK until he has completed a sentence which he is currently serving in this jurisdiction for drug offences, so that the transition period for the UK leaving the EU will have expired by the time of his surrender. I find there is no merit in this objection and that the matter has been fully dealt with by the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act, 2019 (part 15) (Commencement) Order, 2020. It should be further noted that this objection was not pursued at the hearing.
30. I am satisfied that the European arrest warrant indicates the matters required by s. 45 of the Act and I am further satisfied that the surrender of the respondent is not prohibited by virtue of s. 37 or any other provision of part three of the Act of 2003.
31. Having dismissed the respondent's objections, it follows that this Court will make an order pursuant to s. 16 of the Act of 2003 for the surrender of the respondent to the UK.