

# Extradition Bill

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[AS AMENDED ON REPORT]

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A  
**B I L L**

[AS AMENDED ON REPORT]

TO

Make provision about extradition.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART 1**

EXTRADITION TO CATEGORY 1 TERRITORIES

*Introduction*

**1 Extradition to category 1 territories**

- (1) This Part deals with extradition from the United Kingdom to the territories designated for the purposes of this Part by order made by the Secretary of State. 5
- (2) In this Act references to category 1 territories are to the territories designated for the purposes of this Part.
- (3) A territory may not be designated for the purposes of this Part if a person found guilty in the territory of a criminal offence may be sentenced to death for the offence under the general criminal law of the territory. 10

**2 Part 1 warrant and certificate**

- (1) This section applies if the designated authority receives a Part 1 warrant in respect of a person. 15
- (2) A Part 1 warrant is an arrest warrant which is issued by a judicial authority of a category 1 territory and which contains—

- 
- (a) the statement referred to in subsection (3) and the information referred to in subsection (4), or
- (b) the statement referred to in subsection (5) and the information referred to in subsection (6).
- (3) The statement is one that – 5
- (a) the person in respect of whom the Part 1 warrant is issued is accused in the category 1 territory of the commission of an offence specified in the warrant, and
- (b) the Part 1 warrant is issued with a view to his arrest and extradition to the category 1 territory for the purpose of being prosecuted for the offence. 10
- (4) The information is –
- (a) particulars of the person’s identity;
- (b) particulars of any other warrant issued in the category 1 territory for the person’s arrest in respect of the offence; 15
- (c) particulars of the circumstances in which the person is alleged to have committed the offence, including a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person, the nature and legal classification of the offence and the applicable statutory provision; 20
- (d) particulars of the sentence which may be imposed under the law of the category 1 territory in respect of the offence if the person is convicted of it.
- (5) The statement is one that –
- (a) the person in respect of whom the Part 1 warrant is issued is alleged to be unlawfully at large after conviction of an offence specified in the warrant by a court in the category 1 territory, and 25
- (b) the Part 1 warrant is issued with a view to his arrest and extradition to the category 1 territory for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence. 30
- (6) The information is –
- (a) particulars of the person’s identity;
- (b) particulars of the conviction;
- (c) particulars of any other warrant issued in the category 1 territory for the person’s arrest in respect of the offence; 35
- (d) particulars of the sentence which may be imposed under the law of the category 1 territory in respect of the offence, if the person has not been sentenced for the offence;
- (e) particulars of the sentence which has been imposed under the law of the category 1 territory in respect of the offence, if the person has been sentenced for the offence. 40
- (7) The designated authority may issue a certificate under this section if it believes that the authority which issued the Part 1 warrant has the function of issuing arrest warrants in the category 1 territory. 45
- (8) A certificate under this section must certify that the authority which issued the Part 1 warrant has the function of issuing arrest warrants in the category 1 territory.

- (9) The designated authority is the authority designated for the purposes of this Part by order made by the Secretary of State.
- (10) An order made under subsection (9) may –
  - (a) designate more than one authority;
  - (b) designate different authorities for different parts of the United Kingdom. 5

*Arrest*

**3 Arrest under certified Part 1 warrant**

- (1) This section applies if a certificate is issued under section 2 in respect of a Part 1 warrant issued in respect of a person. 10
- (2) The warrant may be executed by a constable or a customs officer in any part of the United Kingdom.
- (3) The warrant may be executed by a service policeman, but only if the service policeman would have power to arrest the person under the appropriate service law if the person had committed an offence under that law. 15
- (4) If a service policeman has power to execute the warrant under subsection (3), he may execute the warrant in any place where he would have power to arrest the person under the appropriate service law if the person had committed an offence under that law.
- (5) The warrant may be executed even if neither the warrant nor a copy of it is in the possession of the person executing it at the time of the arrest. 20
- (6) The appropriate service law is –
  - (a) the Army Act 1955 (3 & 4 Eliz. 2 c. 18), if the person in respect of whom the warrant is issued is subject to military law;
  - (b) the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19), if that person is subject to air-force law; 25
  - (c) the Naval Discipline Act 1957 (c. 53), if that person is subject to that Act.

**4 Person arrested under Part 1 warrant**

- (1) This section applies if a person is arrested under a Part 1 warrant.
- (2) If neither the warrant nor a copy of it was shown to the person at the time of his arrest, the warrant or a copy of it must be shown to him as soon as practicable after his arrest. 30
- (3) The person must be brought as soon as practicable before the appropriate judge.
- (4) If subsection (2) or (3) is not complied with and the person applies to the judge to be discharged, the judge must order his discharge. 35
- (5) A person arrested under the warrant must be treated as continuing in legal custody until he is brought before the appropriate judge under subsection (3) or he is discharged under subsection (4).

**5 Provisional arrest**

- (1) A constable, a customs officer or a service policeman may arrest a person without a warrant if he has reason to believe –
- (a) that a Part 1 warrant has been or will be issued in respect of the person by an authority of a category 1 territory, and 5
  - (b) that the authority has the function of issuing arrest warrants in the category 1 territory.
- (2) A constable or a customs officer may arrest a person under subsection (1) in any part of the United Kingdom.
- (3) A service policeman may arrest a person under subsection (1) only if the service policeman would have power to arrest the person under the appropriate service law if the person had committed an offence under that law. 10
- (4) If a service policeman has power to arrest a person under subsection (1), the service policeman may exercise the power in any place where he would have power to arrest the person for an offence under the appropriate service law if the person had committed an offence under that law. 15
- (5) The appropriate service law is –
- (a) the Army Act 1955 (3 & 4 Eliz. 2 c. 18), if the person to be arrested is subject to military law;
  - (b) the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19), if that person is subject to air-force law; 20
  - (c) the Naval Discipline Act 1957 (c. 53), if that person is subject to that Act.

**6 Person arrested under section 5**

- (1) This section applies if a person is arrested under section 5.
- (2) The following must occur within the required period – 25
- (a) the person must be brought before the appropriate judge;
  - (b) the documents specified in subsection (4) must be produced to the judge.
- (3) The required period is 48 hours starting with the time when the person is arrested. 30
- (4) The documents are –
- (a) a Part 1 warrant in respect of the person;
  - (b) a certificate under section 2 in respect of the warrant.
- (5) The Part 1 warrant or a copy of it must be shown to the person as soon as practicable after his arrest. 35
- (6) If subsection (2) or (5) is not complied with and the person applies to the judge to be discharged, the judge must order his discharge.
- (7) The person must be treated as continuing in legal custody until he is brought before the appropriate judge under subsection (2) or he is discharged under subsection (6). 40
- (8) Subsection (9) applies if –
- (a) a person is arrested under section 5 on the basis of a belief that a Part 1 warrant has been or will be issued in respect of him;

- (b) the person is discharged under subsection (6).
- (9) The person must not be arrested again under section 5 on the basis of a belief relating to the same Part 1 warrant.

*The initial hearing*

- 7 Identity of person arrested** 5
- (1) This section applies if –
    - (a) a person arrested under a Part 1 warrant is brought before the appropriate judge under section 4(3), or
    - (b) a person is arrested under section 5 and section 6(2) is complied with in relation to him. 10
  - (2) The judge must decide whether the person brought before him is the person in respect of whom –
    - (a) the warrant referred to in subsection (1)(a) was issued, or
    - (b) the warrant referred to in section 6(4) was issued.
  - (3) The judge must decide the question in subsection (2) on a balance of probabilities. 15
  - (4) If the judge decides the question in subsection (2) in the negative he must order the person’s discharge.
  - (5) If the judge decides that question in the affirmative he must proceed under section 8. 20
  - (6) In England and Wales, the judge has the same powers (as nearly as may be) as a magistrates’ court would have if the proceedings were the summary trial of an information against the person.
  - (7) In Scotland –
    - (a) the judge has the same powers (as nearly as may be) as if the proceedings were summary proceedings in respect of an offence alleged to have been committed by the person; but
    - (b) in his making any decision under subsection (2) evidence from a single source shall be sufficient. 25
  - (8) In Northern Ireland, the judge has the same powers (as nearly as may be) as a magistrates’ court would have if the proceedings were the hearing and determination of a complaint against the person. 30
  - (9) If the judge exercises his power to adjourn the proceedings he must remand the person in custody or on bail.
  - (10) If the judge remands the person in custody he may later grant bail. 35
- 8 Remand etc.**
- (1) If the judge is required to proceed under this section he must –
    - (a) fix a date on which the extradition hearing is to begin;
    - (b) inform the person of the contents of the Part 1 warrant;
    - (c) give the person the required information about consent; 40
    - (d) remand the person in custody or on bail.

- 
- (2) If the judge remands the person in custody he may later grant bail.
- (3) The required information about consent is –
- (a) that the person may consent to his extradition to the category 1 territory in which the Part 1 warrant was issued;
  - (b) an explanation of the effect of consent and the procedure that will apply if he gives consent; 5
  - (c) that consent must be given before the judge and is irrevocable.
- (4) The date fixed under subsection (1) must not be later than the end of the permitted period, which is 21 days starting with the date of the arrest referred to in section 7(1)(a) or (b). 10
- (5) If before the date fixed under subsection (1) (or this subsection) a party to the proceedings applies to the judge for a later date to be fixed and the judge believes there are exceptional circumstances, he may fix a later date; and this subsection may apply more than once.
- (6) Subsections (7) and (8) apply if the extradition hearing does not begin on or before the date fixed under this section. 15
- (7) If the person applies to the judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay.
- (8) If no application is made under subsection (7) the judge must order the person's discharge on the first occasion after the date fixed under this section when the person appears or is brought before the judge, unless reasonable cause is shown for the delay. 20

*The extradition hearing*

**9 Judge's powers at extradition hearing**

- (1) In England and Wales, at the extradition hearing the appropriate judge has the same powers (as nearly as may be) as a magistrates' court would have if the proceedings were the summary trial of an information against the person in respect of whom the Part 1 warrant was issued. 25
- (2) In Scotland, at the extradition hearing the appropriate judge has the same powers (as nearly as may be) as if the proceedings were summary proceedings in respect of an offence alleged to have been committed by the person in respect of whom the Part 1 warrant was issued. 30
- (3) In Northern Ireland, at the extradition hearing the appropriate judge has the same powers (as nearly as may be) as a magistrates' court would have if the proceedings were the hearing and determination of a complaint against the person in respect of whom the Part 1 warrant was issued. 35
- (4) If the judge adjourns the extradition hearing he must remand the person in custody or on bail.
- (5) If the judge remands the person in custody he may later grant bail.

**10 Initial stage of extradition hearing**

- (1) This section applies if a person in respect of whom a Part 1 warrant is issued appears or is brought before the appropriate judge for the extradition hearing. 40

- (2) The judge must decide whether the offence specified in the Part 1 warrant is an extradition offence.
- (3) If the judge decides the question in subsection (2) in the negative he must order the person's discharge.
- (4) If the judge decides that question in the affirmative he must proceed under section 11. 5

## 11 Bars to extradition

- (1) If the judge is required to proceed under this section he must decide whether the person's extradition to the category 1 territory is barred by reason of –
  - (a) the rule against double jeopardy; 10
  - (b) extraneous considerations;
  - (c) the passage of time;
  - (d) the person's age;
  - (e) hostage-taking considerations;
  - (f) speciality; 15
  - (g) the person's earlier extradition to the United Kingdom from another category 1 territory;
  - (h) the person's earlier extradition to the United Kingdom from a non-category 1 territory.
- (2) Sections 12 to 19 apply for the interpretation of subsection (1). 20
- (3) If the judge decides any of the questions in subsection (1) in the affirmative he must order the person's discharge.
- (4) If the judge decides those questions in the negative and the person is alleged to be unlawfully at large after conviction of the extradition offence, the judge must proceed under section 20. 25
- (5) If the judge decides those questions in the negative and the person is accused of the commission of the extradition offence but is not alleged to be unlawfully at large after conviction of it, the judge must proceed under section 21.

## 12 Rule against double jeopardy

A person's extradition to a category 1 territory is barred by reason of the rule against double jeopardy if (and only if) it appears that he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction on the assumption – 30

- (a) that the conduct constituting the extradition offence constituted an offence in the part of the United Kingdom where the judge exercises jurisdiction; 35
- (b) that the person were charged with the extradition offence in that part of the United Kingdom.

## 13 Extraneous considerations

A person's extradition to a category 1 territory is barred by reason of extraneous considerations if (and only if) it appears that – 40

- (a) the Part 1 warrant issued in respect of him (though purporting to be issued on account of the extradition offence) is in fact issued for the

- purpose of prosecuting or punishing him on account of his race, religion, nationality, gender, sexual orientation or political opinions, or
- (b) if extradited he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, gender, sexual orientation or political opinions. 5
- 14 Passage of time**
- A person’s extradition to a category 1 territory is barred by reason of the passage of time if (and only if) it appears that it would be unjust or oppressive to extradite him by reason of the passage of time since he is alleged to have committed the extradition offence or since he is alleged to have become unlawfully at large (as the case may be). 10
- 15 Age**
- A person’s extradition to a category 1 territory is barred by reason of his age if (and only if) it would be conclusively presumed because of his age that he could not be guilty of the extradition offence on the assumption— 15
- (a) that the conduct constituting the extradition offence constituted an offence in the part of the United Kingdom where the judge exercises jurisdiction;
- (b) that the person carried out the conduct when the extradition offence was committed (or alleged to be committed); 20
- (c) that the person carried out the conduct in the part of the United Kingdom where the judge exercises jurisdiction.
- 16 Hostage-taking considerations**
- (1) A person’s extradition to a category 1 territory is barred by reason of hostage-taking considerations if (and only if) the territory is a party to the Hostage-taking Convention and it appears that— 25
- (a) if extradited he might be prejudiced at his trial because communication between him and the appropriate authorities would not be possible, and
- (b) the act or omission constituting the extradition offence also constitutes an offence under section 1 of the Taking of Hostages Act 1982 (c. 28) or an attempt to commit such an offence. 30
- (2) The appropriate authorities are the authorities of the territory which are entitled to exercise rights of protection in relation to him.
- (3) A certificate issued by the Secretary of State that a territory is a party to the Hostage-taking Convention is conclusive evidence of that fact for the purposes of subsection (1). 35
- (4) The Hostage-taking Convention is the International Convention against the Taking of Hostages opened for signature at New York on 18 December 1979.
- 17 Speciality** 40
- (1) A person’s extradition to a category 1 territory is barred by reason of speciality if (and only if) there are no speciality arrangements with the category 1 territory.



- (2) There are speciality arrangements with a category 1 territory if, under the law of that territory or arrangements made between it and the United Kingdom, a person who is extradited to the territory from the United Kingdom may be dealt with in the territory for an offence committed before his extradition only if – 5
- (a) the offence is one falling within subsection (3), or
  - (b) the condition in subsection (4) is satisfied.
- (3) The offences are –
- (a) the offence in respect of which the person is extradited;
  - (b) an extradition offence disclosed by the same facts as that offence; 10
  - (c) an extradition offence in respect of which the appropriate judge gives his consent under section 56 to the person being dealt with;
  - (d) an offence which is not punishable with imprisonment or another form of detention;
  - (e) an offence in respect of which the person will not be detained in connection with his trial, sentence or appeal; 15
  - (f) an offence in respect of which the person waives the right that he would have (but for this paragraph) not to be dealt with for the offence.
- (4) The condition is that the person is given an opportunity to leave the category 1 territory and – 20
- (a) he does not do so before the end of the permitted period, or
  - (b) if he does so before the end of the permitted period, he returns there.
- (5) The permitted period is 45 days starting with the day on which the person arrives in the category 1 territory.
- (6) Arrangements made with a category 1 territory which is a Commonwealth country or a British overseas territory may be made for a particular case or more generally. 25
- (7) A certificate issued by or under the authority of the Secretary of State confirming the existence of arrangements with a category 1 territory which is a Commonwealth country or a British overseas territory and stating the terms of the arrangements is conclusive evidence of those matters. 30

## 18 Earlier extradition to United Kingdom from category 1 territory

- A person's extradition to a category 1 territory is barred by reason of his earlier extradition to the United Kingdom from another category 1 territory if (and only if) – 35
- (a) the person was extradited to the United Kingdom from another category 1 territory (the extraditing territory);
  - (b) under arrangements between the United Kingdom and the extraditing territory, that territory's consent is required to the person's extradition from the United Kingdom to the category 1 territory in respect of the extradition offence under consideration; 40
  - (c) that consent has not been given on behalf of the extraditing territory.

**19 Earlier extradition to United Kingdom from non-category 1 territory**

A person's extradition to a category 1 territory is barred by reason of his earlier extradition to the United Kingdom from a non-category 1 territory if (and only if) –

- (a) the person was extradited to the United Kingdom from a territory that is not a category 1 territory (the extraditing territory); 5
- (b) under arrangements between the United Kingdom and the extraditing territory, that territory's consent is required to the person's being dealt with in the United Kingdom in respect of the extradition offence under consideration; 10
- (c) consent has not been given on behalf of the extraditing territory to the person's extradition from the United Kingdom to the category 1 territory in respect of the extradition offence under consideration.

**20 Case where person has been convicted**

- (1) If the judge is required to proceed under this section (by virtue of section 11) he must decide whether the person was convicted in his presence. 15
- (2) If the judge decides the question in subsection (1) in the affirmative he must proceed under section 21.
- (3) If the judge decides that question in the negative he must decide whether the person deliberately absented himself from his trial. 20
- (4) If the judge decides the question in subsection (3) in the affirmative he must proceed under section 21.
- (5) If the judge decides that question in the negative he must decide whether the person would be entitled to a retrial or (on appeal) to a review amounting to a retrial. 25
- (6) If the judge decides the question in subsection (5) in the affirmative he must proceed under section 21.
- (7) If the judge decides that question in the negative he must order the person's discharge.
- (8) For the purposes of subsection (5), the judge should not regard as a retrial or (on appeal) a review amounting to a retrial, any proceedings that do not in particular include provision for – 30
  - (a) the suspect to be present at the retrial;
  - (b) the suspect to have like rights to hear and examine witnesses as he would have done at the original trial; 35
  - (c) the suspect to have the same right to publicly funded legal services as any suspect or defendant.

**21 Human rights**

- (1) If the judge is required to proceed under this section (by virtue of section 11 or 20) he must decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998 (c. 42). 40
- (2) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.

- (3) If the judge decides that question in the affirmative he must order the person to be extradited to the category 1 territory in which the warrant was issued.
- (4) If the judge makes an order under subsection (3) he must remand the person in custody or on bail to wait for his extradition to the category 1 territory.
- (5) If the judge remands the person in custody he may later grant bail. 5

## 22 Minimum procedural rights

- (1) In reaching a decision under section 21(1) the judge shall have particular regard to the person's Convention rights under Article 6.3 of the European Convention on Human Rights.
- (2) For the purposes of subsection (1), the judge may accept a written assurance from an appropriate authority in the category 1 territory in which the warrant was issued that the person's Convention rights under Article 6.3 will be observed. 10
- (3) Where a written assurance has been given under subsection (2), the Secretary of State shall make arrangements to monitor the subsequent conduct of the proceedings against the person in the territory to which he has been extradited. 15
- (4) If the Secretary of State believes as a result of monitoring under subsection (3) that a person's Convention rights under Article 6.3 have not been observed, he may draw that conclusion to the attention of a judge acting under section 21 in relation to any proceedings for the extradition of any other person to the same category 1 territory. 20

*Matters arising before end of extradition hearing*

## 23 Person charged with offence in United Kingdom

- (1) This section applies if at any time in the extradition hearing the judge is informed that the person in respect of whom the Part 1 warrant is issued is charged with an offence in the United Kingdom. 25
- (2) The judge must adjourn the extradition hearing until one of these occurs –
  - (a) the charge is disposed of;
  - (b) the charge is withdrawn;
  - (c) proceedings in respect of the charge are discontinued; 30
  - (d) an order is made for the charge to lie on the file, or in relation to Scotland, the diet is deserted *pro loco et tempore*.
- (3) If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the judge may adjourn the extradition hearing until the sentence has been served. 35
- (4) If before he adjourns the extradition hearing under subsection (2) the judge has decided under section 11 whether the person's extradition is barred by reason of the rule against double jeopardy, the judge must decide that question again after the resumption of the hearing.

**24 Person serving sentence in United Kingdom**

- (1) This section applies if at any time in the extradition hearing the judge is informed that the person in respect of whom the Part 1 warrant is issued is serving a sentence of imprisonment or another form of detention in the United Kingdom. 5
- (2) The judge may adjourn the extradition hearing until the sentence has been served.

**25 Extradition request**

- (1) This section applies if at any time in the extradition hearing the judge is informed that – 10
- (a) a certificate has been issued under section 71 in respect of a request for the person’s extradition;
  - (b) the request has not been disposed of;
  - (c) an order has been made under section 180(2) for further proceedings on the warrant to be deferred until the request has been disposed of. 15
- (2) The judge must remand the person in custody or on bail.
- (3) If the judge remands the person in custody he may later grant bail.

**26 Physical or mental condition**

- (1) This section applies if at any time in the extradition hearing it appears to the judge that the condition in subsection (2) is satisfied. 20
- (2) The condition is that the physical or mental condition of the person in respect of whom the Part 1 warrant is issued is such that it would be unjust or oppressive to extradite him.
- (3) The judge must – 25
- (a) order the person’s discharge, or
  - (b) adjourn the extradition hearing until it appears to him that the condition in subsection (2) is no longer satisfied.

*Appeals***27 Appeal against extradition order**

- (1) If the appropriate judge orders a person’s extradition under this Part, the person may appeal to the High Court against the order. 30
- (2) But subsection (1) does not apply if the order is made under section 47 or 49.
- (3) An appeal under this section may be brought on a question of law or fact.
- (4) Notice of an appeal under this section must be given in accordance with rules of court before the end of the permitted period, which is 7 days starting with the day on which the order is made. 35

**28 Court’s powers on appeal under section 27**

- (1) On an appeal under section 27 the High Court may –

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- (a) allow the appeal;
    - (b) dismiss the appeal.
  - (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.
  - (3) The conditions are that— 5
    - (a) the appropriate judge ought to have decided a question before him at the extradition hearing differently;
    - (b) if he had decided the question in the way he ought to have done, he would have been required to order the person’s discharge.
  - (4) The conditions are that— 10
    - (a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;
    - (b) the issue or evidence would have resulted in the appropriate judge deciding a question before him at the extradition hearing differently;
    - (c) if he had decided the question in that way, he would have been required to order the person’s discharge. 15
  - (5) If the court allows the appeal it must—
    - (a) order the person’s discharge;
    - (b) quash the order for his extradition.
- 29 Appeal against discharge at extradition hearing 20**
- (1) If the judge orders a person’s discharge at the extradition hearing the authority which issued the Part 1 warrant may appeal to the High Court against the relevant decision.
  - (2) But subsection (1) does not apply if the order for the person’s discharge was under section 42. 25
  - (3) The relevant decision is the decision which resulted in the order for the person’s discharge.
  - (4) An appeal under this section may be brought on a question of law or fact.
  - (5) Notice of an appeal under this section must be given in accordance with rules of court before the end of the permitted period, which is 7 days starting with the day on which the order for the person’s discharge is made. 30
- 30 Court’s powers on appeal under section 29**
- (1) On an appeal under section 29 the High Court may—
    - (a) allow the appeal;
    - (b) dismiss the appeal. 35
  - (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.
  - (3) The conditions are that—
    - (a) the judge ought to have decided the relevant question differently;
    - (b) if he had decided the question in the way he ought to have done, he would not have been required to order the person’s discharge. 40

- (4) The conditions are that—
- (a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;
  - (b) the issue or evidence would have resulted in the judge deciding the relevant question differently; 5
  - (c) if he had decided the question in that way, he would not have been required to order the person’s discharge.
- (5) If the court allows the appeal it must—
- (a) quash the order discharging the person;
  - (b) remit the case to the judge; 10
  - (c) direct him to proceed as he would have been required to do if he had decided the relevant question differently at the extradition hearing.
- (6) A question is the relevant question if the judge’s decision on it resulted in the order for the person’s discharge.
- 31 Detention pending conclusion of appeal under section 29 15**
- (1) This section applies if immediately after the judge orders the person’s discharge the judge is informed by the authority which issued the Part 1 warrant that it intends to appeal under section 29.
- (2) The judge must remand the person in custody or on bail while the appeal is pending. 20
- (3) If the judge remands the person in custody he may later grant bail.
- (4) An appeal under section 29 ceases to be pending at the earliest of these times—
- (a) when the proceedings on the appeal are discontinued;
  - (b) when the High Court dismisses the appeal, if the authority does not immediately inform the court that it intends to apply for leave to appeal to the House of Lords; 25
  - (c) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the House of Lords against the decision of the High Court on the appeal is granted;
  - (d) when there is no further step that can be taken by the authority which issued the Part 1 warrant in relation to the appeal (ignoring any power of a court to grant leave to take a step out of time). 30
- (5) The preceding provisions of this section apply to Scotland with these modifications—
- (a) in subsection (4)(b) omit the words from “if” to the end; 35
  - (b) omit subsection (4)(c).
- 32 Appeal to High Court: time limit for start of hearing**
- (1) Rules of court must prescribe the period (the relevant period) within which the High Court must begin to hear an appeal under section 27 or 29.
- (2) Rules of court must provide for the relevant period to start with the date on which the person in respect of whom a Part 1 warrant is issued— 40
- (a) was arrested under section 5, if he was arrested under that section;
  - (b) was arrested under the Part 1 warrant, if he was not arrested under section 5.

- (3) The High Court must begin to hear the appeal before the end of the relevant period.
- (4) The High Court may extend the relevant period if it believes it to be in the interests of justice to do so; and this subsection may apply more than once.
- (5) The power in subsection (4) may be exercised even after the end of the relevant period. 5
- (6) If subsection (3) is not complied with and the appeal is under section 27 –
  - (a) the appeal must be taken to have been allowed by a decision of the High Court;
  - (b) the person whose extradition has been ordered must be taken to have been discharged by the High Court; 10
  - (c) the order for the person’s extradition must be taken to have been quashed by the High Court.
- (7) If subsection (3) is not complied with and the appeal is under section 29 the appeal must be taken to have been dismissed by a decision of the High Court. 15

### 33 Appeal to House of Lords

- (1) An appeal lies to the House of Lords from a decision of the High Court on an appeal under section 27 or 29.
- (2) An appeal under this section lies at the instance of –
  - (a) the person in respect of whom the Part 1 warrant was issued; 20
  - (b) the authority which issued the Part 1 warrant.
- (3) An appeal under this section lies only with the leave of the High Court or the House of Lords.
- (4) Leave to appeal under this section must not be granted unless –
  - (a) the High Court has certified that there is a point of law of general public importance involved in the decision, and 25
  - (b) it appears to the court granting leave that the point is one which ought to be considered by the House of Lords.
- (5) An application to the High Court for leave to appeal under this section must be made before the end of the permitted period, which is 14 days starting with the day on which the court makes its decision on the appeal to it. 30
- (6) An application to the House of Lords for leave to appeal under this section must be made before the end of the permitted period, which is 14 days starting with the day on which the High Court refuses leave to appeal.
- (7) If leave to appeal under this section is granted, the appeal must be brought before the end of the permitted period, which is 28 days starting with the day on which leave is granted. 35
- (8) If subsection (7) is not complied with –
  - (a) the appeal must be taken to have been brought;
  - (b) the appeal must be taken to have been dismissed by the House of Lords immediately after the end of the period permitted under that subsection. 40
- (9) These must be ignored for the purposes of subsection (8)(b) –

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- (a) any power of a court to extend the period permitted for bringing the appeal;
- (b) any power of a court to grant leave to take a step out of time.
- (10) The High Court may grant bail to a person appealing under this section or applying for leave to appeal under this section. 5
- (11) Section 5 of the Appellate Jurisdiction Act 1876 (c. 59) (composition of House of Lords for hearing and determination of appeals) applies in relation to an appeal under this section or an application for leave to appeal under this section as it applies in relation to an appeal under that Act.
- (12) An order of the House of Lords which provides for an application for leave to appeal under this section to be determined by a committee constituted in accordance with section 5 of the Appellate Jurisdiction Act 1876 may direct that the decision of the committee is taken on behalf of the House. 10
- (13) The preceding provisions of this section do not apply to Scotland.
- 34 Powers of House of Lords on appeal under section 33** 15
- (1) On an appeal under section 33 the House of Lords may –
- (a) allow the appeal;
- (b) dismiss the appeal.
- (2) Subsection (3) applies if –
- (a) the person in respect of whom the Part 1 warrant was issued brings an appeal under section 33, and 20
- (b) the House of Lords allows the appeal.
- (3) The House of Lords must –
- (a) order the person’s discharge;
- (b) quash the order for his extradition, if the appeal was against a decision of the High Court to dismiss an appeal under section 27. 25
- (4) Subsection (5) applies if –
- (a) the High Court allows an appeal under section 27 by the person in respect of whom the Part 1 warrant was issued,
- (b) the authority which issued the warrant brings an appeal under section 33 against the decision of the High Court, and 30
- (c) the House of Lords allows the appeal.
- (5) The House of Lords must –
- (a) quash the order of the High Court under section 28(5) discharging the person; 35
- (b) order the person to be extradited to the category 1 territory in which the warrant was issued.
- (6) Subsections (7) and (8) apply if –
- (a) the High Court dismisses an appeal under section 29 against a decision made by the judge at the extradition hearing, 40
- (b) the authority which issued the Part 1 warrant brings an appeal under section 33 against the decision of the High Court, and
- (c) the House of Lords allows the appeal.



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- (7) If the judge would have been required to order the person in respect of whom the warrant was issued to be extradited had he decided the relevant question differently, the House of Lords must—
- (a) quash the order of the judge discharging the person;
  - (b) order the person to be extradited to the category 1 territory in which the warrant was issued. 5
- (8) In any other case, the House of Lords must—
- (a) quash the order of the judge discharging the person in respect of whom the warrant was issued;
  - (b) remit the case to the judge; 10
  - (c) direct him to proceed as he would have been required to do if he had decided the relevant question differently at the extradition hearing.
- (9) A question is the relevant question if the judge’s decision on it resulted in the order for the person’s discharge.
- 35 Appeals: general 15**
- A decision of the judge under this Part may be questioned in legal proceedings only by means of an appeal under this Part.
- Time for extradition*
- 36 Extradition where no appeal**
- (1) This section applies if— 20
- (a) the appropriate judge orders a person’s extradition to a category 1 territory under this Part, and
  - (b) no notice of an appeal under section 27 is given before the end of the period permitted under that section.
- (2) But this section does not apply if the order is made under section 47 or 49. 25
- (3) The person must be extradited to the category 1 territory before the end of the required period.
- (4) The required period is—
- (a) 10 days starting with the day on which the judge makes the order, or
  - (b) if the judge and the authority which issued the Part 1 warrant agree a later date, 10 days starting with the later date. 30
- (5) If subsection (3) is not complied with and the person applies to the appropriate judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay.
- (6) These must be ignored for the purposes of subsection (1)(b)— 35
- (a) any power of a court to extend the period permitted for giving notice of appeal;
  - (b) any power of a court to grant leave to take a step out of time.
- 37 Extradition following appeal**
- (1) This section applies if— 40

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- (a) there is an appeal to the High Court under section 27 against an order for a person’s extradition to a category 1 territory, and
- (b) the effect of the decision of the relevant court on the appeal is that the person is to be extradited there.
- (2) The person must be extradited to the category 1 territory before the end of the required period. 5
- (3) The required period is –
- (a) 10 days starting with the day on which the decision of the relevant court on the appeal becomes final or proceedings on the appeal are discontinued, or 10
- (b) if the relevant court and the authority which issued the Part 1 warrant agree a later date, 10 days starting with the later date.
- (4) The relevant court is –
- (a) the High Court, if there is no appeal to the House of Lords against the decision of the High Court on the appeal; 15
- (b) the House of Lords, if there is such an appeal.
- (5) The decision of the High Court on the appeal becomes final –
- (a) when the period permitted for applying to the High Court for leave to appeal to the House of Lords ends, if there is no such application;
- (b) when the period permitted for applying to the House of Lords for leave to appeal to it ends, if the High Court refuses leave to appeal and there is no application to the House of Lords for leave to appeal; 20
- (c) when the House of Lords refuses leave to appeal to it;
- (d) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the House of Lords is granted, if no such appeal is brought before the end of that period. 25
- (6) These must be ignored for the purposes of subsection (5) –
- (a) any power of a court to extend the period permitted for applying for leave to appeal;
- (b) any power of a court to grant leave to take a step out of time. 30
- (7) The decision of the House of Lords on the appeal becomes final when it is made.
- (8) If subsection (2) is not complied with and the person applies to the appropriate judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay. 35
- (9) The preceding provisions of this section apply to Scotland with these modifications –
- (a) in subsections (1) and (3) for “relevant court” substitute “High Court”;
- (b) omit subsections (4) to (7).
- 38 Undertaking in relation to person serving sentence in United Kingdom 40**
- (1) This section applies if –
- (a) the appropriate judge orders a person’s extradition to a category 1 territory under this Part;
- (b) the person is serving a sentence of imprisonment or another form of detention in the United Kingdom. 45

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- (2) But this section does not apply if the order is made under section 47 or 49.
- (3) The judge may make the order for extradition subject to the condition that extradition is not to take place before he receives an undertaking given on behalf of the category 1 territory in terms specified by him.
- (4) The terms which may be specified by the judge in relation to a person accused in a category 1 territory of the commission of an offence include terms – 5
- (a) that the person be kept in custody until the conclusion of the proceedings against him for the offence and any other offence in respect of which he is permitted to be dealt with in the category 1 territory; 10
  - (b) that the person be returned to the United Kingdom to serve the remainder of his sentence on the conclusion of those proceedings.
- (5) The terms which may be specified by the judge in relation to a person alleged to be unlawfully at large after conviction of an offence by a court in a category 1 territory include terms that the person be returned to the United Kingdom to serve the remainder of his sentence after serving any sentence imposed on him in the category 1 territory for – 15
- (a) the offence, and
  - (b) any other offence in respect of which he is permitted to be dealt with in the category 1 territory. 20
- (6) Subsections (7) and (8) apply if the judge makes an order for extradition subject to a condition under subsection (3).
- (7) If the judge does not receive the undertaking before the end of the period of 21 days starting with the day on which he makes the order and the person applies to the appropriate judge to be discharged, the judge must order his discharge. 25
- (8) If the judge receives the undertaking before the end of that period –
- (a) in a case where section 36 applies, the required period for the purposes of section 36(3) is 10 days starting with the day on which the judge receives the undertaking;
  - (b) in a case where section 37 applies, the required period for the purposes of section 37(2) is 10 days starting with the day on which the decision of the relevant court on the appeal becomes final (within the meaning of that section) or (if later) the day on which the judge receives the undertaking. 30
- 39 Extradition following deferral for competing claim 35**
- (1) This section applies if –
- (a) an order is made under this Part for a person to be extradited to a category 1 territory in pursuance of a Part 1 warrant;
  - (b) before the person is extradited to the territory an order is made under section 45(4)(b) or 180(2)(b) for the person’s extradition in pursuance of the warrant to be deferred; 40
  - (c) the appropriate judge makes an order under section 182(2) for the person’s extradition in pursuance of the warrant to cease to be deferred.
- (2) But this section does not apply if the order for the person’s extradition is made under section 47 or 49. 45

- (3) In a case where section 36 applies, the required period for the purposes of section 36(3) is 10 days starting with the day on which the order under section 182(2) is made.
- (4) In a case where section 37 applies, the required period for the purposes of section 37(2) is 10 days starting with the day on which the decision of the relevant court on the appeal becomes final (within the meaning of that section) or (if later) the day on which the order under section 182(2) is made. 5

#### 40 Asylum claim

- (1) This section applies if –
- (a) a person in respect of whom a Part 1 warrant is issued makes an asylum claim at any time in the relevant period; 10
  - (b) an order is made under this Part for the person to be extradited in pursuance of the warrant.
- (2) The relevant period is the period –
- (a) starting when a certificate is issued under section 2 in respect of the warrant; 15
  - (b) ending when the person is extradited in pursuance of the warrant.
- (3) The person must not be extradited in pursuance of the warrant before the asylum claim is finally determined; and sections 36, 37, 48 and 50 have effect subject to this. 20
- (4) Subsection (3) is subject to section 41.
- (5) If the Secretary of State allows the asylum claim, the claim is finally determined when he makes his decision on the claim.
- (6) If the Secretary of State rejects the asylum claim, the claim is finally determined – 25
- (a) when the Secretary of State makes his decision on the claim, if there is no right to appeal against the Secretary of State’s decision on the claim;
  - (b) when the period permitted for appealing against the Secretary of State’s decision on the claim ends, if there is such a right but there is no such appeal; 30
  - (c) when the appeal against that decision is finally determined or is withdrawn or abandoned, if there is such an appeal.
- (7) An appeal against the Secretary of State’s decision on an asylum claim is not finally determined for the purposes of subsection (6) at any time when a further appeal or an application for leave to bring a further appeal – 35
- (a) has been instituted and has not been finally determined or withdrawn or abandoned, or
  - (b) may be brought.
- (8) The remittal of an appeal is not a final determination for the purposes of subsection (7). 40
- (9) The possibility of an appeal out of time with leave must be ignored for the purposes of subsections (6) and (7).

#### **41 Certificate in respect of asylum claimant**

- (1) Section 40(3) does not apply in relation to a person if the Secretary of State has certified that the conditions in subsection (2) or the conditions in subsection (3) are satisfied in relation to him.
- (2) The conditions are that— 5
  - (a) the category 1 territory to which the person’s extradition has been ordered has accepted that, under standing arrangements, it is the responsible State in relation to the person’s asylum claim;
  - (b) in the opinion of the Secretary of State, the person is not a national or citizen of the territory. 10
- (3) The conditions are that, in the opinion of the Secretary of State—
  - (a) the person is not a national or citizen of the category 1 territory to which his extradition has been ordered;
  - (b) the person’s life and liberty would not be threatened in that territory by reason of his race, religion, nationality, political opinion or membership of a particular social group; 15
  - (c) the government of the territory would not send the person to another country otherwise than in accordance with the Refugee Convention.
- (4) In this section—
  - “the Refugee Convention” has the meaning given by section 167(1) of the Immigration and Asylum Act 1999 (c. 33); 20
  - “standing arrangements” means arrangements in force between the United Kingdom and the category 1 territory for determining which State is responsible for considering applications for asylum.

#### *Withdrawal of Part 1 warrant* 25

#### **42 Withdrawal of warrant before extradition**

- (1) This section applies if at any time in the relevant period the appropriate judge is informed by the designated authority that a Part 1 warrant issued in respect of a person has been withdrawn.
- (2) The relevant period is the period— 30
  - (a) starting when the person is first brought before the appropriate judge following his arrest under this Part;
  - (b) ending when the person is extradited in pursuance of the warrant or discharged.
- (3) The judge must order the person’s discharge. 35
- (4) If the person is not before the judge at the time the judge orders his discharge, the judge must inform him of the order as soon as practicable.

#### **43 Withdrawal of warrant while appeal to High Court pending**

- (1) This section applies if at any time in the relevant period the High Court is informed by the designated authority that a Part 1 warrant issued in respect of a person has been withdrawn. 40
- (2) The relevant period is the period—

- 
- (a) starting when notice of an appeal to the court is given by the person or the authority which issued the warrant;
- (b) ending when proceedings on the appeal are discontinued or the court makes its decision on the appeal.
- (3) The court must – 5
- (a) if the appeal is under section 27, order the person’s discharge and quash the order for his extradition;
- (b) if the appeal is under section 29, dismiss the appeal.
- (4) If the person is not before the court at the time the court orders his discharge, the court must inform him of the order as soon as practicable. 10
- 44 Withdrawal of warrant while appeal to House of Lords pending**
- (1) This section applies if at any time in the relevant period the House of Lords is informed by the designated authority that a Part 1 warrant issued in respect of a person has been withdrawn.
- (2) The relevant period is the period – 15
- (a) starting when leave to appeal to the House of Lords is granted to the person or the authority which issued the warrant;
- (b) ending when proceedings on the appeal are discontinued or the House of Lords makes its decision on the appeal.
- (3) If the appeal is brought by the person in respect of whom the warrant was issued the House of Lords must – 20
- (a) order the person’s discharge;
- (b) quash the order for his extradition, in a case where the appeal was against a decision of the High Court to dismiss an appeal under section 27. 25
- (4) If the appeal is brought by the authority which issued the warrant the House of Lords must dismiss the appeal.
- (5) If the person is not before the House of Lords at the time it orders his discharge, the House of Lords must inform him of the order as soon as practicable.
- Competing Part 1 warrants* 30
- 45 Competing Part 1 warrants**
- (1) This section applies if at any time in the relevant period the conditions in subsection (3) are satisfied in relation to a person in respect of whom a Part 1 warrant has been issued.
- (2) The relevant period is the period – 35
- (a) starting when the person is first brought before the appropriate judge following his arrest under this Part;
- (b) ending when the person is extradited in pursuance of the warrant or discharged.
- (3) The conditions are that – 40
- (a) the judge is informed that another Part 1 warrant has been issued in respect of the person;

- (b) the other warrant falls to be dealt with by the judge or by a judge who is the appropriate judge in another part of the United Kingdom;
  - (c) the other warrant has not been disposed of.
- (4) The judge may –
- (a) order further proceedings on the warrant under consideration to be deferred until the other warrant has been disposed of, if the warrant under consideration has not been disposed of; 5
  - (b) order the person’s extradition in pursuance of the warrant under consideration to be deferred until the other warrant has been disposed of, if an order for his extradition in pursuance of the warrant under consideration has been made. 10
- (5) If the judge makes an order under subsection (4) and the person is not already remanded in custody or on bail, the judge must remand the person in custody or on bail.
- (6) If the judge remands the person in custody he may later grant bail. 15
- (7) In applying subsection (4) the judge must take account in particular of these matters –
- (a) the relative seriousness of the offences concerned;
  - (b) the place where each offence was committed (or was alleged to have been committed); 20
  - (c) the date on which each warrant was issued;
  - (d) whether, in the case of each offence, the person is accused of its commission (but not alleged to have been convicted) or is alleged to be unlawfully at large after conviction.

*Consent to extradition* 25

**46 Consent to extradition**

- (1) A person arrested under a Part 1 warrant may consent to his extradition to the category 1 territory in which the warrant was issued.
- (2) A person arrested under section 5 may consent to his extradition to the category 1 territory referred to in subsection (1) of that section. 30
- (3) If a person consents to his extradition under this section he must be taken to have waived any right he would have (apart from the consent) not to be dealt with in the category 1 territory for an offence committed before his extradition.
- (4) Consent under this section –
- (a) must be given before the appropriate judge; 35
  - (b) must be recorded in writing;
  - (c) is irrevocable.
- (5) A person may not give his consent under this section unless –
- (a) he is legally represented before the appropriate judge at the time he gives consent, or 40
  - (b) he is a person to whom subsection (6) applies.
- (6) This subsection applies to a person if –

- 
- (a) he has been informed of his right to apply for legal aid and has had the opportunity to apply for legal aid, but he has refused or failed to apply;
- (b) he has applied for legal aid but his application has been refused;
- (c) he was granted legal aid but the legal aid was withdrawn.
- (7) In subsection (6) “legal aid” means – 5
- (a) in England and Wales, a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service;
- (b) in Scotland, such legal aid as is available by virtue of section 184(a) of this Act;
- (c) in Northern Ireland, such free legal aid as is available by virtue of sections 185 and 186 of this Act. 10
- (8) For the purposes of subsection (5) a person is to be treated as legally represented before the appropriate judge if (and only if) he has the assistance of counsel or a solicitor to represent him in the proceedings before the appropriate judge. 15
- 47 Extradition order following consent**
- (1) This section applies if a person consents to his extradition under section 46.
- (2) The judge must remand the person in custody or on bail.
- (3) If the judge remands the person in custody he may later grant bail.
- (4) If the judge has not fixed a date under section 8 on which the extradition hearing is to begin he is not required to do so. 20
- (5) If the extradition hearing has begun the judge is no longer required to proceed or continue proceeding under sections 10 to 26.
- (6) The judge must within the period of 10 days starting with the day on which consent is given order the person’s extradition to the category 1 territory. 25
- (7) Subsection (6) has effect subject to sections 49 and 52.
- (8) If subsection (6) is not complied with and the person applies to the judge to be discharged the judge must order his discharge.
- 48 Extradition to category 1 territory following consent**
- (1) This section applies if the appropriate judge makes an order under section 47(6) for a person’s extradition to a category 1 territory. 30
- (2) The person must be extradited to the category 1 territory before the end of the required period.
- (3) The required period is – 35
- (a) 10 days starting with the day on which the order is made, or
- (b) if the judge and the authority which issued the Part 1 warrant agree a later date, 10 days starting with the later date.
- (4) If subsection (2) is not complied with and the person applies to the judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay. 40



(5) If before the person is extradited to the category 1 territory the judge is informed by the designated authority that the Part 1 warrant has been withdrawn—

- (a) subsection (2) does not apply, and
- (b) the judge must order the person’s discharge.

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#### **49 Other warrant issued following consent**

(1) This section applies if—

- (a) a person consents under section 46 to his extradition to a category 1 territory, and
- (b) the conditions in subsection (2) are satisfied before the judge orders his extradition under section 47(6).

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(2) The conditions are that—

- (a) the judge is informed that another Part 1 warrant has been issued in respect of the person;
- (b) the warrant falls to be dealt with by the judge or by a judge who is the appropriate judge in another part of the United Kingdom;
- (c) the warrant has not been disposed of.

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(3) Section 47(6) does not apply but the judge may—

- (a) order the person’s extradition in pursuance of his consent, or
- (b) order further proceedings on the warrant under consideration to be deferred until the other warrant has been disposed of.

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(4) Subsection (3) is subject to section 52.

(5) In applying subsection (3) the judge must take account in particular of these matters—

- (a) the relative seriousness of the offences concerned;
- (b) the place where each offence was committed (or was alleged to have been committed);
- (c) the date on which each warrant was issued;
- (d) whether, in the case of each offence, the person is accused of its commission (but not alleged to have been convicted) or is alleged to be unlawfully at large after conviction.

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#### **50 Other warrant issued: extradition to category 1 territory**

(1) This section applies if the appropriate judge makes an order under section 49(3)(a) for a person’s extradition to a category 1 territory.

(2) The person must be extradited to the category 1 territory before the end of the required period.

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(3) The required period is—

- (a) 10 days starting with the day on which the order is made, or
- (b) if the judge and the authority which issued the Part 1 warrant agree a later date, 10 days starting with the later date.

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(4) If subsection (2) is not complied with and the person applies to the judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay.

- (5) If before the person is extradited to the category 1 territory the judge is informed by the designated authority that the Part 1 warrant has been withdrawn—
- (a) subsection (2) does not apply, and
  - (b) the judge must order the person’s discharge. 5

## 51 Other warrant issued: proceedings deferred

- (1) This section applies if the appropriate judge makes an order under section 49(3)(b) for further proceedings on a Part 1 warrant to be deferred.
- (2) The judge must remand the person in respect of whom the warrant was issued in custody or on bail. 10
- (3) If the judge remands the person in custody he may later grant bail.
- (4) If an order is made under section 181 for proceedings on the warrant to be resumed, the period specified in section 47(6) must be taken to be 10 days starting with the day on which the order under section 181 is made.

## 52 Extradition request following consent 15

- (1) This section applies if—
  - (a) a person in respect of whom a Part 1 warrant is issued consents under section 46 to his extradition to the category 1 territory in which the warrant was issued, and
  - (b) the condition in subsection (2) is satisfied before the judge orders his extradition under section 47(6) or 49(3)(a). 20
- (2) The condition is that the judge is informed that—
  - (a) a certificate has been issued under section 71 in respect of a request for the person’s extradition;
  - (b) the request has not been disposed of. 25
- (3) The judge must not make an order under section 47(6) or 49(3) until he is informed what order has been made under section 180(2).
- (4) If the order under section 180(2) is for further proceedings on the warrant to be deferred until the request has been disposed of, the judge must remand the person in custody or on bail. 30
- (5) If the judge remands the person in custody he may later grant bail.
- (6) If—
  - (a) the order under section 180(2) is for further proceedings on the warrant to be deferred until the request has been disposed of, and
  - (b) an order is made under section 181 for proceedings on the warrant to be resumed, 35

the period specified in section 47(6) must be taken to be 10 days starting with the day on which the order under section 181 is made.
- (7) If the order under section 180(2) is for further proceedings on the request to be deferred until the warrant has been disposed of, the period specified in section 47(6) must be taken to be 10 days starting with the day on which the judge is informed of the order. 40

### 53 Undertaking in relation to person serving sentence

- (1) This section applies if—
  - (a) the appropriate judge makes an order under section 47(6) or 49(3)(a) for a person’s extradition to a category 1 territory;
  - (b) the person is serving a sentence of imprisonment or another form of detention in the United Kingdom. 5
- (2) The judge may make the order for extradition subject to the condition that extradition is not to take place before he receives an undertaking given on behalf of the category 1 territory in terms specified by him.
- (3) The terms which may be specified by the judge in relation to a person accused in a category 1 territory of the commission of an offence include terms—
  - (a) that the person be kept in custody until the conclusion of the proceedings against him for the offence and any other offence in respect of which he is permitted to be dealt with in the category 1 territory; 10 15
  - (b) that the person be returned to the United Kingdom to serve the remainder of his sentence on the conclusion of those proceedings.
- (4) The terms which may be specified by the judge in relation to a person alleged to be unlawfully at large after conviction of an offence by a court in a category 1 territory include terms that the person be returned to the United Kingdom to serve the remainder of his sentence after serving any sentence imposed on him in the category 1 territory for—
  - (a) the offence, and
  - (b) any other offence in respect of which he is permitted to be dealt with in the category 1 territory. 20 25
- (5) If the judge makes an order for extradition subject to a condition under subsection (2) the required period for the purposes of sections 48(2) and 50(2) is 10 days starting with the day on which the judge receives the undertaking.

### 54 Extradition following deferral for competing claim

- (1) This section applies if—
  - (a) an order is made under section 47(6) or 49(3)(a) for a person to be extradited to a category 1 territory in pursuance of a Part 1 warrant;
  - (b) before the person is extradited to the territory an order is made under section 45(4)(b) or 180(2)(b) for the person’s extradition in pursuance of the warrant to be deferred; 30 35
  - (c) the appropriate judge makes an order under section 182(2) for the person’s extradition in pursuance of the warrant to cease to be deferred.
- (2) The required period for the purposes of sections 48(2) and 50(2) is 10 days starting with the day on which the order under section 182(2) is made. 40

#### *Post-extradition matters*

### 55 Request for consent to other offence being dealt with

- (1) This section applies if—

- (a) a person is extradited to a category 1 territory in respect of an offence in accordance with this Part;
  - (b) the appropriate judge receives a request for consent to the person being dealt with in the territory for another offence;
  - (c) the request is certified under this section by the designated authority. 5
- (2) The designated authority may certify a request for consent under this section if it believes that the authority making the request –
- (a) is a judicial authority of the territory, and
  - (b) has the function of making requests for the consent referred to in subsection (1)(b) in that territory. 10
- (3) A certificate under subsection (2) must certify that the authority making the request falls within paragraphs (a) and (b) of that subsection.
- (4) The judge must serve notice on the person that he has received the request for consent, unless he is satisfied that it would not be practicable to do so.
- (5) The consent hearing must begin before the end of the required period, which is 21 days starting with the day on which the request for consent is received by the designated authority. 15
- (6) The judge may extend the required period if he believes there are exceptional circumstances; and this subsection may apply more than once.
- (7) The power in subsection (6) may be exercised even after the end of the required period. 20
- (8) If the consent hearing does not begin before the end of the required period and the judge does not exercise the power in subsection (6) to extend the period, he must refuse consent.
- (9) The judge may at any time adjourn the consent hearing. 25
- (10) The consent hearing is the hearing at which the judge is to consider the request for consent.

## 56 Questions for decision at consent hearing

- (1) At the consent hearing under section 55 the judge must decide whether consent is required to the person being dealt with in the territory for the offence for which consent is requested. 30
- (2) If the judge decides the question in subsection (1) in the negative he must inform the authority making the request of his decision.
- (3) If the judge decides that question in the affirmative he must decide whether the offence for which consent is requested is an extradition offence. 35
- (4) If the judge decides the question in subsection (3) in the negative he must refuse consent.
- (5) If the judge decides that question in the affirmative he must decide whether he would order the person's extradition under sections 11 to 26 if –
- (a) the person were in the United Kingdom, and
  - (b) the judge were required to proceed under section 11 in respect of the offence for which consent is requested. 40

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- (6) If the judge decides the question in subsection (5) in the affirmative he must give consent.
- (7) If the judge decides that question in the negative he must refuse consent.
- (8) Consent is not required to the person being dealt with in the territory for the offence if the person has been given an opportunity to leave the territory and – 5
- (a) he has not done so before the end of the permitted period, or
  - (b) if he did so before the end of the permitted period, he has returned there.
- (9) The permitted period is 45 days starting with the day on which the person arrived in the territory following his extradition there in accordance with this Part. 10
- (10) Subject to subsection (8), the judge must decide whether consent is required to the person being dealt with in the territory for the offence by reference to what appears to him to be the law of the territory or arrangements made between the territory and the United Kingdom. 15
- 57 Request for consent to further extradition to category 1 territory**
- (1) This section applies if –
- (a) a person is extradited to a category 1 territory (the requesting territory) in accordance with this Part;
  - (b) the appropriate judge receives a request for consent to the person’s extradition to another category 1 territory for an offence; 20
  - (c) the request is certified under this section by the designated authority.
- (2) The designated authority may certify a request for consent under this section if it believes that the authority making the request –
- (a) is a judicial authority of the requesting territory, and 25
  - (b) has the function of making requests for the consent referred to in subsection (1)(b) in that territory.
- (3) A certificate under subsection (2) must certify that the authority making the request falls within paragraphs (a) and (b) of that subsection.
- (4) The judge must serve notice on the person that he has received the request for consent, unless he is satisfied that it would not be practicable to do so. 30
- (5) The consent hearing must begin before the end of the required period, which is 21 days starting with the day on which the request for consent is received by the designated authority.
- (6) The judge may extend the required period if he believes there are exceptional circumstances; and this subsection may apply more than once. 35
- (7) The power in subsection (6) may be exercised even after the end of the required period.
- (8) If the consent hearing does not begin before the end of the required period and the judge does not exercise the power in subsection (6) to extend the period, he must refuse consent. 40
- (9) The judge may at any time adjourn the consent hearing.

- (10) The consent hearing is the hearing at which the judge is to consider the request for consent.

## 58 Questions for decision at consent hearing

- (1) At the consent hearing under section 57 the judge must decide whether consent is required to the person's extradition to the other category 1 territory for the offence. 5
- (2) If the judge decides the question in subsection (1) in the negative he must inform the authority making the request of his decision.
- (3) If the judge decides that question in the affirmative he must decide whether the offence is an extradition offence in relation to the category 1 territory referred to in section 57(1)(b). 10
- (4) If the judge decides the question in subsection (3) in the negative he must refuse consent.
- (5) If the judge decides that question in the affirmative he must decide whether he would order the person's extradition under sections 11 to 26 if— 15
- (a) the person were in the United Kingdom, and
- (b) the judge were required to proceed under section 11 in respect of the offence for which consent is requested.
- (6) If the judge decides the question in subsection (5) in the affirmative he must give consent. 20
- (7) If the judge decides that question in the negative he must refuse consent.
- (8) Consent is not required to the person's extradition to the other territory for the offence if the person has been given an opportunity to leave the requesting territory and—
- (a) he has not done so before the end of the permitted period, or 25
- (b) if he did so before the end of the permitted period, he has returned there.
- (9) The permitted period is 45 days starting with the day on which the person arrived in the requesting territory following his extradition there in accordance with this Part. 30
- (10) Subject to subsection (8), the judge must decide whether consent is required to the person's extradition to the other territory for the offence by reference to what appears to him to be the arrangements made between the requesting territory and the United Kingdom.

## 59 Consent to further extradition to category 2 territory 35

- (1) This section applies if—
- (a) a person is extradited to a category 1 territory (the requesting territory) in accordance with this Part;
- (b) the Secretary of State receives a request for consent to the person's extradition to a category 2 territory for an offence; 40
- (c) the request is certified under this section by the designated authority.
- (2) The designated authority may certify a request for consent under this section if it believes that the authority making the request—

- (a) is a judicial authority of the requesting territory, and
  - (b) has the function of making requests for the consent referred to in subsection (1)(b) in that territory.
- (3) A certificate under subsection (2) must certify that the authority making the request falls within paragraphs (a) and (b) of that subsection. 5
- (4) The Secretary of State must serve notice on the person that he has received the request for consent, unless he is satisfied that it would not be practicable to do so.
- (5) The Secretary of State must decide whether the offence is an extradition offence within the meaning given by section 138 in relation to the category 2 territory. 10
- (6) If the Secretary of State decides the question in subsection (5) in the negative he must refuse consent.
- (7) If the Secretary of State decides that question in the affirmative he must decide whether the appropriate judge would send the case to him (for his decision whether the person was to be extradited) under sections 80 to 92 if – 15
  - (a) the person were in the United Kingdom, and
  - (b) the judge were required to proceed under section 80 in respect of the offence for which the Secretary of State’s consent is requested.
- (8) If the Secretary of State decides the question in subsection (7) in the negative he must refuse his consent. 20
- (9) If the Secretary of State decides that question in the affirmative he must decide whether, if the person were in the United Kingdom, his extradition to the category 2 territory in respect of the offence would be prohibited under section 95, 96 or 97.
- (10) If the Secretary of State decides the question in subsection (9) in the negative he may give consent. 25
- (11) If the Secretary of State decides that question in the affirmative he must refuse consent.
- (12) This section applies in relation to any function which falls under this section to be exercised in relation to Scotland only as if the references in this section to the Secretary of State were to the Scottish Ministers. 30

## 60 Return of person to serve remainder of sentence

- (1) This section applies if –
  - (a) a person who is serving a sentence of imprisonment or another form of detention in the United Kingdom is extradited to a category 1 territory in accordance with this Part; 35
  - (b) the person is returned to the United Kingdom to serve the remainder of his sentence.
- (2) The person is liable to be detained in pursuance of his sentence.
- (3) If he is at large he must be treated as being unlawfully at large. 40
- (4) Time during which the person was not in the United Kingdom as a result of his extradition does not count as time served by him as part of his sentence.
- (5) But subsection (4) does not apply if –

- (a) the person was extradited for the purpose of being prosecuted for an offence, and
  - (b) the person has not been convicted of the offence or of any other offence in respect of which he was permitted to be dealt with in the category 1 territory. 5
- (6) In a case falling within subsection (5), time during which the person was not in the United Kingdom as a result of his extradition counts as time served by him as part of his sentence only if it was spent in custody in connection with the offence or any other offence in respect of which he was permitted to be dealt with in the territory. 10

### *Costs*

#### **61 Costs where extradition ordered**

- (1) This section applies if any of the following occurs in relation to a person in respect of whom a Part 1 warrant is issued –
- (a) an order for the person’s extradition is made under this Part; 15
  - (b) the High Court dismisses an appeal under section 27;
  - (c) the High Court or the House of Lords dismisses an application for leave to appeal to the House of Lords under section 33, if the application is made by the person;
  - (d) the House of Lords dismisses an appeal under section 33, if the appeal is brought by the person. 20
- (2) In a case falling within subsection (1)(a), the appropriate judge may make such order as he considers just and reasonable with regard to the costs to be paid by the person.
- (3) In a case falling within subsection (1)(b), (c) or (d), the court by which the application or appeal is dismissed may make such order as it considers just and reasonable with regard to the costs to be paid by the person. 25
- (4) An order for costs under this section –
- (a) must specify their amount;
  - (b) may name the person to whom they are to be paid. 30

#### **62 Costs where discharge ordered**

- (1) This section applies if any of the following occurs in relation to a person in respect of whom a Part 1 warrant is issued –
- (a) an order for the person’s discharge is made under this Part;
  - (b) the person is taken to be discharged under this Part; 35
  - (c) the High Court dismisses an appeal under section 29;
  - (d) the High Court or the House of Lords dismisses an application for leave to appeal to the House of Lords under section 33, if the application is made by the authority which issued the warrant;
  - (e) the House of Lords dismisses an appeal under section 33, if the appeal is brought by the authority which issued the warrant. 40
- (2) In a case falling within subsection (1)(a), an order under subsection (5) in favour of the person may be made by –



- (a) the appropriate judge, if the order for the person’s discharge is made by him;
  - (b) the High Court, if the order for the person’s discharge is made by it;
  - (c) the House of Lords, if the order for the person’s discharge is made by it.
- (3) In a case falling within subsection (1)(b), the appropriate judge may make an order under subsection (5) in favour of the person. 5
- (4) In a case falling within subsection (1)(c), (d) or (e), the court by which the application or appeal is dismissed may make an order under subsection (5) in favour of the person.
- (5) An order under this subsection in favour of a person is an order for a payment of the appropriate amount to be made to the person out of money provided by Parliament. 10
- (6) The appropriate amount is such amount as the judge or court making the order under subsection (5) considers reasonably sufficient to compensate the person in whose favour the order is made for any expenses properly incurred by him in the proceedings under this Part. 15
- (7) But if the judge or court making an order under subsection (5) is of the opinion that there are circumstances which make it inappropriate that the person in whose favour the order is made should recover the full amount mentioned in subsection (6), the judge or court must – 20
  - (a) assess what amount would in his or its opinion be just and reasonable;
  - (b) specify that amount in the order as the appropriate amount.
- (8) Unless subsection (7) applies, the appropriate amount – 25
  - (a) must be specified in the order, if the court considers it appropriate for it to be so specified and the person in whose favour the order is made agrees the amount;
  - (b) must be determined in accordance with regulations made by the Lord Chancellor for the purposes of this section, in any other case.

**63 Costs where discharge ordered: supplementary**

- (1) In England and Wales, subsections (1) and (3) of section 20 of the Prosecution of Offences Act 1985 (c. 23) (regulations for carrying Part 2 of that Act into effect) apply in relation to section 62 as those subsections apply in relation to Part 2 of that Act. 30
- (2) As so applied those subsections have effect as if an order under section 62(5) were an order under Part 2 of that Act for a payment to be made out of central funds. 35
- (3) In Northern Ireland, section 7 of the Costs in Criminal Cases Act (Northern Ireland) 1968 (c.10) (rules relating to costs) applies in relation to section 62 as that section applies in relation to sections 2 to 5 of that Act.

*Repatriation cases***64 Persons serving sentences outside territory where convicted**

- (1) This section applies if an arrest warrant is issued in respect of a person by an authority of a category 1 territory and the warrant contains the statement referred to in subsection (2). 5
- (2) The statement is one that –
- (a) the person is alleged to be unlawfully at large from a prison in one territory (the imprisoning territory) in which he was serving a sentence after conviction of an offence specified in the warrant by a court in another territory (the convicting territory), and 10
  - (b) the person was serving the sentence in pursuance of international arrangements for prisoners sentenced in one territory to be repatriated to another territory in order to serve their sentence, and
  - (c) the warrant is issued with a view to his arrest and extradition to the category 1 territory for the purpose of serving a sentence or another form of detention imposed in respect of the offence. 15
- (3) If the category 1 territory is either the imprisoning territory or the convicting territory, section 2(2)(b) has effect as if the reference to the statement referred to in subsection (5) of that section were a reference to the statement referred to in subsection (2) of this section. 20
- (4) If the category 1 territory is the imprisoning territory –
- (a) section 2(6)(e) has effect as if “the category 1 territory” read “the convicting territory”;
  - (b) section 10(2) has effect as if “an extradition offence” read “an extradition offence in relation to the convicting territory”;
  - (c) section 20(5) has effect as if after “entitled” there were inserted “in the convicting territory”;
  - (d) section 38(5) has effect as if “a category 1 territory” read “the convicting territory” and as if “the category 1 territory” in both places read “the convicting territory”;
  - (e) section 53(4) has effect as if “a category 1 territory” read “the convicting territory” and as if “the category 1 territory” in both places read “the convicting territory”;
  - (f) section 66(1) has effect as if “a category 1 territory” read “the convicting territory”;
  - (g) section 66(2) has effect as if “the category 1 territory” in the opening words and paragraphs (a) and (c) read “the convicting territory” and as if “the category 1 territory” in paragraph (b) read “the imprisoning territory”;
  - (h) in section 66, subsections (3), (4), (5), (6) and (8) have effect as if “the category 1 territory” in each place read “the convicting territory”. 40

*Interpretation***65 Extradition offences: person not sentenced for offence**

- (1) This section applies in relation to conduct of a person if –

- 
- (a) he is accused in a category 1 territory of the commission of an offence constituted by the conduct, or
- (b) he is alleged to be unlawfully at large after conviction by a court in a category 1 territory of an offence constituted by the conduct and he has not been sentenced for the offence. 5
- (2) The conduct constitutes an extradition offence in relation to the category 1 territory if these conditions are satisfied –
- (a) the conduct occurs in the category 1 territory and no part of it occurs in the United Kingdom;
- (b) a certificate issued by an appropriate authority of the category 1 territory shows that the conduct falls within the European framework list; 10
- (c) the certificate shows that the conduct is punishable under the law of the category 1 territory with imprisonment or another form of detention for a term of 3 years or a greater punishment. 15
- (3) The conduct also constitutes an extradition offence in relation to the category 1 territory if these conditions are satisfied –
- (a) the conduct occurs in the category 1 territory;
- (b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom if it occurred in that part of the United Kingdom; 20
- (c) the conduct is punishable under the law of the category 1 territory with imprisonment or another form of detention for a term of 12 months or a greater punishment (however it is described in that law).
- (4) The conduct also constitutes an extradition offence in relation to the category 1 territory if these conditions are satisfied – 25
- (a) the conduct occurs outside the category 1 territory;
- (b) the conduct is punishable under the law of the category 1 territory with imprisonment or another form of detention for a term of 12 months or a greater punishment (however it is described in that law); 30
- (c) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment.
- (5) The conduct also constitutes an extradition offence in relation to the category 1 territory if these conditions are satisfied – 35
- (a) the conduct occurs outside the category 1 territory and no part of it occurs in the United Kingdom;
- (b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom; 40
- (c) the conduct is so punishable under the law of the category 1 territory (however it is described in that law).
- (6) The conduct also constitutes an extradition offence in relation to the category 1 territory if these conditions are satisfied – 45
- (a) the conduct occurs outside the category 1 territory and no part of it occurs in the United Kingdom;

- 
- (b) the conduct is punishable under the law of the category 1 territory with imprisonment or another form of detention for a term of 12 months or a greater punishment (however it is described in that law);
  - (c) the conduct constitutes or if committed in the United Kingdom would constitute an offence mentioned in subsection (7). 5
- (7) The offences are –
- (a) an offence under section 51 or 58 of the International Criminal Court Act 2001 (c. 17) (genocide, crimes against humanity and war crimes);
  - (b) an offence under section 52 or 59 of that Act (conduct ancillary to genocide etc. committed outside the jurisdiction); 10
  - (c) an ancillary offence, as defined in section 55 or 62 of that Act, in relation to an offence falling within paragraph (a) or (b);
  - (d) an offence under section 1 of the International Criminal Court (Scotland) Act 2001 (asp 13) (genocide, crimes against humanity and war crimes); 15
  - (e) an offence under section 2 of that Act (conduct ancillary to genocide etc. committed outside the jurisdiction);
  - (f) an ancillary offence, as defined in section 7 of that Act, in relation to an offence falling within paragraph (d) or (e).
- (8) For the purposes of subsections (3)(b), (4)(c) and (5)(b) – 20
- (a) if the conduct relates to a tax or duty, it is immaterial that the law of the relevant part of the United Kingdom does not impose the same kind of tax or duty or does not contain rules of the same kind as those of the law of the category 1 territory;
  - (b) if the conduct relates to customs or exchange, it is immaterial that the law of the relevant part of the United Kingdom does not contain rules of the same kind as those of the law of the category 1 territory. 25
- (9) This section applies for the purposes of this Part.
- 66 Extradition offences: person sentenced for offence**
- (1) This section applies in relation to conduct of a person if – 30
- (a) he is alleged to be unlawfully at large after conviction by a court in a category 1 territory of an offence constituted by the conduct, and
  - (b) he has been sentenced for the offence.
- (2) The conduct constitutes an extradition offence in relation to the category 1 territory if these conditions are satisfied – 35
- (a) the conduct occurs in the category 1 territory and no part of it occurs in the United Kingdom;
  - (b) a certificate issued by an appropriate authority of the category 1 territory shows that the conduct falls within the European framework list; 40
  - (c) the certificate shows that a sentence of imprisonment or another form of detention for a term of 12 months or a greater punishment has been imposed in the category 1 territory in respect of the conduct.
- (3) The conduct also constitutes an extradition offence in relation to the category 1 territory if these conditions are satisfied – 45
- (a) the conduct occurs in the category 1 territory;

- (b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom if it occurred in that part of the United Kingdom;
  - (c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 1 territory in respect of the conduct. 5
- (4) The conduct also constitutes an extradition offence in relation to the category 1 territory if these conditions are satisfied –
  - (a) the conduct occurs outside the category 1 territory;
  - (b) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 1 territory in respect of the conduct; 10
  - (c) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment. 15
- (5) The conduct also constitutes an extradition offence in relation to the category 1 territory if these conditions are satisfied –
  - (a) the conduct occurs outside the category 1 territory and no part of it occurs in the United Kingdom; 20
  - (b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom;
  - (c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 1 territory in respect of the conduct. 25
- (6) The conduct also constitutes an extradition offence in relation to the category 1 territory if these conditions are satisfied –
  - (a) the conduct occurs outside the category 1 territory and no part of it occurs in the United Kingdom; 30
  - (b) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 1 territory in respect of the conduct;
  - (c) the conduct constitutes or if committed in the United Kingdom would constitute an offence mentioned in subsection (7). 35
- (7) The offences are –
  - (a) an offence under section 51 or 58 of the International Criminal Court Act 2001 (c. 17) (genocide, crimes against humanity and war crimes);
  - (b) an offence under section 52 or 59 of that Act (conduct ancillary to genocide etc. committed outside the jurisdiction); 40
  - (c) an ancillary offence, as defined in section 55 or 62 of that Act, in relation to an offence falling within paragraph (a) or (b);
  - (d) an offence under section 1 of the International Criminal Court (Scotland) Act 2001 (asp 13) (genocide, crimes against humanity and war crimes); 45
  - (e) an offence under section 2 of that Act (conduct ancillary to genocide etc. committed outside the jurisdiction);
  - (f) an ancillary offence, as defined in section 7 of that Act, in relation to an offence falling within paragraph (d) or (e). 50

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- (8) For the purposes of subsections (3)(b), (4)(c) and (5)(b) –
- (a) if the conduct relates to a tax or duty, it is immaterial that the law of the relevant part of the United Kingdom does not impose the same kind of tax or duty or does not contain rules of the same kind as those of the law of the category 1 territory; 5
  - (b) if the conduct relates to customs or exchange, it is immaterial that the law of the relevant part of the United Kingdom does not contain rules of the same kind as those of the law of the category 1 territory.
- (9) This section applies for the purposes of this Part.
- 67 Extradition offences: supplementary** 10
- (1) Subsections (2) to (4) apply for the purposes of sections 65 and 66.
  - (2) An appropriate authority of a category 1 territory is a judicial authority of the territory which the appropriate judge believes has the function of issuing arrest warrants in that territory.
  - (3) The law of a territory is the general criminal law of the territory. 15
  - (4) The relevant part of the United Kingdom is the part of the United Kingdom in which the relevant proceedings are taking place.
  - (5) The relevant proceedings are the proceedings in which it is necessary to decide whether conduct constitutes an extradition offence.
- 68 The appropriate judge** 20
- (1) The appropriate judge is –
    - (a) in England and Wales, a District Judge (Magistrates’ Courts) designated for the purposes of this Part by the Lord Chancellor;
    - (b) in Scotland, the sheriff of Lothian and Borders;
    - (c) in Northern Ireland, such county court judge or resident magistrate as is designated for the purposes of this Part by the Lord Chancellor. 25
  - (2) A designation under subsection (1) may be made for all cases or for such cases (or cases of such description) as the designation stipulates.
  - (3) More than one designation may be made under subsection (1).
  - (4) This section applies for the purposes of this Part. 30
- 69 The extradition hearing**
- (1) The extradition hearing is the hearing at which the appropriate judge is to decide whether a person in respect of whom a Part 1 warrant was issued is to be extradited to the category 1 territory in which it was issued.
  - (2) This section applies for the purposes of this Part. 35

## PART 2

### EXTRADITION TO CATEGORY 2 TERRITORIES

#### *Introduction*

- 70 Extradition to category 2 territories** 5
- (1) This Part deals with extradition from the United Kingdom to the territories designated for the purposes of this Part by order made by the Secretary of State.
- (2) In this Act references to category 2 territories are to the territories designated for the purposes of this Part.
- 71 Extradition request and certificate** 10
- (1) The Secretary of State must issue a certificate under this section if he receives a valid request for the extradition to a category 2 territory of a person who is in the United Kingdom.
- (2) But subsection (1) does not apply if the Secretary of State decides under section 127 that the request is not to be proceeded with. 15
- (3) A request for a person’s extradition is valid if –
- (a) it contains the statement referred to in subsection (4), and
  - (b) it is made in the approved way.
- (4) The statement is one that the person –
- (a) is accused in the category 2 territory of the commission of an offence specified in the request, or 20
  - (b) is alleged to be unlawfully at large after conviction by a court in the category 2 territory of an offence specified in the request.
- (5) A request for extradition to a category 2 territory which is a British overseas territory is made in the approved way if it is made by or on behalf of the person administering the territory. 25
- (6) A request for extradition to a category 2 territory which is the Hong Kong Special Administrative Region of the People’s Republic of China is made in the approved way if it is made by or on behalf of the government of the Region.
- (7) A request for extradition to any other category 2 territory is made in the approved way if it is made – 30
- (a) by an authority of the territory which the Secretary of State believes has the function of making requests for extradition in that territory, or
  - (b) by a person recognised by the Secretary of State as a diplomatic or consular representative of the territory. 35
- (8) A certificate under this section must certify that the request is made in the approved way.
- (9) If a certificate is issued under this section the Secretary of State must send these documents to the appropriate judge – 40
- (a) the request;
  - (b) the certificate;

- (c) a copy of any relevant Order in Council.

*Arrest*

**72 Arrest warrant following extradition request**

- (1) This section applies if the Secretary of State sends documents to the appropriate judge under section 71. 5
- (2) The judge may issue a warrant for the arrest of the person whose extradition is requested if it appears to the judge that –
- (a) the offence in respect of which extradition is requested is an extradition offence, and
- (b) there is evidence falling within subsection (3). 10
- (3) The evidence is –
- (a) evidence that would justify the issue of a warrant for the arrest of a person accused of the offence within the judge’s jurisdiction, if the person whose extradition is requested is accused of the commission of the offence; 15
- (b) evidence that would justify the issue of a warrant for the arrest of a person unlawfully at large after conviction of the offence within the judge’s jurisdiction, if the person whose extradition is requested is alleged to be unlawfully at large after conviction of the offence.
- (4) But if the category 2 territory to which extradition is requested is designated for the purposes of this section by order made by the Secretary of State, subsections (2) and (3) have effect as if “evidence” read “information”. 20
- (5) A warrant issued under this section may –
- (a) be executed by any person to whom it is directed or by any constable or customs officer; 25
- (b) be executed even if neither the warrant nor a copy of it is in the possession of the person executing it at the time of the arrest.
- (6) If a warrant issued under this section in respect of a person is directed to a service policeman, it may be executed in any place where the service policeman would have power to arrest the person under the appropriate service law if the person had committed an offence under that law. 30
- (7) In any other case, a warrant issued under this section may be executed in any part of the United Kingdom.
- (8) The appropriate service law is –
- (a) the Army Act 1955 (3 & 4 Eliz. 2 c. 18), if the person in respect of whom the warrant is issued is subject to military law; 35
- (b) the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19), if that person is subject to air-force law;
- (c) the Naval Discipline Act 1957 (c. 53), if that person is subject to that Act.

**73 Person arrested under section 72**

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- (1) This section applies if a person is arrested under a warrant issued under section 72.



- (2) If neither the warrant nor a copy of it was shown to the person at the time of his arrest, the warrant or a copy of it must be shown to him as soon as practicable after his arrest.
- (3) The person must be brought as soon as practicable before the appropriate judge. 5
- (4) But subsection (3) does not apply if—
  - (a) the person is granted bail by a constable following his arrest, or
  - (b) the Secretary of State decides under section 127 that the request for the person’s extradition is not to be proceeded with.
- (5) If subsection (2) or (3) is not complied with and the person applies to the judge to be discharged, the judge must order his discharge. 10
- (6) When the person first appears or is brought before the appropriate judge, the judge must—
  - (a) inform him of the contents of the request for his extradition;
  - (b) give him the required information about consent; 15
  - (c) remand him in custody or on bail.
- (7) The required information about consent is—
  - (a) that the person may consent to his extradition to the category 2 territory to which his extradition is requested;
  - (b) an explanation of the effect of consent and the procedure that will apply if he gives consent; 20
  - (c) that consent must be given in writing and is irrevocable.
- (8) If the judge remands the person in custody he may later grant bail.
- (9) Subsection (4)(a) applies to Scotland with the omission of the words “by a constable”. 25

#### 74 Provisional warrant

- (1) This section applies if a justice of the peace is satisfied on information in writing and on oath that a person within subsection (2)—
  - (a) is or is believed to be in the United Kingdom, or
  - (b) is or is believed to be on his way to the United Kingdom. 30
- (2) A person is within this subsection if—
  - (a) he is accused in a category 2 territory of the commission of an offence, or
  - (b) he is alleged to be unlawfully at large after conviction of an offence by a court in a category 2 territory. 35
- (3) The justice may issue a warrant for the arrest of the person (a provisional warrant) if it appears to him that—
  - (a) the offence of which the person is accused or has been convicted is an extradition offence, and
  - (b) there is written evidence falling within subsection (4). 40
- (4) The evidence is—
  - (a) evidence that would justify the issue of a warrant for the arrest of a person accused of the offence within the justice’s jurisdiction, if the

- person in respect of whom the warrant is sought is accused of the commission of the offence;
- (b) evidence that would justify the issue of a warrant for the arrest of a person unlawfully at large after conviction of the offence within the justice’s jurisdiction, if the person in respect of whom the warrant is sought is alleged to be unlawfully at large after conviction of the offence. 5
- (5) But if the category 2 territory is designated for the purposes of this section by order made by the Secretary of State, subsections (3) and (4) have effect as if “evidence” read “information”. 10
- (6) A provisional warrant may –
- (a) be executed by any person to whom it is directed or by any constable or customs officer;
- (b) be executed even if neither the warrant nor a copy of it is in the possession of the person executing it at the time of the arrest. 15
- (7) If a warrant issued under this section in respect of a person is directed to a service policeman, it may be executed in any place where the service policeman would have power to arrest the person under the appropriate service law if the person had committed an offence under that law.
- (8) In any other case, a warrant issued under this section may be executed in any part of the United Kingdom. 20
- (9) The appropriate service law is –
- (a) the Army Act 1955 (3 & 4 Eliz. 2 c. 18), if the person in respect of whom the warrant is issued is subject to military law;
- (b) the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19), if that person is subject to air-force law; 25
- (c) the Naval Discipline Act 1957 (c. 53), if that person is subject to that Act.
- (10) The preceding provisions of this section apply to Scotland with these modifications –
- (a) in subsection (1) for “justice of the peace is satisfied on information in writing and on oath” substitute “sheriff is satisfied, on an application by a procurator fiscal,”; 30
- (b) in subsection (3) for “justice” substitute “sheriff”;
- (c) in subsection (4) for “justice’s”, in paragraphs (a) and (b), substitute “sheriff’s”. 35
- (11) Subsection (1) applies to Northern Ireland with the substitution of “a complaint” for “information”.

## 75 Person arrested under provisional warrant

- (1) This section applies if a person is arrested under a provisional warrant.
- (2) If neither the warrant nor a copy of it was shown to the person at the time of his arrest, the warrant or a copy of it must be shown to him as soon as practicable after his arrest. 40
- (3) The person must be brought as soon as practicable before the appropriate judge.
- (4) But subsection (3) does not apply if – 45

- (a) the person is granted bail by a constable following his arrest, or
  - (b) in a case where the Secretary of State has received a valid request for the person’s extradition, the Secretary of State decides under section 127 that the request is not to be proceeded with.
- (5) If subsection (2) or (3) is not complied with and the person applies to the judge to be discharged, the judge must order his discharge. 5
- (6) When the person first appears or is brought before the appropriate judge, the judge must –
  - (a) inform him that he is accused of the commission of an offence in a category 2 territory or that he is alleged to be unlawfully at large after conviction of an offence by a court in a category 2 territory; 10
  - (b) give him the required information about consent;
  - (c) remand him in custody or on bail.
- (7) The required information about consent is –
  - (a) that the person may consent to his extradition to the category 2 territory in which he is accused of the commission of an offence or is alleged to have been convicted of an offence; 15
  - (b) an explanation of the effect of consent and the procedure that will apply if he gives consent;
  - (c) that consent must be given in writing and is irrevocable. 20
- (8) If the judge remands the person in custody he may later grant bail.
- (9) The judge must order the person’s discharge if the documents referred to in section 71(9) are not received by the judge within the required period.
- (10) The required period is –
  - (a) 45 days starting with the day on which the person was arrested, or 25
  - (b) if the category 2 territory is designated by order made by the Secretary of State for the purposes of this section, any longer period permitted by the order.
- (11) Subsection (4)(a) applies to Scotland with the omission of the words “by a constable”. 30

*The extradition hearing*

**76 Date of extradition hearing: arrest under section 72**

- (1) When a person arrested under a warrant issued under section 72 first appears or is brought before the appropriate judge, the judge must fix a date on which the extradition hearing is to begin. 35
- (2) The date fixed under subsection (1) must not be later than the end of the permitted period, which is 2 months starting with the date on which the person first appears or is brought before the judge.
- (3) If before the date fixed under subsection (1) (or this subsection) a party to the proceedings applies to the judge for a later date to be fixed and the judge believes there are exceptional circumstances, he may fix a later date; and this subsection may apply more than once. 40

- (4) If the extradition hearing does not begin on or before the date fixed under this section and the person applies to the judge to be discharged, the judge must order his discharge.

## 77 Date of extradition hearing: arrest under provisional warrant

- (1) Subsection (2) applies if – 5  
 (a) a person is arrested under a provisional warrant, and  
 (b) the documents referred to in section 71(9) are received by the appropriate judge within the period required under section 75(9).
- (2) The judge must fix a date on which the extradition hearing is to begin.
- (3) The date fixed under subsection (2) must not be later than the end of the permitted period, which is 2 months starting with the date on which the judge receives the documents. 10
- (4) If before the date fixed under subsection (2) (or this subsection) a party to the proceedings applies to the judge for a later date to be fixed and the judge believes there are exceptional circumstances, he may fix a later date; and this subsection may apply more than once. 15
- (5) If the extradition hearing does not begin on or before the date fixed under this section and the person applies to the judge to be discharged, the judge must order his discharge.

## 78 Judge's powers at extradition hearing 20

- (1) In England and Wales, at the extradition hearing the appropriate judge has the same powers (as nearly as may be) as a magistrates' court would have if the proceedings were the summary trial of an information against the person whose extradition is requested.
- (2) In Scotland – 25  
 (a) at the extradition hearing the appropriate judge has the same powers (as nearly as may be) as if the proceedings were summary proceedings in respect of an offence alleged to have been committed by the person whose extradition is requested; but  
 (b) in his making any decision under section 79(4)(a) evidence from a single source shall be sufficient. 30
- (3) In Northern Ireland, at the extradition hearing the appropriate judge has the same powers (as nearly as may be) as a magistrates' court would have if the proceedings were the hearing and determination of a complaint against the person whose extradition is requested. 35
- (4) If the judge adjourns the extradition hearing he must remand the person in custody or on bail.
- (5) If the judge remands the person in custody he may later grant bail.

## 79 Initial stages of extradition hearing

- (1) This section applies if a person alleged to be the person whose extradition is requested appears or is brought before the appropriate judge for the extradition hearing. 40

- (2) The judge must decide whether the documents sent to him by the Secretary of State consist of (or include) –
  - (a) the documents referred to in section 71(9);
  - (b) particulars of the person whose extradition is requested;
  - (c) particulars of the offence specified in the request; 5
  - (d) in the case of a person accused of an offence, a warrant for his arrest issued in the category 2 territory;
  - (e) in the case of a person alleged to be unlawfully at large after conviction of an offence, a certificate issued in the category 2 territory of the conviction and (if he has been sentenced) of the sentence. 10
- (3) If the judge decides the question in subsection (2) in the negative he must order the person's discharge.
- (4) If the judge decides that question in the affirmative he must decide whether –
  - (a) the person appearing or brought before him is the person whose extradition is requested; 15
  - (b) the offence specified in the request is an extradition offence;
  - (c) copies of the documents sent to the judge by the Secretary of State have been served on the person.
- (5) The judge must decide the question in subsection (4)(a) on a balance of probabilities. 20
- (6) If the judge decides any of the questions in subsection (4) in the negative he must order the person's discharge.
- (7) If the judge decides those questions in the affirmative he must proceed under section 80.
- (8) The reference in subsection (2)(d) to a warrant for a person's arrest includes a reference to a judicial document authorising his arrest. 25

## 80 Bars to extradition

- (1) If the judge is required to proceed under this section he must decide whether the person's extradition to the category 2 territory is barred by reason of –
  - (a) the rule against double jeopardy; 30
  - (b) extraneous considerations;
  - (c) the passage of time;
  - (d) hostage-taking considerations.
- (2) Sections 81 to 84 apply for the interpretation of subsection (1).
- (3) If the judge decides any of the questions in subsection (1) in the affirmative he must order the person's discharge. 35
- (4) If the judge decides those questions in the negative and the person is accused of the commission of the extradition offence but is not alleged to be unlawfully at large after conviction of it, the judge must proceed under section 85.
- (5) If the judge decides those questions in the negative and the person is alleged to be unlawfully at large after conviction of the extradition offence, the judge must proceed under section 86. 40

**81 Rule against double jeopardy**

A person's extradition to a category 2 territory is barred by reason of the rule against double jeopardy if (and only if) it appears that he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction if he were charged with the extradition offence in the part of the United Kingdom where the judge exercises his jurisdiction. 5

**82 Extraneous considerations**

A person's extradition to a category 2 territory is barred by reason of extraneous considerations if (and only if) it appears that –

- (a) the request for his extradition (though purporting to be made on account of the extradition offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality, gender, sexual orientation or political opinions, or 10
- (b) if extradited he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, gender, sexual orientation or political opinions. 15

**83 Passage of time**

A person's extradition to a category 2 territory is barred by reason of the passage of time if (and only if) it appears that it would be unjust or oppressive to extradite him by reason of the passage of time since he is alleged to have committed the extradition offence or since he is alleged to have become unlawfully at large (as the case may be). 20

**84 Hostage-taking considerations**

- (1) A person's extradition to a category 2 territory is barred by reason of hostage-taking considerations if (and only if) the territory is a party to the Hostage-taking Convention and it appears that – 25
  - (a) if extradited he might be prejudiced at his trial because communication between him and the appropriate authorities would not be possible, and
  - (b) the act or omission constituting the extradition offence also constitutes an offence under section 1 of the Taking of Hostages Act 1982 (c. 28) or an attempt to commit such an offence. 30
- (2) The appropriate authorities are the authorities of the territory which are entitled to exercise rights of protection in relation to him.
- (3) A certificate issued by the Secretary of State that a territory is a party to the Hostage-taking Convention is conclusive evidence of that fact for the purposes of subsection (1). 35
- (4) The Hostage-taking Convention is the International Convention against the Taking of Hostages opened for signature at New York on 18 December 1979.

**85 Case where person has not been convicted**

- (1) If the judge is required to proceed under this section he must decide whether there is evidence which would be sufficient to make a case requiring an answer 40

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by the person if the proceedings were the summary trial of an information against him.	
(2) In deciding the question in subsection (1) the judge may treat a statement made by a person in a document as admissible evidence of a fact if—	
(a) the statement is made by the person to a police officer or another person charged with the duty of investigating offences or charging offenders, and	5
(b) direct oral evidence by the person of the fact would be admissible.	
(3) In deciding whether to treat a statement made by a person in a document as admissible evidence of a fact, the judge must in particular have regard—	10
(a) to the nature and source of the document;	
(b) to whether or not, having regard to the nature and source of the document and to any other circumstances that appear to the judge to be relevant, it is likely that the document is authentic;	
(c) to the extent to which the statement appears to supply evidence which would not be readily available if the statement were not treated as being admissible evidence of the fact;	15
(d) to the relevance of the evidence that the statement appears to supply to any issue likely to have to be determined by the judge in deciding the question in subsection (1);	20
(e) to any risk that the admission or exclusion of the statement will result in unfairness to the person whose extradition is sought, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings.	25
(4) A summary in a document of a statement made by a person must be treated as a statement made by the person in the document for the purposes of subsection (2).	
(5) If the judge decides the question in subsection (1) in the negative he must order the person’s discharge.	30
(6) If the judge decides that question in the affirmative he must proceed under section 88.	
(7) If the judge is required to proceed under this section and the category 2 territory to which extradition is requested is designated for the purposes of this section by order made by the Secretary of State—	35
(a) the judge must not decide under subsection (1), and	
(b) he must proceed under section 88.	
(8) Subsection (1) applies to Scotland with the substitution of “summary proceedings in respect of an offence alleged to have been committed by the person (except that for this purpose evidence from a single source shall be sufficient)” for “the summary trial of an information against him”.	40
(9) Subsection (1) applies to Northern Ireland with the substitution of “the hearing and determination of a complaint” for “the summary trial of an information”.	
<b>86 Case where person has been convicted</b>	
(1) If the judge is required to proceed under this section he must decide whether the person was convicted in his presence.	45

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- (2) If the judge decides the question in subsection (1) in the affirmative he must proceed under section 88.
- (3) If the judge decides that question in the negative he must decide whether the person deliberately absented himself from his trial.
- (4) If the judge decides the question in subsection (3) in the affirmative he must proceed under section 88. 5
- (5) If the judge decides that question in the negative he must decide whether the person would be entitled to a retrial or (on appeal) to a review amounting to a retrial.
- (6) If the judge decides the question in subsection (5) in the affirmative he must proceed under section 87. 10
- (7) If the judge decides that question in the negative he must order the person's discharge.
- (8) For the purposes of subsection (5), the judge should not regard as a retrial or (on appeal) a review amounting to a retrial, any proceedings that do not in particular include provision for – 15
- (a) the suspect to be present at the retrial;
  - (b) the suspect to have like rights to hear and examine witnesses as he would have done at the original trial;
  - (c) the suspect to have the same right to publicly funded legal services as any suspect or defendant. 20
- 87 Conviction in person's absence**
- (1) If the judge is required to proceed under this section he must decide whether there is evidence which would be sufficient to make a case requiring an answer by the person if the proceedings were the summary trial of an information against him. 25
- (2) In deciding the question in subsection (1) the judge may treat a statement made by a person in a document as admissible evidence of a fact if – 30
- (a) the statement is made by the person to a police officer or another person charged with the duty of investigating offences or charging offenders, and
  - (b) direct oral evidence by the person of the fact would be admissible.
- (3) In deciding whether to treat a statement made by a person in a document as admissible evidence of a fact, the judge must in particular have regard – 35
- (a) to the nature and source of the document;
  - (b) to whether or not, having regard to the nature and source of the document and to any other circumstances that appear to the judge to be relevant, it is likely that the document is authentic;
  - (c) to the extent to which the statement appears to supply evidence which would not be readily available if the statement were not treated as being admissible evidence of the fact; 40
  - (d) to the relevance of the evidence that the statement appears to supply to any issue likely to have to be determined by the judge in deciding the question in subsection (1);
  - (e) to any risk that the admission or exclusion of the statement will result in unfairness to the person whose extradition is sought, having regard 45



in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings.

- (4) A summary in a document of a statement made by a person must be treated as a statement made by the person in the document for the purposes of subsection (2). 5
- (5) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.
- (6) If the judge decides that question in the affirmative he must proceed under section 88. 10
- (7) If the judge is required to proceed under this section and the category 2 territory to which extradition is requested is designated for the purposes of this section by order made by the Secretary of State –
  - (a) the judge must not decide under subsection (1), and
  - (b) he must proceed under section 88. 15
- (8) Subsection (1) applies to Scotland with the substitution of “summary proceedings in respect of an offence alleged to have been committed by the person (except that for this purpose evidence from a single source shall be sufficient)” for “the summary trial of an information against him”.
- (9) Subsection (1) applies to Northern Ireland with the substitution of “the hearing and determination of a complaint” for “the summary trial of an information”. 20

## 88 Human rights

- (1) If the judge is required to proceed under this section (by virtue of section 85, 86 or 87) he must decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998 (c. 42). 25
- (2) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.
- (3) If the judge decides that question in the affirmative he must send the case to the Secretary of State for his decision whether the person is to be extradited. 30

## 89 Person charged with offence in United Kingdom

- (1) This section applies if at any time in the extradition hearing the judge is informed that the person is charged with an offence in the United Kingdom.
- (2) The judge must adjourn the extradition hearing until one of these occurs –
  - (a) the charge is disposed of; 35
  - (b) the charge is withdrawn;
  - (c) proceedings in respect of the charge are discontinued;
  - (d) an order is made for the charge to lie on the file, or in relation to Scotland, the diet is deserted *pro loco et tempore*.
- (3) If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the judge may adjourn the extradition hearing until the sentence has been served. 40

- (4) If before he adjourns the extradition hearing under subsection (2) the judge has decided under section 80 whether the person's extradition is barred by reason of the rule against double jeopardy, the judge must decide that question again after the resumption of the hearing.

**90 Person serving sentence in United Kingdom** 5

- (1) This section applies if at any time in the extradition hearing the judge is informed that the person is serving a sentence of imprisonment or another form of detention in the United Kingdom.
- (2) The judge may adjourn the extradition hearing until the sentence has been served. 10

**91 Competing extradition claim**

- (1) This section applies if at any time in the extradition hearing the judge is informed that the conditions in subsection (2) or (3) are met.
- (2) The conditions are that—
- (a) the Secretary of State has received another valid request for the person's extradition to a category 2 territory; 15
  - (b) the other request has not been disposed of;
  - (c) the Secretary of State has made an order under section 127(2) for further proceedings on the request under consideration to be deferred until the other request has been disposed of. 20
- (3) The conditions are that—
- (a) a certificate has been issued under section 2 in respect of a Part 1 warrant issued in respect of the person;
  - (b) the warrant has not been disposed of;
  - (c) the Secretary of State has made an order under section 180(2) for further proceedings on the request to be deferred until the warrant has been disposed of. 25
- (4) The judge must remand the person in custody or on bail.
- (5) If the judge remands the person in custody he may later grant bail.

**92 Physical or mental condition** 30

- (1) This section applies if at any time in the extradition hearing it appears to the judge that the condition in subsection (2) is satisfied.
- (2) The condition is that the physical or mental condition of the person is such that it would be unjust or oppressive to extradite him.
- (3) The judge must— 35
- (a) order the person's discharge, or
  - (b) adjourn the extradition hearing until it appears to him that the condition in subsection (2) is no longer satisfied.

**93 Case sent to Secretary of State**

- (1) This section applies if the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited.
- (2) The judge must inform the person in ordinary language that –
  - (a) he has a right to appeal to the High Court; 5
  - (b) if he exercises the right the appeal will not be heard until the Secretary of State has made his decision.
- (3) But subsection (2) does not apply if the person has consented to his extradition under section 128.
- (4) The judge must remand the person in custody or on bail – 10
  - (a) to wait for the Secretary of State’s decision, and
  - (b) to wait for his extradition to the territory to which extradition is requested (if the Secretary of State orders him to be extradited).
- (5) If the judge remands the person in custody he may later grant bail.

*Secretary of State’s functions* 15

**94 Secretary of State’s consideration of case**

- (1) This section applies if the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited.
- (2) The Secretary of State must decide whether he is prohibited from ordering the person’s extradition under any of these sections – 20
  - (a) section 95 (death penalty);
  - (b) section 96 (speciality);
  - (c) section 97 (earlier extradition to United Kingdom from other territory).
- (3) If the Secretary of State decides any of the questions in subsection (2) in the affirmative he must order the person’s discharge. 25
- (4) If the Secretary of State decides those questions in the negative he must order the person to be extradited to the territory to which his extradition is requested unless –
  - (a) he is informed that the request has been withdrawn,
  - (b) he makes an order under section 127(2) or 180(2) for further proceedings on the request to be deferred and the person is discharged under section 181, or 30
  - (c) he orders the person’s discharge under section 209.
- (5) In deciding the questions in subsection (2), the Secretary of State is not required to consider any representations received by him after the end of the permitted period. 35
- (6) The permitted period is the period of 6 weeks starting with the appropriate day.

**95 Death penalty**

- (1) The Secretary of State must not order a person's extradition to a category 2 territory if he could be, will be or has been sentenced to death for the offence concerned in the category 2 territory.
- (2) Subsection (1) does not apply if the Secretary of State receives a written assurance which he considers adequate that a sentence of death—
- (a) will not be imposed, or
  - (b) will not be carried out (if imposed).

**96 Speciality**

- (1) The Secretary of State must not order a person's extradition to a category 2 territory if there are no speciality arrangements with the category 2 territory. 10
- (2) But subsection (1) does not apply if the person consented to his extradition under section 128 before his case was sent to the Secretary of State.
- (3) There are speciality arrangements with a category 2 territory if (and only if) under the law of that territory or arrangements made between it and the United Kingdom a person who is extradited to the territory from the United Kingdom may be dealt with in the territory for an offence committed before his extradition only if—
- (a) the offence is one falling within subsection (4), or
  - (b) he is first given an opportunity to leave the territory. 15
- (4) The offences are—
- (a) the offence in respect of which the person is extradited;
  - (b) an extradition offence disclosed by the same facts as that offence, other than one in respect of which a sentence of death could be imposed;
  - (c) an extradition offence in respect of which the Secretary of State consents to the person being dealt with; 25
  - (d) an offence in respect of which the person waives the right that he would have (but for this paragraph) not to be dealt with for the offence.
- (5) Arrangements made with a category 2 territory which is a Commonwealth country or a British overseas territory may be made for a particular case or more generally. 30
- (6) A certificate issued by or under the authority of the Secretary of State confirming the existence of arrangements with a category 2 territory which is a Commonwealth country or a British overseas territory and stating the terms of the arrangements is conclusive evidence of those matters. 35

**97 Earlier extradition to United Kingdom from other territory**

The Secretary of State must not order a person's extradition to a category 2 territory if—

- (a) the person was extradited to the United Kingdom from another territory (the extraditing territory); 40
- (b) under arrangements between the United Kingdom and the extraditing territory, that territory's consent is required to the person's extradition from the United Kingdom to the category 2 territory in respect of the extradition offence under consideration;

- (c) that consent has not been given on behalf of the extraditing territory.

## 98 Deferral: person charged with offence in United Kingdom

- (1) This section applies if—
  - (a) the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited; 5
  - (b) the person is charged with an offence in the United Kingdom.
- (2) The Secretary of State must not make a decision with regard to the person’s extradition until one of these occurs—
  - (a) the charge is disposed of;
  - (b) the charge is withdrawn; 10
  - (c) proceedings in respect of the charge are discontinued;
  - (d) an order is made for the charge to lie on the file or, in relation to Scotland, the diet is deserted *pro loco et tempore*.
- (3) If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the Secretary of State may defer making a decision with regard to the person’s extradition until the sentence has been served. 15

## 99 Deferral: person serving sentence in United Kingdom

- (1) This section applies if—
  - (a) the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited; 20
  - (b) the person is serving a sentence of imprisonment or another form of detention in the United Kingdom.
- (2) The Secretary of State may defer making a decision with regard to the person’s extradition until the sentence has been served. 25

## 100 Time limit for order for extradition or discharge

- (1) This section applies if—
  - (a) the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited;
  - (b) within the required period the Secretary of State does not make an order for the person’s extradition or discharge. 30
- (2) If the person applies to the High Court to be discharged, the court must order his discharge.
- (3) The required period is the period of 2 months starting with the appropriate day. 35
- (4) If before the required period ends the Secretary of State applies to the High Court for it to be extended the High Court may make an order accordingly; and this subsection may apply more than once.

## 101 Information

- (1) If the Secretary of State orders a person’s extradition under this Part he must—
  - (a) inform the person of the order; 40

- (b) inform him in ordinary language that he has a right of appeal to the High Court;
  - (c) inform a person acting on behalf of the category 2 territory of the order.
- (2) But subsection (1)(b) does not apply if the person has consented to his extradition under section 128. 5
- (3) If the Secretary of State orders a person’s extradition under this Part and he has received an assurance such as is mentioned in section 95(2), he must give the person a copy of the assurance when he informs him under subsection (1) of the order.
- (4) If the Secretary of State orders a person’s discharge under this Part he must – 10
- (a) inform him of the order;
  - (b) inform a person acting on behalf of the category 2 territory of the order.

### 102 Making of order for extradition or discharge

- (1) An order to which this section applies must be made under the hand of one of these – 15
- (a) the Secretary of State;
  - (b) a Minister of State;
  - (c) a Parliamentary Under-Secretary of State;
  - (d) a senior official.
- (2) But, in relation to Scotland, an order to which this section applies must be made under the hand of one of these – 20
- (a) a member of the Scottish Executive or a junior Scottish Minister;
  - (b) a senior official who is a member of the staff of the Scottish Administration.
- (3) This section applies to – 25
- (a) an order under section 94 for a person’s extradition;
  - (b) an order under section 94 or 124 for a person’s discharge.
- (4) A senior official is –
- (a) a member of the Senior Civil Service;
  - (b) a member of the Senior Management Structure of Her Majesty’s Diplomatic Service. 30
- (5) If it appears to the Secretary of State that it is necessary to do so in consequence of any changes to the structure or grading of the home civil service or diplomatic service, he may by order make such amendments to subsection (4) as appear to him appropriate to preserve (so far as practicable) the effect of that subsection. 35

### 103 The appropriate day

- (1) This section applies for the purposes of sections 94 and 100 if the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited. 40
- (2) If the person is charged with an offence in the United Kingdom, the appropriate day is the day on which one of these occurs –
- (a) the charge is disposed of;

- (b) the charge is withdrawn;
  - (c) proceedings in respect of the charge are discontinued;
  - (d) an order is made for the charge to lie on the file, or in relation to Scotland, the diet is deserted *pro loco et tempore*.
- (3) If under section 98(3) or 99(2) the Secretary of State defers making a decision until the person has served a sentence, the appropriate day is the day on which the person finishes serving the sentence. 5
- (4) If section 127 applies in relation to the request for the person’s extradition (the request concerned) the appropriate day is –
- (a) the day on which the Secretary of State makes an order under that section, if the order is for proceedings on the other request to be deferred; 10
  - (b) the day on which an order under section 181 is made, if the order under section 127 is for proceedings on the request concerned to be deferred and the order under section 181 is for the proceedings to be resumed. 15
- (5) If section 180 applies in relation to the request for the person’s extradition, the appropriate day is –
- (a) the day on which the Secretary of State makes an order under that section, if the order is for proceedings on the warrant to be deferred;
  - (b) the day on which an order under section 181 is made, if the order under section 180 is for proceedings on the request to be deferred and the order under section 181 is for the proceedings to be resumed. 20
- (6) If more than one of subsections (2) to (5) applies, the appropriate day is the latest of the days found under the subsections which apply.
- (7) In any other case, the appropriate day is the day on which the judge sends the case to the Secretary of State for his decision whether the person is to be extradited. 25

### *Appeals*

#### **104 Appeal where case sent to Secretary of State**

- (1) If the judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited, the person may appeal to the High Court against the relevant decision. 30
- (2) But subsection (1) does not apply if the person consented to his extradition under section 128 before his case was sent to the Secretary of State.
- (3) The relevant decision is the decision that resulted in the case being sent to the Secretary of State. 35
- (4) An appeal under this section may be brought on a question of law or fact.
- (5) If an appeal is brought under this section before the Secretary of State has decided whether the person is to be extradited the appeal must not be heard until after the Secretary of State has made his decision. 40
- (6) If the Secretary of State orders the person’s discharge the appeal must not be proceeded with.

- (7) No appeal may be brought under this section if the Secretary of State has ordered the person's discharge.
- (8) If notice of an appeal under section 111 against the decision which resulted in the order for the person's discharge is given in accordance with subsection (5) of that section – 5
- (a) subsections (6) and (7) do not apply;
  - (b) no appeal may be brought under this section if the High Court has made its decision on the appeal.
- (9) Notice of an appeal under this section must be given in accordance with rules of court before the end of the permitted period, which is 14 days starting with the day on which the Secretary of State informs the person under section 101(1) or (4) of the order he has made in respect of the person. 10

### 105 Court's powers on appeal under section 104

- (1) On an appeal under section 104 the High Court may – 15
- (a) allow the appeal;
  - (b) direct the judge to decide again a question (or questions) which he decided at the extradition hearing;
  - (c) dismiss the appeal.
- (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied. 20
- (3) The conditions are that –
- (a) the judge ought to have decided a question before him at the extradition hearing differently;
  - (b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge. 25
- (4) The conditions are that –
- (a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;
  - (b) the issue or evidence would have resulted in the judge deciding a question before him at the extradition hearing differently; 30
  - (c) if he had decided the question in that way, he would have been required to order the person's discharge.
- (5) If the court allows the appeal it must – 35
- (a) order the person's discharge;
  - (b) quash the order for his extradition.
- (6) If the judge comes to a different decision on any question that is the subject of a direction under subsection (1)(b) he must order the person's discharge.
- (7) If the judge comes to the same decision as he did at the extradition hearing on the question that is (or all the questions that are) the subject of a direction under subsection (1)(b) the appeal must be taken to have been dismissed by a decision of the High Court. 40



### 106 Appeal against discharge at extradition hearing

- (1) If at the extradition hearing the judge orders a person's discharge, an appeal to the High Court may be brought on behalf of the category 2 territory against the relevant decision.
- (2) But subsection (1) does not apply if the order for the person's discharge was under section 123. 5
- (3) The relevant decision is the decision which resulted in the order for the person's discharge.
- (4) An appeal under this section may be brought on a question of law or fact.
- (5) Notice of an appeal under this section must be given in accordance with rules of court before the end of the permitted period, which is 14 days starting with the day on which the order for the person's discharge is made. 10

### 107 Court's powers on appeal under section 106

- (1) On an appeal under section 106 the High Court may –
  - (a) allow the appeal; 15
  - (b) direct the judge to decide the relevant question again;
  - (c) dismiss the appeal.
- (2) A question is the relevant question if the judge's decision on it resulted in the order for the person's discharge.
- (3) The court may allow the appeal only if the conditions in subsection (4) or the conditions in subsection (5) are satisfied. 20
- (4) The conditions are that –
  - (a) the judge ought to have decided the relevant question differently;
  - (b) if he had decided the question in the way he ought to have done, he would not have been required to order the person's discharge. 25
- (5) The conditions are that –
  - (a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;
  - (b) the issue or evidence would have resulted in the judge deciding the relevant question differently; 30
  - (c) if he had decided the question in that way, he would not have been required to order the person's discharge.
- (6) If the court allows the appeal it must –
  - (a) quash the order discharging the person;
  - (b) remit the case to the judge; 35
  - (c) direct him to proceed as he would have been required to do if he had decided the relevant question differently at the extradition hearing.
- (7) If the court makes a direction under subsection (1)(b) and the judge decides the relevant question differently he must proceed as he would have been required to do if he had decided that question differently at the extradition hearing. 40
- (8) If the court makes a direction under subsection (1)(b) and the judge does not decide the relevant question differently the appeal must be taken to have been dismissed by a decision of the High Court.

**108 Detention pending conclusion of appeal under section 106**

- (1) This section applies if immediately after the judge orders the person's discharge the judge is informed on behalf of the category 2 territory of an intention to appeal under section 106.
- (2) The judge must remand the person in custody or on bail while the appeal is pending. 5
- (3) If the judge remands the person in custody he may later grant bail.
- (4) An appeal under section 106 ceases to be pending at the earliest of these times –
  - (a) when the proceedings on the appeal are discontinued; 10
  - (b) when the High Court dismisses the appeal, if the court is not immediately informed on behalf of the category 2 territory of an intention to apply for leave to appeal to the House of Lords;
  - (c) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the House of Lords against the decision of the High Court on the appeal is granted; 15
  - (d) when there is no further step that can be taken on behalf of the category 2 territory in relation to the appeal (ignoring any power of a court to grant leave to take a step out of time).
- (5) The preceding provisions of this section apply to Scotland with these modifications – 20
  - (a) in subsection (4)(b) omit the words from “if” to the end;
  - (b) omit subsection (4)(c).

**109 Appeal against extradition order**

- (1) If the Secretary of State orders a person's extradition under this Part, the person may appeal to the High Court against the order. 25
- (2) But subsection (1) does not apply if the person has consented to his extradition under section 128.
- (3) An appeal under this section may be brought on a question of law or fact.
- (4) Notice of an appeal under this section must be given in accordance with rules of court before the end of the permitted period, which is 14 days starting with the day on which the Secretary of State informs the person of the order under section 101(1). 30

**110 Court's powers on appeal under section 109**

- (1) On an appeal under section 109 the High Court may – 35
  - (a) allow the appeal;
  - (b) dismiss the appeal.
- (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.
- (3) The conditions are that – 40
  - (a) the Secretary of State ought to have decided a question before him differently;

- (b) if he had decided the question in the way he ought to have done, he would not have ordered the person's extradition.
- (4) The conditions are that—
  - (a) an issue is raised that was not raised when the case was being considered by the Secretary of State or information is available that was not available at that time; 5
  - (b) the issue or information would have resulted in the Secretary of State deciding a question before him differently;
  - (c) if he had decided the question in that way, he would not have ordered the person's extradition. 10
- (5) If the court allows the appeal it must—
  - (a) order the person's discharge;
  - (b) quash the order for his extradition.

### 111 Appeal against discharge by Secretary of State

- (1) If the Secretary of State makes an order for a person's discharge under this Part, an appeal to the High Court may be brought on behalf of the category 2 territory against the relevant decision. 15
- (2) But subsection (1) does not apply if the order for the person's discharge was under section 124.
- (3) The relevant decision is the decision which resulted in the order for the person's discharge. 20
- (4) An appeal under this section may be brought on a question of law or fact.
- (5) Notice of an appeal under this section must be given in accordance with rules of court before the end of the permitted period, which is 14 days starting with the day on which (under section 101(4)) the Secretary of State informs a person acting on behalf of the category 2 territory of the order. 25

### 112 Court's powers on appeal under section 111

- (1) On an appeal under section 111 the High Court may —
  - (a) allow the appeal;
  - (b) dismiss the appeal. 30
- (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.
- (3) The conditions are that—
  - (a) the Secretary of State ought to have decided a question before him differently;
  - (b) if he had decided the question in the way he ought to have done, he would have ordered the person's extradition. 35
- (4) The conditions are that—
  - (a) an issue is raised that was not raised when the case was being considered by the Secretary of State or information is available that was not available at that time;
  - (b) the issue or information would have resulted in the Secretary of State deciding a question before him differently; 40

- (c) if he had decided the question in that way, he would have ordered the person's extradition.
- (5) If the court allows the appeal it must—
  - (a) quash the order discharging the person;
  - (b) order the person's extradition. 5

### 113 Detention pending conclusion of appeal under section 111

- (1) This section applies if immediately after the Secretary of State orders the person's discharge under this Part the Secretary of State is informed on behalf of the category 2 territory of an intention to appeal under section 111.
- (2) The judge must remand the person in custody or on bail while the appeal is pending. 10
- (3) If the judge remands the person in custody he may later grant bail.
- (4) An appeal under section 111 ceases to be pending at the earliest of these times—
  - (a) when the proceedings on the appeal are discontinued; 15
  - (b) when the High Court dismisses the appeal, if the court is not immediately informed on behalf of the category 2 territory of an intention to apply for leave to appeal to the House of Lords;
  - (c) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the House of Lords against the decision of the High Court on the appeal is granted; 20
  - (d) when there is no further step that can be taken on behalf of the category 2 territory in relation to the appeal (ignoring any power of a court to grant leave to take a step out of time).
- (5) The preceding provisions of this section apply to Scotland with these modifications—
  - (a) in subsection (4)(b) omit the words from “if” to the end;
  - (b) omit subsection (4)(c). 25

### 114 Appeal to High Court: time limit for start of hearing

- (1) Rules of court must prescribe the period (the relevant period) within which the High Court must begin to hear an appeal under section 104, 106, 109 or 111. 30
- (2) The High Court must begin to hear the appeal before the end of the relevant period.
- (3) The High Court may extend the relevant period if it believes it to be in the interests of justice to do so; and this subsection may apply more than once. 35
- (4) The power in subsection (3) may be exercised even after the end of the relevant period.
- (5) If subsection (2) is not complied with and the appeal is under section 104 or 109—
  - (a) the appeal must be taken to have been allowed by a decision of the High Court; 40
  - (b) the person whose extradition has been ordered must be taken to have been discharged by the High Court;

- (c) the order for the person’s extradition must be taken to have been quashed by the High Court.
- (6) If subsection (2) is not complied with and the appeal is under section 106 or 111 the appeal must be taken to have been dismissed by a decision of the High Court.

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### 115 Appeal to House of Lords

- (1) An appeal lies to the House of Lords from a decision of the High Court on an appeal under section 104, 106, 109 or 111.
- (2) An appeal under this section lies at the instance of –
  - (a) the person whose extradition is requested;
  - (b) a person acting on behalf of the category 2 territory.
- (3) An appeal under this section lies only with the leave of the High Court or the House of Lords.
- (4) Leave to appeal under this section must not be granted unless –
  - (a) the High Court has certified that there is a point of law of general public importance involved in the decision, and
  - (b) it appears to the court granting leave that the point is one which ought to be considered by the House of Lords.
- (5) An application to the High Court for leave to appeal under this section must be made before the end of the permitted period, which is 14 days starting with the day on which the court makes its decision on the appeal to it.
- (6) An application to the House of Lords for leave to appeal under this section must be made before the end of the permitted period, which is 14 days starting with the day on which the High Court refuses leave to appeal.
- (7) If leave to appeal under this section is granted, the appeal must be brought before the end of the permitted period, which is 28 days starting with the day on which leave is granted.
- (8) If subsection (7) is not complied with –
  - (a) the appeal must be taken to have been brought;
  - (b) the appeal must be taken to have been dismissed by the House of Lords immediately after the end of the period permitted under that subsection.
- (9) These must be ignored for the purposes of subsection (8)(b) –
  - (a) any power of a court to extend the period permitted for bringing the appeal;
  - (b) any power of a court to grant leave to take a step out of time.
- (10) The High Court may grant bail to a person appealing under this section or applying for leave to appeal under this section.
- (11) Section 5 of the Appellate Jurisdiction Act 1876 (c. 59) (composition of House of Lords for hearing and determination of appeals) applies in relation to an appeal under this section or an application for leave to appeal under this section as it applies in relation to an appeal under that Act.
- (12) An order of the House of Lords which provides for an application for leave to appeal under this section to be determined by a committee constituted in

accordance with section 5 of the Appellate Jurisdiction Act 1876 may direct that the decision of the committee is taken on behalf of the House.

- (13) The preceding provisions of this section do not apply to Scotland.

## 116 Powers of House of Lords on appeal under section 115

- |     |  |    |
|-----|--|----|
| (1) | On an appeal under section 115 the House of Lords may –  | 5  |
|     | (a) allow the appeal;  |    |
|     | (b) dismiss the appeal.  |    |
| (2) | Subsection (3) applies if –  |    |
|     | (a) the person whose extradition is requested brings an appeal under section 115, and  | 10 |
|     | (b) the House of Lords allows the appeal.  |    |
| (3) | The House of Lords must –  |    |
|     | (a) order the person’s discharge;  |    |
|     | (b) quash the order for his extradition, if the appeal was against a decision of the High Court to dismiss an appeal under section 104 or 109 or to allow an appeal under section 111.                       | 15 |
| (4) | Subsection (5) applies if –  |    |
|     | (a) the High Court allows an appeal under section 104 or 109 by the person whose extradition is requested or dismisses an appeal under section 111 by a person acting on behalf of the category 2 territory, | 20 |
|     | (b) a person acting on behalf of the category 2 territory brings an appeal under section 115 against the decision of the High Court, and   |    |
|     | (c) the House of Lords allows the appeal.  |    |
| (5) | The House of Lords must –  |    |
|     | (a) quash the order discharging the person made by the High Court under section 105(5) or 110(5) or by the Secretary of State under this Part;   | 25 |
|     | (b) order the person to be extradited to the category 2 territory.   |    |
| (6) | Subsection (7) applies if –  |    |
|     | (a) the High Court dismisses an appeal under section 106 against a decision made by the judge at the extradition hearing,  | 30 |
|     | (b) a person acting on behalf of the category 2 territory brings an appeal under section 115 against the decision of the High Court, and   |    |
|     | (c) the House of Lords allows the appeal.  |    |
| (7) | The House of Lords must –  |    |
|     | (a) quash the order of the judge discharging the person whose extradition is requested;  | 35 |
|     | (b) remit the case to the judge;   |    |
|     | (c) direct him to proceed as he would have been required to do if he had decided the relevant question differently at the extradition hearing.   |    |
| (8) | A question is the relevant question if the judge’s decision on it resulted in the order for the person’s discharge.  | 40 |

## 117 Appeals: general

A decision under this Part of the judge or the Secretary of State may be questioned in legal proceedings only by means of an appeal under this Part.

### *Time for extradition*

## 118 Extradition where no appeal

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- (1) This section applies if –
  - (a) the Secretary of State orders a person’s extradition to a category 2 territory under this Part, and
  - (b) no notice of an appeal under section 104 or 109 is given before the end of the permitted period, which is 14 days starting with the day on which the Secretary of State informs the person under section 101(1) that he has ordered his extradition. 10
- (2) The person must be extradited to the category 2 territory before the end of the required period, which is 28 days starting with the day on which the Secretary of State makes the order. 15
- (3) If subsection (2) is not complied with and the person applies to the appropriate judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay.
- (4) These must be ignored for the purposes of subsection (1)(b) –
  - (a) any power of a court to extend the period permitted for giving notice of appeal; 20
  - (b) any power of a court to grant leave to take a step out of time.

## 119 Extradition following appeal

- (1) This section applies if –
  - (a) there is an appeal to the High Court under section 104, 109 or 111 against a decision or order relating to a person’s extradition to a category 2 territory, and 25
  - (b) the effect of the decision of the relevant court on the appeal is that the person is to be extradited there.
- (2) The person must be extradited to the category 2 territory before the end of the required period, which is 28 days starting with –
  - (a) the day on which the decision of the relevant court on the appeal becomes final, or
  - (b) the day on which proceedings on the appeal are discontinued. 30
- (3) The relevant court is –
  - (a) the High Court, if there is no appeal to the House of Lords against the decision of the High Court on the appeal;
  - (b) the House of Lords, if there is such an appeal. 35
- (4) The decision of the High Court on the appeal becomes final –
  - (a) when the period permitted for applying to the High Court for leave to appeal to the House of Lords ends, if there is no such application; 40

- (b) when the period permitted for applying to the House of Lords for leave to appeal to it ends, if the High Court refuses leave to appeal and there is no application to the House of Lords for leave to appeal;
  - (c) when the House of Lords refuses leave to appeal to it;
  - (d) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the House of Lords is granted, if no such appeal is brought before the end of that period. 5
- (5) These must be ignored for the purposes of subsection (4) –
- (a) any power of a court to extend the period permitted for applying for leave to appeal; 10
  - (b) any power of a court to grant leave to take a step out of time.
- (6) The decision of the House of Lords on the appeal becomes final when it is made.
- (7) If subsection (2) is not complied with and the person applies to the appropriate judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay. 15
- (8) The preceding provisions of this section apply to Scotland with these modifications –
- (a) in subsections (1) and (2) for “relevant court” substitute “High Court”;
  - (b) omit subsections (3) to (6). 20

## 120 Undertaking in relation to person serving sentence in United Kingdom

- (1) This section applies if –
- (a) the Secretary of State orders a person’s extradition to a category 2 territory under this Part;
  - (b) the person is serving a sentence of imprisonment or another form of detention in the United Kingdom. 25
- (2) The Secretary of State may make the order for extradition subject to the condition that extradition is not to take place before he receives an undertaking given on behalf of the category 2 territory in terms specified by him.
- (3) The terms which may be specified by the Secretary of State in relation to a person accused in a category 2 territory of the commission of an offence include terms – 30
- (a) that the person be kept in custody until the conclusion of the proceedings against him for the offence and any other offence in respect of which he is permitted to be dealt with in the category 2 territory; 35
  - (b) that the person be returned to the United Kingdom to serve the remainder of his sentence on the conclusion of those proceedings.
- (4) The terms which may be specified by the Secretary of State in relation to a person alleged to be unlawfully at large after conviction of an offence by a court in a category 2 territory include terms that the person be returned to the United Kingdom to serve the remainder of his sentence after serving any sentence imposed on him in the category 2 territory for – 40
- (a) the offence, and
  - (b) any other offence in respect of which he is permitted to be dealt with in the category 2 territory. 45



- (5) Subsections (6) and (7) apply if the Secretary of State makes an order for extradition subject to a condition under subsection (2).
- (6) If the Secretary of State does not receive the undertaking before the end of the period of 21 days starting with the day on which he makes the order and the person applies to the High Court to be discharged, the court must order his discharge. 5
- (7) If the Secretary of State receives the undertaking before the end of that period –
  - (a) in a case where section 118 applies, the required period for the purposes of section 118(2) is 28 days starting with the day on which the Secretary of State receives the undertaking; 10
  - (b) in a case where section 119 applies, the required period for the purposes of section 119(2) is 28 days starting with the day on which the decision of the relevant court on the appeal becomes final (within the meaning of that section) or (if later) the day on which the Secretary of State receives the undertaking. 15

## 121 Extradition following deferral for competing claim

- (1) This section applies if –
  - (a) an order is made under this Part for a person to be extradited to a category 2 territory in pursuance of a request for his extradition; 20
  - (b) before the person is extradited to the territory an order is made under section 127(2) or 180(2) for the person’s extradition in pursuance of the request to be deferred;
  - (c) the appropriate judge makes an order under section 182(2) for the person’s extradition in pursuance of the request to cease to be deferred. 25
- (2) In a case where section 118 applies, the required period for the purposes of section 118(2) is 28 days starting with the day on which the order under section 182(2) is made.
- (3) In a case where section 119 applies, the required period for the purposes of section 119(2) is 28 days starting with the day on which the decision of the relevant court on the appeal becomes final (within the meaning of that section) or (if later) the day on which the order under section 182(2) is made. 30

## 122 Asylum claim

- (1) This section applies if –
  - (a) a person whose extradition is requested makes an asylum claim at any time in the relevant period; 35
  - (b) an order is made under this Part for the person to be extradited in pursuance of the request.
- (2) The relevant period is the period –
  - (a) starting when a certificate is issued under section 71 in respect of the request; 40
  - (b) ending when the person is extradited in pursuance of the request.
- (3) The person must not be extradited in pursuance of the request before the asylum claim is finally determined; and sections 118 and 119 have effect subject to this. 45

- (4) If the Secretary of State allows the asylum claim, the claim is finally determined when he makes his decision on the claim.
- (5) If the Secretary of State rejects the asylum claim, the claim is finally determined –
- (a) when the Secretary of State makes his decision on the claim, if there is no right to appeal against the Secretary of State’s decision on the claim; 5
  - (b) when the period permitted for appealing against the Secretary of State’s decision on the claim ends, if there is such a right but there is no such appeal;
  - (c) when the appeal against that decision is finally determined or is withdrawn or abandoned, if there is such an appeal. 10
- (6) An appeal against the Secretary of State’s decision on an asylum claim is not finally determined for the purposes of subsection (5) at any time when a further appeal or an application for leave to bring a further appeal –
- (a) has been instituted and has not been finally determined or withdrawn or abandoned, or
  - (b) may be brought. 15
- (7) The remittal of an appeal is not a final determination for the purposes of subsection (6).
- (8) The possibility of an appeal out of time with leave must be ignored for the purposes of subsections (5) and (6). 20

*Withdrawal of extradition request*

**123 Withdrawal of request before end of extradition hearing**

- (1) This section applies if at any time in the relevant period the appropriate judge is informed by the Secretary of State that a request for a person’s extradition has been withdrawn. 25
- (2) The relevant period is the period –
- (a) starting when the person first appears or is brought before the appropriate judge following his arrest under this Part;
  - (b) ending when the judge orders the person’s discharge or sends the case to the Secretary of State for his decision whether the person is to be extradited. 30
- (3) The judge must order the person’s discharge.
- (4) If the person is not before the judge at the time the judge orders his discharge, the judge must inform him of the order as soon as practicable. 35

**124 Withdrawal of request after case sent to Secretary of State**

- (1) This section applies if at any time in the relevant period the Secretary of State is informed that a request for a person’s extradition has been withdrawn.
- (2) The relevant period is the period –
- (a) starting when the judge sends the case to the Secretary of State for his decision whether the person is to be extradited; 40

- (b) ending when the person is extradited in pursuance of the request or discharged.
- (3) The Secretary of State must order the person’s discharge.

**125 Withdrawal of request while appeal to High Court pending**

- (1) This section applies if at any time in the relevant period the High Court is informed by the Secretary of State that a request for a person’s extradition has been withdrawn. 5
- (2) The relevant period is the period –
  - (a) starting when notice of an appeal to the court is given by the person whose extradition is requested or by a person acting on behalf of the category 2 territory to which his extradition is requested; 10
  - (b) ending when proceedings on the appeal are discontinued or the court makes its decision on the appeal.
- (3) If the appeal is under section 104 or 109, the court must –
  - (a) order the person’s discharge; 15
  - (b) quash the order for his extradition, if the Secretary of State has ordered his extradition.
- (4) If the appeal is under section 106 or 111, the court must dismiss the appeal.
- (5) If the person is not before the court at the time the court orders his discharge, the court must inform him of the order as soon as practicable. 20

**126 Withdrawal of request while appeal to House of Lords pending**

- (1) This section applies if at any time in the relevant period the House of Lords is informed by the Secretary of State that a request for a person’s extradition has been withdrawn.
- (2) The relevant period is the period –
  - (a) starting when leave to appeal to the House of Lords is granted to the person whose extradition is requested or a person acting on behalf of the category 2 territory to which his extradition is requested; 25
  - (b) ending when proceedings on the appeal are discontinued or the House of Lords makes its decision on the appeal. 30
- (3) If the appeal is brought by the person whose extradition is requested the House of Lords must –
  - (a) order the person’s discharge;
  - (b) quash the order for his extradition, in a case where the appeal was against a decision of the High Court to dismiss an appeal under section 104 or 109. 35
- (4) If the appeal is brought by a person acting on behalf of the category 2 territory the House of Lords must dismiss the appeal.
- (5) If the person whose extradition is requested is not before the House of Lords at the time it orders his discharge, the House of Lords must inform him of the order as soon as practicable. 40

*Competing extradition requests***127 Competing extradition requests**

- (1) This section applies if –
- (a) the Secretary of State receives a valid request for a person’s extradition to a category 2 territory; 5
  - (b) the person is in the United Kingdom;
  - (c) before the person is extradited in pursuance of the request or discharged, the Secretary of State receives another valid request for the person’s extradition.
- (2) The Secretary of State may – 10
- (a) order proceedings (or further proceedings) on one of the requests to be deferred until the other one has been disposed of, if neither of the requests has been disposed of;
  - (b) order the person’s extradition in pursuance of the request under consideration to be deferred until the other request has been disposed of, if an order for his extradition in pursuance of the request under consideration has been made. 15
- (3) In applying subsection (2) the Secretary of State must take account in particular of these matters –
- (a) the relative seriousness of the offences concerned; 20
  - (b) the place where each offence was committed (or was alleged to have been committed);
  - (c) the date when each request was received;
  - (d) whether, in the case of each offence, the person is accused of its commission (but not alleged to have been convicted) or is alleged to be unlawfully at large after conviction. 25

*Consent to extradition***128 Consent to extradition: general**

- (1) A person arrested under a warrant issued under section 72 may consent to his extradition to the category 2 territory to which his extradition is requested. 30
- (2) A person arrested under a provisional warrant may consent to his extradition to the category 2 territory in which he is accused of the commission of an offence or is alleged to have been convicted of an offence.
- (3) Consent under this section –
- (a) must be given in writing; 35
  - (b) is irrevocable.
- (4) Consent under this section which is given by a person before his case is sent to the Secretary of State for the Secretary of State’s decision whether he is to be extradited must be given before the appropriate judge.
- (5) Consent under this section which is given in any other case must be given to the Secretary of State. 40
- (6) A person may not give his consent under this section before the appropriate judge unless –

- (a) he is legally represented before the appropriate judge at the time he gives consent, or
    - (b) he is a person to whom subsection (7) applies.
  - (7) This subsection applies to a person if –
    - (a) he has been informed of his right to apply for legal aid and has had the opportunity to apply for legal aid, but he has refused or failed to apply; 5
    - (b) he has applied for legal aid but his application has been refused;
    - (c) he was granted legal aid but the legal aid was withdrawn.
  - (8) In subsection (7) “legal aid” means –
    - (a) in England and Wales, a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service; 10
    - (b) in Scotland, such legal aid as is available by virtue of section 184(a) of this Act;
    - (c) in Northern Ireland, such free legal aid as is available by virtue of sections 185 and 186 of this Act. 15
  - (9) For the purposes of subsection (6) a person is to be treated as legally represented before the appropriate judge if (and only if) he has the assistance of counsel or a solicitor to represent him in the proceedings before the appropriate judge.
- 129 Consent to extradition before case sent to Secretary of State 20**
- (1) This section applies if a person gives his consent under section 128 to the appropriate judge.
  - (2) If the judge has not fixed a date under section 76 or 77 on which the extradition hearing is to begin he is not required to do so.
  - (3) If the extradition hearing has begun the judge is no longer required to proceed or continue proceeding under sections 79 to 92. 25
  - (4) The judge must send the case to the Secretary of State for his decision whether the person is to be extradited.
  - (5) The person must be taken to have waived any right he would have (apart from the consent) not to be dealt with in the category 2 territory for an offence committed before his extradition. 30

*Post-extradition matters*

**130 Consent to other offence being dealt with**

- (1) This section applies if –
  - (a) a person is extradited to a category 2 territory in accordance with this Part; 35
  - (b) the Secretary of State receives a valid request for his consent to the person being dealt with in the territory for an offence other than the offence in respect of which he was extradited.
- (2) A request for consent is valid if it is made by an authority which is an authority of the territory and which the Secretary of State believes has the function of making requests for the consent referred to in subsection (1)(b) in that territory. 40

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- (3) The Secretary of State must serve notice on the person that he has received the request for consent, unless he is satisfied that it would not be practicable to do so.
- (4) The Secretary of State must decide whether the offence is an extradition offence. 5
- (5) If the Secretary of State decides the question in subsection (4) in the negative he must refuse his consent.
- (6) If the Secretary of State decides that question in the affirmative he must decide whether the appropriate judge would send the case to him (for his decision whether the person was to be extradited) under sections 80 to 92 if – 10
- (a) the person were in the United Kingdom, and
- (b) the judge were required to proceed under section 80 in respect of the offence for which the Secretary of State’s consent is requested.
- (7) If the Secretary of State decides the question in subsection (6) in the negative he must refuse his consent. 15
- (8) If the Secretary of State decides that question in the affirmative he must decide whether, if the person were in the United Kingdom, his extradition in respect of the offence would be prohibited under section 95, 96 or 97.
- (9) If the Secretary of State decides the question in subsection (8) in the affirmative he must refuse his consent. 20
- (10) If the Secretary of State decides that question in the negative he may give his consent.

### 131 Consent to further extradition to category 2 territory

- (1) This section applies if – 25
- (a) a person is extradited to a category 2 territory (the requesting territory) in accordance with this Part;
- (b) the Secretary of State receives a valid request for his consent to the person’s extradition to another category 2 territory for an offence other than the offence in respect of which he was extradited.
- (2) A request for consent is valid if it is made by an authority which is an authority of the requesting territory and which the Secretary of State believes has the function of making requests for the consent referred to in subsection (1)(b) in that territory. 30
- (3) The Secretary of State must serve notice on the person that he has received the request for consent, unless he is satisfied that it would not be practicable to do so. 35
- (4) The Secretary of State must decide whether the offence is an extradition offence in relation to the category 2 territory referred to in subsection (1)(b).
- (5) If the Secretary of State decides the question in subsection (4) in the negative he must refuse his consent. 40
- (6) If the Secretary of State decides that question in the affirmative he must decide whether the appropriate judge would send the case to him (for his decision whether the person was to be extradited) under sections 80 to 92 if –
- (a) the person were in the United Kingdom, and

- (b) the judge were required to proceed under section 80 in respect of the offence for which the Secretary of State's consent is requested.
- (7) If the Secretary of State decides the question in subsection (6) in the negative he must refuse his consent.
- (8) If the Secretary of State decides that question in the affirmative he must decide whether, if the person were in the United Kingdom, his extradition in respect of the offence would be prohibited under section 95, 96 or 97. 5
- (9) If the Secretary of State decides the question in subsection (8) in the affirmative he must refuse his consent.
- (10) If the Secretary of State decides that question in the negative he may give his consent. 10

**132 Consent to further extradition to category 1 territory**

- (1) This section applies if –
  - (a) a person is extradited to a category 2 territory (the requesting territory) in accordance with this Part; 15
  - (b) the Secretary of State receives a valid request for his consent to the person's extradition to a category 1 territory for an offence other than the offence in respect of which he was extradited.
- (2) A request for consent is valid if it is made by an authority which is an authority of the requesting territory and which the Secretary of State believes has the function of making requests for the consent referred to in subsection (1)(b) in that territory. 20
- (3) The Secretary of State must serve notice on the person that he has received the request for consent, unless he is satisfied that it would not be practicable to do so. 25
- (4) The Secretary of State must decide whether the offence is an extradition offence within the meaning given by section 65 in relation to the category 1 territory.
- (5) If the Secretary of State decides the question in subsection (4) in the negative he must refuse his consent.
- (6) If the Secretary of State decides that question in the affirmative he must decide whether the appropriate judge would order the person's extradition under sections 11 to 26 if – 30
  - (a) the person were in the United Kingdom, and
  - (b) the judge were required to proceed under section 11 in respect of the offence for which the Secretary of State's consent is requested. 35
- (7) If the Secretary of State decides the question in subsection (6) in the affirmative he must give his consent.
- (8) If the Secretary of State decides that question in the negative he must refuse his consent.

**133 Return of person to serve remainder of sentence 40**

- (1) This section applies if –

- (a) a person who is serving a sentence of imprisonment or another form of detention in the United Kingdom is extradited to a category 2 territory in accordance with this Part;
- (b) the person is returned to the United Kingdom to serve the remainder of his sentence. 5
- (2) The person is liable to be detained in pursuance of his sentence.
- (3) If he is at large he must be treated as being unlawfully at large.
- (4) Time during which the person was not in the United Kingdom as a result of his extradition does not count as time served by him as part of his sentence.
- (5) But subsection (4) does not apply if— 10
- (a) the person was extradited for the purpose of being prosecuted for an offence, and
- (b) the person has not been convicted of the offence or of any other offence in respect of which he was permitted to be dealt with in the category 2 territory. 15
- (6) In a case falling within subsection (5), time during which the person was not in the United Kingdom as a result of his extradition counts as time served by him as part of his sentence only if it was spent in custody in connection with the offence or any other offence in respect of which he was permitted to be dealt with in the territory. 20

### Costs

#### 134 Costs where extradition ordered

- (1) This section applies if any of the following occurs in relation to a person whose extradition is requested under this Part— 25
- (a) an order for the person's extradition is made under this Part;
- (b) the High Court dismisses an appeal under section 104 or 109;
- (c) the High Court or the House of Lords dismisses an application for leave to appeal to the House of Lords under section 115, if the application is made by the person;
- (d) the House of Lords dismisses an appeal under section 115, if the appeal is brought by the person. 30
- (2) In a case falling within subsection (1)(a), the appropriate judge may make such order as he considers just and reasonable with regard to the costs to be paid by the person.
- (3) In a case falling within subsection (1)(b) by virtue of section 105(7), the judge who decides the question that is (or all the questions that are) the subject of a direction under section 105(1)(b) may make such order as he considers just and reasonable with regard to the costs to be paid by the person. 35
- (4) In any other case falling within subsection (1)(b), the High Court may make such order as it considers just and reasonable with regard to the costs to be paid by the person. 40
- (5) In a case falling within subsection (1)(c) or (d), the court by which the application or appeal is dismissed may make such order as it considers just and reasonable with regard to the costs to be paid by the person.



- (6) An order for costs under this section –
  - (a) must specify their amount;
  - (b) may name the person to whom they are to be paid.

### 135 Costs where discharge ordered

- (1) This section applies if any of the following occurs in relation to a person whose extradition to a category 2 territory is requested under this Part – 5
  - (a) an order for the person’s discharge is made under this Part;
  - (b) the person is taken to be discharged under this Part;
  - (c) the High Court dismisses an appeal under section 106 or 111;
  - (d) the High Court or the House of Lords dismisses an application for leave to appeal to the House of Lords under section 115, if the application is made on behalf of the category 2 territory; 10
  - (e) the House of Lords dismisses an appeal under section 115, if the appeal is brought on behalf of the category 2 territory.
- (2) In a case falling within subsection (1)(a), an order under subsection (5) in favour of the person may be made by – 15
  - (a) the appropriate judge, if the order for the person’s discharge is made by him or by the Secretary of State;
  - (b) the High Court, if the order for the person’s discharge is made by it;
  - (c) the House of Lords, if the order for the person’s discharge is made by it. 20
- (3) In a case falling within subsection (1)(b), the appropriate judge may make an order under subsection (5) in favour of the person.
- (4) In a case falling within subsection (1)(c), (d) or (e), the court by which the application or appeal is dismissed may make an order under subsection (5) in favour of the person. 25
- (5) An order under this subsection in favour of a person is an order for a payment of the appropriate amount to be made to the person out of money provided by Parliament.
- (6) The appropriate amount is such amount as the judge or court making the order under subsection (5) considers reasonably sufficient to compensate the person in whose favour the order is made for any expenses properly incurred by him in the proceedings under this Part. 30
- (7) But if the judge or court making an order under subsection (5) is of the opinion that there are circumstances which make it inappropriate that the person in whose favour the order is made should recover the full amount mentioned in subsection (6), the judge or court must – 35
  - (a) assess what amount would in his or its opinion be just and reasonable;
  - (b) specify that amount in the order as the appropriate amount.
- (8) Unless subsection (7) applies, the appropriate amount – 40
  - (a) must be specified in the order, if the court considers it appropriate for it to be so specified and the person in whose favour the order is made agrees the amount;
  - (b) must be determined in accordance with regulations made by the Lord Chancellor for the purposes of this section, in any other case.

**136 Costs where discharge ordered: supplementary**

- (1) In England and Wales, subsections (1) and (3) of section 20 of the Prosecution of Offences Act 1985 (c. 23) (regulations for carrying Part 2 of that Act into effect) apply in relation to section 135 as those subsections apply in relation to Part 2 of that Act. 5
- (2) As so applied those subsections have effect as if an order under section 135(5) were an order under Part 2 of that Act for a payment to be made out of central funds.
- (3) In Northern Ireland, section 7 of the Costs in Criminal Cases Act (Northern Ireland) 1968 (c.10) (rules relating to costs) applies in relation to section 135 as that section applies in relation to sections 2 to 5 of that Act. 10

*Repatriation cases***137 Persons serving sentences outside territory where convicted**

- (1) This section applies if –
- (a) a request is made for a person’s extradition to a category 2 territory and the request contains the statement referred to in subsection (2), or 15
  - (b) a provisional warrant for a person’s arrest is sought on behalf of a category 2 territory and the information laid before the justice contains the statement referred to in subsection (2).
- (2) The statement is one that the person – 20
- (a) is alleged to be unlawfully at large from a prison in one territory (the imprisoning territory) in which he was serving a sentence after conviction of an offence specified in the request by a court in another territory (the convicting territory), and
  - (b) was serving the sentence in pursuance of international arrangements for prisoners sentenced in one territory to be repatriated to another territory in order to serve their sentence. 25
- (3) If the category 2 territory is either the imprisoning territory or the convicting territory –
- (a) section 71(3) has effect as if the reference to the statement referred to in subsection (4) of that section were a reference to the statement referred to in subsection (2) of this section; 30
  - (b) section 74(1) has effect as if the reference to a person within subsection (2) of that section were a reference to the person referred to in subsection (1)(b) of this section. 35
- (4) If the category 2 territory is the imprisoning territory –
- (a) sections 72(2)(a), 74(3)(a) and 79(4)(b) have effect as if “an extradition offence” read “an extradition offence in relation to the convicting territory”;
  - (b) sections 75(7)(a) and 128(2) have effect as if “the category 2 territory in which he is accused of the commission of an offence or is alleged to have been convicted of an offence” read “the imprisoning territory”;
  - (c) section 75(10)(b) has effect as if “the category 2 territory” read “the imprisoning territory”;
  - (d) section 79(2)(e) has effect as if “the category 2 territory” read “the convicting territory”;

- (e) section 86(5) has effect as if after “entitled” there were inserted “in the convicting territory”;
  - (f) section 120(4) has effect as if “a category 2 territory” read “the convicting territory” and as if “the category 2 territory” in both places read “the convicting territory”; 5
  - (g) section 139(1) has effect as if “a category 2 territory” read “the convicting territory”;
  - (h) in section 139, subsections (2), (3), (4), (5) and (7) have effect as if “the category 2 territory” read “the convicting territory”.
- (5) Subsection (1)(b) applies to Scotland with the substitution of “application by the procurator fiscal sets out the matters referred to in paragraphs (a) and (b) of subsection (2)” for “information laid by the justice contains the statement referred to in subsection (2)”. 10
- (6) Subsection (1)(b) applies to Northern Ireland with the substitution of “the complaint made to” for “the information laid before”. 15

*Interpretation*

**138 Extradition offences: person not sentenced for offence**

- (1) This section applies in relation to conduct of a person if –
- (a) he is accused in a category 2 territory of the commission of an offence constituted by the conduct, or 20
  - (b) he is alleged to be unlawfully at large after conviction by a court in a category 2 territory of an offence constituted by the conduct and he has not been sentenced for the offence.
- (2) The conduct constitutes an extradition offence in relation to the category 2 territory if these conditions are satisfied – 25
- (a) the conduct occurs in the category 2 territory;
  - (b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom; 30
  - (c) the conduct is so punishable under the law of the category 2 territory (however it is described in that law).
- (3) The conduct also constitutes an extradition offence in relation to the category 2 territory if these conditions are satisfied – 35
- (a) the conduct occurs outside the category 2 territory;
  - (b) the conduct is punishable under the law of the category 2 territory with imprisonment or another form of detention for a term of 12 months or a greater punishment (however it is described in that law);
  - (c) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment. 40
- (4) The conduct also constitutes an extradition offence in relation to the category 2 territory if these conditions are satisfied – 45
- (a) the conduct occurs outside the category 2 territory and no part of it occurs in the United Kingdom;

- (b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom;
- (c) the conduct is so punishable under the law of the category 2 territory (however it is described in that law). 5
- (5) The conduct also constitutes an extradition offence in relation to the category 2 territory if these conditions are satisfied –
- (a) the conduct occurs outside the category 2 territory and no part of it occurs in the United Kingdom; 10
- (b) the conduct is punishable under the law of the category 2 territory with imprisonment for a term of 12 months or another form of detention or a greater punishment (however it is described in that law);
- (c) the conduct constitutes or if committed in the United Kingdom would constitute an offence mentioned in subsection (6). 15
- (6) The offences are –
- (a) an offence under section 51 or 58 of the International Criminal Court Act 2001 (c. 17) (genocide, crimes against humanity and war crimes);
- (b) an offence under section 52 or 59 of that Act (conduct ancillary to genocide etc. committed outside the jurisdiction); 20
- (c) an ancillary offence, as defined in section 55 or 62 of that Act, in relation to an offence falling within paragraph (a) or (b);
- (d) an offence under section 1 of the International Criminal Court (Scotland) Act 2001 (asp 13) (genocide, crimes against humanity and war crimes); 25
- (e) an offence under section 2 of that Act (conduct ancillary to genocide etc. committed outside the jurisdiction);
- (f) an ancillary offence, as defined in section 7 of that Act, in relation to an offence falling within paragraph (d) or (e).
- (7) If the conduct constitutes an offence under the military law of the category 2 territory but does not constitute an offence under the general criminal law of the relevant part of the United Kingdom it does not constitute an extradition offence; and subsections (1) to (6) have effect subject to this. 30
- (8) The relevant part of the United Kingdom is the part of the United Kingdom in which – 35
- (a) the extradition hearing took place, if the question of whether conduct constitutes an extradition offence is to be decided by the Secretary of State;
- (b) proceedings in which it is necessary to decide that question are taking place, in any other case. 40
- (9) Subsections (1) to (7) apply for the purposes of this Part.

### 139 Extradition offences: person sentenced for offence

- (1) This section applies in relation to conduct of a person if –
- (a) he is alleged to be unlawfully at large after conviction by a court in a category 2 territory of an offence constituted by the conduct, and 45
- (b) he has been sentenced for the offence.

- 
- (2) The conduct constitutes an extradition offence in relation to the category 2 territory if these conditions are satisfied –
- (a) the conduct occurs in the category 2 territory;
  - (b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom; 5
  - (c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 2 territory in respect of the conduct. 10
- (3) The conduct also constitutes an extradition offence in relation to the category 2 territory if these conditions are satisfied –
- (a) the conduct occurs outside the category 2 territory;
  - (b) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 2 territory in respect of the conduct; 15
  - (c) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment. 20
- (4) The conduct also constitutes an extradition offence in relation to the category 2 territory if these conditions are satisfied –
- (a) the conduct occurs outside the category 2 territory and no part of it occurs in the United Kingdom;
  - (b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom; 25
  - (c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 2 territory in respect of the conduct. 30
- (5) The conduct also constitutes an extradition offence in relation to the category 2 territory if these conditions are satisfied –
- (a) the conduct occurs outside the category 2 territory and no part of it occurs in the United Kingdom; 35
  - (b) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 2 territory in respect of the conduct;
  - (c) the conduct constitutes or if committed in the United Kingdom would constitute an offence mentioned in subsection (6). 40
- (6) The offences are –
- (a) an offence under section 51 or 58 of the International Criminal Court Act 2001 (c. 17) (genocide, crimes against humanity and war crimes);
  - (b) an offence under section 52 or 59 of that Act (conduct ancillary to genocide etc. committed outside the jurisdiction); 45
  - (c) an ancillary offence, as defined in section 55 or 62 of that Act, in relation to an offence falling within paragraph (a) or (b);
  - (d) an offence under section 1 of the International Criminal Court (Scotland) Act 2001 (asp 13) (genocide, crimes against humanity and war crimes); 50

- (e) an offence under section 2 of that Act (conduct ancillary to genocide etc. committed outside the jurisdiction);
  - (f) an ancillary offence, as defined in section 7 of that Act, in relation to an offence falling within paragraph (d) or (e).
- (7) If the conduct constitutes an offence under the military law of the category 2 territory but does not constitute an offence under the general criminal law of the relevant part of the United Kingdom it does not constitute an extradition offence; and subsections (1) to (6) have effect subject to this. 5
- (8) The relevant part of the United Kingdom is the part of the United Kingdom in which— 10
- (a) the extradition hearing took place, if the question of whether conduct constitutes an extradition offence is to be decided by the Secretary of State;
  - (b) proceedings in which it is necessary to decide that question are taking place, in any other case. 15
- (9) Subsections (1) to (7) apply for the purposes of this Part.

#### **140 The appropriate judge**

- (1) The appropriate judge is—
- (a) in England and Wales, a District Judge (Magistrates' Courts) designated for the purposes of this Part by the Lord Chancellor; 20
  - (b) in Scotland, the sheriff of Lothian and Borders;
  - (c) in Northern Ireland, such county court judge or resident magistrate as is designated for the purposes of this Part by the Lord Chancellor.
- (2) A designation under subsection (1) may be made for all cases or for such cases (or cases of such description) as the designation stipulates. 25
- (3) More than one designation may be made under subsection (1).
- (4) This section applies for the purposes of this Part.

#### **141 The extradition hearing**

- (1) The extradition hearing is the hearing at which the appropriate judge is to deal with a request for extradition to a category 2 territory. 30
- (2) This section applies for the purposes of this Part.

#### **142 Scotland: references to Secretary of State**

- (1) This Part applies in relation to any function which falls under this Part to be exercised in relation to Scotland only as if references in this Part to the Secretary of State were to the Scottish Ministers. 35
- (2) Subsection (1) does not apply to the references to the Secretary of State in sections 84(3), 102(5) and 122.

**PART 3**

EXTRADITION TO THE UNITED KINGDOM

*Extradition from category 1 territories*

**143 Issue of Part 3 warrant**

- (1) The appropriate judge may issue a Part 3 warrant in respect of a person if – 5
  - (a) a constable or an appropriate person applies to the judge for a Part 3 warrant, and
  - (b) the condition in subsection (2) is satisfied.
- (2) The condition is that a domestic warrant has been issued in respect of the person and there is reason to believe – 10
  - (a) that the person has committed an extradition offence, or
  - (b) that the person is unlawfully at large after conviction of an extradition offence by a court in the United Kingdom.
- (3) A Part 3 warrant is an arrest warrant which contains – 15
  - (a) the statement referred to in subsection (4) or the statement referred to in subsection (5), and
  - (b) the certificate referred to in subsection (6).
- (4) The statement is one that – 20
  - (a) the person in respect of whom the warrant is issued is accused in the United Kingdom of the commission of an extradition offence specified in the warrant, and
  - (b) the warrant is issued with a view to his arrest and extradition to the United Kingdom for the purpose of being prosecuted for the offence.
- (5) The statement is one that – 25
  - (a) the person in respect of whom the warrant is issued is alleged to be unlawfully at large after conviction of an extradition offence specified in the warrant by a court in the United Kingdom, and 25
  - (b) the warrant is issued with a view to his arrest and extradition to the United Kingdom for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence. 30
- (6) The certificate is one certifying – 35
  - (a) whether the conduct constituting the extradition offence specified in the warrant falls within the European framework list;
  - (b) whether the offence is an extra-territorial offence;
  - (c) what is the maximum punishment that may be imposed on conviction of the offence or (if the person has been sentenced for the offence) what sentence has been imposed.
- (7) The conduct which falls within the European framework list must be taken for the purposes of subsection (6)(a) to include conduct which constitutes – 40
  - (a) an attempt, conspiracy or incitement to carry out conduct falling within the list, or
  - (b) aiding, abetting, counselling or procuring the carrying out of conduct falling within the list.

- (8) A domestic warrant is a warrant for the arrest or apprehension of a person which is issued under any of these –
- (a) section 72 of the Criminal Justice Act 1967 (c. 80);
  - (b) section 7 of the Bail Act 1976 (c. 63);
  - (c) section 51 of the Judicature (Northern Ireland) Act 1978 (c. 23); 5
  - (d) section 1 of the Magistrates’ Courts Act 1980 (c. 43);
  - (e) Article 20 or 25 of the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/ 1675 (N.I. 26));
  - (f) the Criminal Procedure (Scotland) Act 1995 (c. 46).
- (9) An appropriate person is a person of a description specified in an order made by the Secretary of State for the purposes of this section. 10
- (10) Subsection (1)(a) applies to Scotland with the substitution of “a procurator fiscal” for “a constable or an appropriate person”.

#### 144 Undertaking in relation to person serving sentence

- (1) This section applies if – 15
- (a) a Part 3 warrant is issued in respect of a person;
  - (b) the person is serving a sentence of imprisonment or another form of detention in a category 1 territory;
  - (c) the person’s extradition to the United Kingdom from the category 1 territory in pursuance of the warrant is made subject to a condition that an undertaking is given on behalf of the United Kingdom with regard to his treatment in the United Kingdom or his return to the category 1 territory (or both). 20
- (2) The Secretary of State may give an undertaking to a person acting on behalf of the category 1 territory with regard to either or both of these things – 25
- (a) the treatment in the United Kingdom of the person in respect of whom the warrant is issued;
  - (b) the return of that person to the category 1 territory.
- (3) The terms which may be included by the Secretary of State in an undertaking given under subsection (2) in relation to a person accused in the United Kingdom of the commission of an offence include terms – 30
- (a) that the person be kept in custody until the conclusion of the proceedings against him for the offence and any other offence in respect of which he is permitted to be dealt with in the United Kingdom; 35
  - (b) that the person be returned to the category 1 territory to serve the remainder of his sentence on the conclusion of those proceedings.
- (4) The terms which may be included by the Secretary of State in an undertaking given under subsection (2) in relation to a person alleged to be unlawfully at large after conviction of an offence by a court in the United Kingdom include terms that the person be returned to the category 1 territory to serve the remainder of his sentence after serving any sentence imposed on him in the United Kingdom. 40
- (5) If the Part 3 warrant was issued by a sheriff, the preceding provisions of this section apply as if the references to the Secretary of State were to the Scottish Ministers. 45



#### **145 Return to extraditing territory to serve sentence**

- (1) This section applies if—
  - (a) a Part 3 warrant is issued in respect of a person;
  - (b) the warrant states that it is issued with a view to his extradition to the United Kingdom for the purpose of being prosecuted for an offence; 5
  - (c) he is extradited to the United Kingdom from a category 1 territory in pursuance of the warrant;
  - (d) he is extradited on the condition that, if he is convicted of the offence and a sentence of imprisonment or another form of detention is imposed in respect of it, he must be returned to the category 1 territory to serve the sentence; 10
  - (e) he is convicted of the offence and a sentence of imprisonment or another form of detention is imposed in respect of it.
- (2) The person must be returned to the category 1 territory to serve the sentence as soon as is reasonably practicable after the sentence is imposed. 15
- (3) If subsection (2) is complied with the punishment for the offence must be treated as remitted but the person's conviction for the offence must be treated as a conviction for all other purposes.
- (4) If subsection (2) is not complied with and the person applies to the appropriate judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay. 20

#### **146 Service of sentence in territory executing Part 3 warrant**

- (1) This section applies if—
  - (a) a Part 3 warrant is issued in respect of a person;
  - (b) the certificate contained in the warrant certifies that a sentence has been imposed; 25
  - (c) an undertaking is given on behalf of a category 1 territory that the person will be required to serve the sentence in the territory;
  - (d) on the basis of the undertaking the person is not extradited to the United Kingdom from the category 1 territory. 30
- (2) The punishment for the offence must be treated as remitted but the person's conviction for the offence must be treated as a conviction for all other purposes.

#### **147 Dealing with person for other offences**

- (1) This section applies if a person is extradited to the United Kingdom from a category 1 territory in pursuance of a Part 3 warrant. 35
- (2) The person may be dealt with in the United Kingdom for an offence committed before his extradition only if—
  - (a) the offence is one falling within subsection (3), or
  - (b) the condition in subsection (4) is satisfied.
- (3) The offences are— 40
  - (a) the offence in respect of which the person is extradited;
  - (b) an offence disclosed by the information provided to the category 1 territory in respect of that offence;

- (c) an extradition offence in respect of which consent to the person being dealt with is given on behalf of the territory;
  - (d) an offence which is not punishable with imprisonment or another form of detention;
  - (e) an offence in respect of which the person will not be detained in connection with his trial, sentence or appeal; 5
  - (f) an offence in respect of which the person waives the right that he would have (but for this paragraph) not to be dealt with for the offence.
- (4) The condition is that the person has been given an opportunity to leave the United Kingdom and – 10
- (a) he has not done so before the end of the permitted period, or
  - (b) he has done so before the end of the permitted period and has returned to the United Kingdom.
- (5) The permitted period is 45 days starting with the day on which the person arrives in the United Kingdom. 15

#### 148 Effect of consent to extradition to the United Kingdom

- (1) This section applies if –
- (a) a person is extradited to the United Kingdom from a category 1 territory in pursuance of a Part 3 warrant;
  - (b) the person consented to his extradition to the United Kingdom in accordance with the law of the category 1 territory. 20
- (2) Section 147(2) does not apply if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.
- (3) The conditions are that –
- (a) under the law of the category 1 territory, the effect of the person’s consent is to waive his right under section 147(2); 25
  - (b) the person has not revoked his consent in accordance with that law, if he is permitted to do so under that law.
- (4) The conditions are that –
- (a) under the law of the category 1 territory, the effect of the person’s consent is not to waive his right under section 147(2); 30
  - (b) the person has expressly waived his right under section 147(2) in accordance with that law;
  - (c) the person has not revoked his consent in accordance with that law, if he is permitted to do so under that law; 35
  - (d) the person has not revoked the waiver of his right under section 147(2) in accordance with that law, if he is permitted to do so under that law.

#### 149 Extradition offences

- (1) Conduct constitutes an extradition offence in relation to the United Kingdom if these conditions are satisfied – 40
- (a) the conduct occurs in the United Kingdom;
  - (b) the conduct is punishable under the law of the relevant part of the United Kingdom with imprisonment or another form of detention for a term of 12 months or a greater punishment.

- 
- (2) Conduct also constitutes an extradition offence in relation to the United Kingdom if these conditions are satisfied –
- (a) the conduct occurs outside the United Kingdom;
  - (b) the conduct constitutes an extra-territorial offence punishable under the law of the relevant part of the United Kingdom with imprisonment or another form of detention for a term of 12 months or a greater punishment. 5
- (3) But subsections (1) and (2) do not apply in relation to conduct of a person if –
- (a) he is alleged to be unlawfully at large after conviction by a court in the United Kingdom of the offence constituted by the conduct, and 10
  - (b) he has been sentenced for the offence.
- (4) Conduct also constitutes an extradition offence in relation to the United Kingdom if these conditions are satisfied –
- (a) the conduct occurs in the United Kingdom;
  - (b) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the United Kingdom in respect of the conduct. 15
- (5) Conduct also constitutes an extradition offence in relation to the United Kingdom if these conditions are satisfied –
- (a) the conduct occurs outside the United Kingdom; 20
  - (b) the conduct constitutes an extra-territorial offence;
  - (c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the United Kingdom in respect of the conduct.
- (6) The relevant part of the United Kingdom is the part of the United Kingdom in which the relevant proceedings are taking place. 25
- (7) The relevant proceedings are the proceedings in which it is necessary to decide whether conduct constitutes an extradition offence.
- (8) Subsections (1) to (5) apply for the purposes of sections 143 to 148.
- 150 The appropriate judge** 30
- (1) The appropriate judge is –
- (a) in England and Wales, a District Judge (Magistrates’ Courts), a justice of the peace or a judge entitled to exercise the jurisdiction of the Crown Court;
  - (b) in Scotland, a sheriff; 35
  - (c) in Northern Ireland, a justice of the peace, a resident magistrate or a Crown Court judge.
- (2) This section applies for the purposes of sections 143 to 148.

*Extradition from category 2 territories*

- 151 Dealing with person for other offences: Commonwealth countries etc.** 40
- (1) This section applies if –

- 
- (a) a person is extradited to the United Kingdom from a category 2 territory under law of the territory corresponding to Part 2 of this Act, and
- (b) the territory is a Commonwealth country, a British overseas territory or the Hong Kong Special Administrative Region of the People’s Republic of China. 5
- (2) The person may be dealt with in the United Kingdom for an offence committed before his extradition only if –
- (a) the offence is one falling within subsection (3), or
- (b) the condition in subsection (6) is satisfied. 10
- (3) The offences are –
- (a) the offence in respect of which the person is extradited;
- (b) a lesser offence disclosed by the information provided to the category 2 territory in respect of that offence;
- (c) an offence in respect of which consent to the person being dealt with is given by or on behalf of the relevant authority. 15
- (4) An offence is a lesser offence in relation to another offence if the maximum punishment for it is less severe than the maximum punishment for the other offence.
- (5) The relevant authority is – 20
- (a) if the person has been extradited from a Commonwealth country, the government of the country;
- (b) if the person has been extradited from a British overseas territory, the person administering the territory;
- (c) if the person has been extradited from the Hong Kong Special Administrative Region of the People’s Republic of China, the government of the Region. 25
- (6) The condition is that the protected period has ended.
- (7) The protected period is 45 days starting with the first day after his extradition to the United Kingdom on which the person is given an opportunity to leave the United Kingdom. 30
- (8) A person is dealt with in the United Kingdom for an offence if –
- (a) he is tried there for it;
- (b) he is detained with a view to trial there for it.
- 152 Dealing with person for other offences: other category 2 territories 35**
- (1) This section applies if –
- (a) a person is extradited to the United Kingdom from a category 2 territory under law of the territory corresponding to Part 2 of this Act, and
- (b) the territory is not one falling within section 151(1)(b). 40
- (2) The person may be dealt with in the United Kingdom for an offence committed before his extradition only if –
- (a) the offence is one falling within subsection (3), or
- (b) the condition in subsection (4) is satisfied.

- (3) The offences are –
  - (a) the offence in respect of which the person is extradited;
  - (b) an offence disclosed by the information provided to the category 2 territory in respect of that offence;
  - (c) an offence in respect of which consent to the person being dealt with is given on behalf of the territory. 5
- (4) The condition is that –
  - (a) the person has returned to the territory from which he was extradited, or
  - (b) the person has been given an opportunity to leave the United Kingdom. 10
- (5) A person is dealt with in the United Kingdom for an offence if –
  - (a) he is tried there for it;
  - (b) he is detained with a view to trial there for it.

*General*

**153 Remission of punishment for other offences** 15

- (1) This section applies if –
  - (a) a person is extradited to the United Kingdom from –
    - (i) a category 1 territory under law of the territory corresponding to Part 1 of this Act, or
    - (ii) a category 2 territory under law of the territory corresponding to Part 2 of this Act; 20
  - (b) before his extradition he has been convicted of an offence in the United Kingdom;
  - (c) he has not been extradited in respect of that offence.
- (2) The punishment for the offence must be treated as remitted but the person's conviction for the offence must be treated as a conviction for all other purposes. 25

**154 Return of person acquitted or not tried**

- (1) This section applies if –
  - (a) a person is accused in the United Kingdom of the commission of an offence; 30
  - (b) the person is extradited to the United Kingdom in respect of the offence from –
    - (i) a category 1 territory under law of the territory corresponding to Part 1 of this Act, or
    - (ii) a category 2 territory under law of the territory corresponding to Part 2 of this Act; 35
  - (c) the condition in subsection (2) or the condition in subsection (3) is satisfied.
- (2) The condition is that –
  - (a) proceedings against the person for the offence are not begun before the end of the required period, which is 6 months starting with the day on which the person arrives in the United Kingdom on his extradition, and 40

- (b) before the end of the period of 3 months starting immediately after the end of the required period the person asks the Secretary of State to return him to the territory from which he was extradited.
- (3) The condition is that—
- (a) at his trial for the offence the person is acquitted or is discharged under any of the provisions specified in subsection (4), and 5
- (b) before the end of the period of 3 months starting immediately after the date of his acquittal or discharge the person asks the Secretary of State to return him to the territory from which he was extradited.
- (4) The provisions are— 10
- (a) section 12(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6);
- (b) section 246(1), (2) or (3) of the Criminal Procedure (Scotland) Act 1995 (c. 46);
- (c) Article 4(1) of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)). 15
- (5) The Secretary of State must arrange for him to be sent back, free of charge and with as little delay as possible, to the territory from which he was extradited to the United Kingdom in respect of the offence.
- (6) If the accusation in subsection (1)(a) relates to the commission of an offence in Scotland, subsection (2)(b), (3)(b) and (5) apply as if the reference to the Secretary of State were a reference to the Scottish Ministers. 20

#### 155 Restriction on bail where undertaking given by Secretary of State

- (1) This section applies in relation to a person if—
- (a) the Secretary of State has given an undertaking in connection with the person's extradition to the United Kingdom, and 25
- (b) the undertaking includes terms that the person be kept in custody until the conclusion of any proceedings against him in the United Kingdom for an offence.
- (2) A court, judge or justice of the peace may grant bail to the person in the proceedings only if the court, judge or justice of the peace considers that there are exceptional circumstances which justify it. 30

#### 156 Service personnel

The Secretary of State may by order provide for the preceding provisions of this Part to have effect with specified modifications in relation to a case where the person whose extradition is sought or ordered is subject to military law, air-force law or the Naval Discipline Act 1957 (c. 53). 35

**PART 4**

POLICE POWERS

*Warrants and orders*

**157 Search and seizure warrants**

- (1) A justice of the peace may, on an application made to him by a constable, issue a search and seizure warrant if he is satisfied that the requirements for the issue of a search and seizure warrant are fulfilled. 5
- (2) The application for a search and seizure warrant must state that—
  - (a) the extradition of a person specified in the application is sought under Part 1 or Part 2; 10
  - (b) the warrant is sought in relation to premises specified in the application;
  - (c) the warrant is sought in relation to material, or material of a description, specified in the application;
  - (d) that material, or material of that description, is believed to be on the premises. 15
- (3) If the application states that the extradition of the person is sought under Part 1, the application must also state that the person is accused in a category 1 territory specified in the application of the commission of an offence—
  - (a) which is specified in the application, and 20
  - (b) which is an extradition offence within the meaning given by section 65.
- (4) If the application states that the extradition of the person is sought under Part 2, the application must also state that the person is accused in a category 2 territory specified in the application of the commission of an offence—
  - (a) which is specified in the application, and 25
  - (b) which is an extradition offence within the meaning given by section 138.
- (5) A search and seizure warrant is a warrant authorising a constable—
  - (a) to enter and search the premises specified in the application for the warrant, and 30
  - (b) to seize and retain any material found there which falls within subsection (6).
- (6) Material falls within this subsection if—
  - (a) it would be likely to be admissible evidence at a trial in the relevant part of the United Kingdom for the offence specified in the application for the warrant (on the assumption that conduct constituting that offence would constitute an offence in that part of the United Kingdom), and 35
  - (b) it does not consist of or include items subject to legal privilege, excluded material or special procedure material.
- (7) The relevant part of the United Kingdom is the part of the United Kingdom where the justice of the peace exercises jurisdiction. 40
- (8) The requirements for the issue of a search and seizure warrant are that there are reasonable grounds for believing that—

- (a) the offence specified in the application has been committed by the person so specified;
  - (b) the person is in the United Kingdom or is on his way to the United Kingdom;
  - (c) the offence is an extradition offence within the meaning given by section 65 (if subsection (3) applies) or section 138 (if subsection (4) applies); 5
  - (d) there is material on premises specified in the application which falls within subsection (6);
  - (e) any of the conditions referred to in subsection (9) is satisfied. 10
- (9) The conditions are –
- (a) that it is not practicable to communicate with a person entitled to grant entry to the premises;
  - (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with a person entitled to grant access to the material referred to in subsection (8)(d); 15
  - (c) that entry to the premises will not be granted unless a warrant is produced;
  - (d) that the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them. 20
- (10) The preceding provisions of this section apply to Scotland with these modifications –
- (a) in subsections (1) and (7) for “justice of the peace” substitute “sheriff”; 25
  - (b) in subsection (1) for “constable” substitute “procurator fiscal”;
  - (c) for “search and seizure warrant” substitute “warrant to search”;
  - (d) in subsection (6)(b) omit the words “, excluded material or special procedure material”;
  - (e) subsections (8)(e) and (9) are omitted. 30

## 158 Production orders

- (1) A judge may, on an application made to him by a constable, make a production order if he is satisfied that the requirements for the making of a production order are fulfilled.
- (2) The application for a production order must state that – 35
- (a) the extradition of a person specified in the application is sought under Part 1 or Part 2;
  - (b) the order is sought in relation to premises specified in the application;
  - (c) the order is sought in relation to material, or material of a description, specified in the application; 40
  - (d) the material is special procedure material or excluded material;
  - (e) a person specified in the application appears to be in possession or control of the material.
- (3) If the application states that the extradition of the person is sought under Part 1, the application must also state that the person is accused in a category 1 territory specified in the application of the commission of an offence – 45
- (a) which is specified in the application, and



- (b) which is an extradition offence within the meaning given by section 65.
- (4) If the application states that the extradition of the person is sought under Part 2, the application must also state that the person is accused in a category 2 territory specified in the application of the commission of an offence –
  - (a) which is specified in the application, and 5
  - (b) which is an extradition offence within the meaning given by section 138.
- (5) A production order is an order either –
  - (a) requiring the person the application for the order specifies as appearing to be in possession or control of special procedure material or excluded material to produce it to a constable (within the period stated in the order) for him to take away, or 10
  - (b) requiring that person to give a constable access to the special procedure material or excluded material within the period stated in the order.
- (6) The period stated in a production order must be a period of 7 days starting with the day on which the order is made, unless it appears to the judge by whom the order is made that a longer period would be appropriate. 15
- (7) Production orders have effect as if they were orders of the court.
- (8) In this section “judge” –
  - (a) in England and Wales, means a circuit judge; 20
  - (b) in Northern Ireland, means a Crown Court judge.

### 159 Requirements for making of production order

- (1) These are the requirements for the making of a production order.
- (2) There must be reasonable grounds for believing that –
  - (a) the offence specified in the application has been committed by the person so specified; 25
  - (b) the person is in the United Kingdom or is on his way to the United Kingdom;
  - (c) the offence is an extradition offence within the meaning given by section 65 (if section 158(3) applies) or section 138 (if section 158(4) applies); 30
  - (d) there is material which consists of or includes special procedure material or excluded material on premises specified in the application;
  - (e) the material would be likely to be admissible evidence at a trial in the relevant part of the United Kingdom for the offence specified in the application (on the assumption that conduct constituting that offence would constitute an offence in that part of the United Kingdom). 35
- (3) The relevant part of the United Kingdom is the part of the United Kingdom where the judge exercises jurisdiction.
- (4) It must appear that other methods of obtaining the material – 40
  - (a) have been tried without success, or
  - (b) have not been tried because they were bound to fail.
- (5) It must be in the public interest that the material should be produced or that access to it should be given.

**160 Computer information**

- (1) This section applies if any of the special procedure material or excluded material specified in an application for a production order consists of information stored in any electronic form.
- (2) If the order is an order requiring a person to produce the material to a constable for him to take away, it has effect as an order to produce the material in a form –
- (a) in which it can be taken away by him;
  - (b) in which it is visible and legible or from which it can readily be produced in a visible and legible form.
- (3) If the order is an order requiring a person to give a constable access to the material, it has effect as an order to give him access to the material in a form –
- (a) in which it is visible and legible, or
  - (b) from which it can readily be produced in a visible and legible form.

**161 Warrants: special procedure material and excluded material**

- (1) A judge may, on an application made to him by a constable, issue a warrant under this section if he is satisfied that –
- (a) the requirements for the making of a production order are fulfilled, and
  - (b) the further requirement for the issue of a warrant under this section is fulfilled.
- (2) The application for a warrant under this section must state that –
- (a) the extradition of a person specified in the application is sought under Part 1 or Part 2;
  - (b) the warrant is sought in relation to premises specified in the application;
  - (c) the warrant is sought in relation to material, or material of a description, specified in the application;
  - (d) the material is special procedure material or excluded material.
- (3) If the application states that the extradition of the person is sought under Part 1, the application must also state that the person is accused in a category 1 territory specified in the application of the commission of an offence –
- (a) which is specified in the application, and
  - (b) which is an extradition offence within the meaning given by section 65.
- (4) If the application states that the extradition of the person is sought under Part 2, the application must also state that the person is accused in a category 2 territory specified in the application of the commission of an offence –
- (a) which is specified in the application, and
  - (b) which is an extradition offence within the meaning given by section 138.
- (5) A warrant under this section authorises a constable to enter and search the premises specified in the application for the warrant and –
- (a) to seize and retain any material found there which falls within subsection (6) and which is special procedure material, if the application for the warrant states that the warrant is sought in relation to special procedure material;

- (b) to seize and retain any material found there which falls within subsection (6) and which is excluded material, if the application for the warrant states that the warrant is sought in relation to excluded material.
- (6) Material falls within this subsection if it would be likely to be admissible evidence at a trial in the relevant part of the United Kingdom for the offence specified in the application for the warrant (on the assumption that conduct constituting that offence would constitute an offence in that part of the United Kingdom). 5
- (7) The relevant part of the United Kingdom is the part of the United Kingdom where the judge exercises jurisdiction. 10
- (8) The further requirement for the issue of a warrant under this section is that any of these conditions is satisfied –
  - (a) it is not practicable to communicate with a person entitled to grant entry to the premises; 15
  - (b) it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with a person entitled to grant access to the material referred to in section 159(2)(d);
  - (c) the material contains information which is subject to a restriction on disclosure or an obligation of secrecy contained in an enactment (including one passed after this Act) and is likely to be disclosed in breach of the restriction or obligation if a warrant is not issued. 20
- (9) In this section “judge” –
  - (a) in England and Wales, means a circuit judge;
  - (b) in Northern Ireland, means a Crown Court judge. 25

*Search and seizure without warrant*

**162 Entry and search of premises for purposes of arrest**

- (1) This section applies if a constable has power to arrest a person under an extradition arrest power.
- (2) A constable may enter and search any premises for the purpose of exercising the power of arrest if he has reasonable grounds for believing that the person is on the premises. 30
- (3) The power to search conferred by subsection (2) is exercisable only to the extent that is reasonably required for the purpose of exercising the power of arrest.
- (4) A constable who has entered premises in exercise of the power conferred by subsection (2) may seize and retain anything which is on the premises if he has reasonable grounds for believing –
  - (a) that it has been obtained in consequence of the commission of an offence or it is evidence in relation to an offence, and
  - (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed. 40
- (5) An offence includes an offence committed outside the United Kingdom.
- (6) If the premises contain 2 or more separate dwellings, the power conferred by subsection (2) is a power to enter and search only –

- (a) any parts of the premises which the occupiers of any dwelling comprised in the premises use in common with the occupiers of any other dwelling comprised in the premises, and
- (b) any dwelling comprised in the premises in which the constable has reasonable grounds for believing that the person may be. 5

### 163 Entry and search of premises on arrest

- (1) This section applies if a person has been arrested under an extradition arrest power at a place other than a police station.
- (2) A constable may enter and search any premises in which the person was at the time of his arrest or immediately before his arrest if he has reasonable grounds for believing –
  - (a) if the person has not been convicted of the relevant offence, that there is on the premises evidence (other than items subject to legal privilege) relating to the relevant offence; 10
  - (b) in any case, that there is on the premises evidence (other than items subject to legal privilege) relating to the identity of the person. 15
- (3) The relevant offence is the offence –
  - (a) referred to in the Part 1 warrant, if the arrest was under a Part 1 warrant;
  - (b) in respect of which the constable has reason to believe that a Part 1 warrant has been or will be issued, if the arrest was under section 5; 20
  - (c) in respect of which extradition is requested, if the arrest was under a warrant issued under section 72;
  - (d) of which the person is accused, if the arrest was under a provisional warrant. 25
- (4) The power to search conferred by subsection (2) –
  - (a) if the person has not been convicted of the relevant offence, is a power to search for evidence (other than items subject to legal privilege) relating to the relevant offence;
  - (b) in any case, is a power to search for evidence (other than items subject to legal privilege) relating to the identity of the person. 30
- (5) The power to search conferred by subsection (2) is exercisable only to the extent that it is reasonably required for the purpose of discovering evidence in respect of which the power is available by virtue of subsection (4).
- (6) A constable may seize and retain anything for which he may search by virtue of subsections (4) and (5). 35
- (7) A constable who has entered premises in exercise of the power conferred by subsection (2) may seize and retain anything which is on the premises if he has reasonable grounds for believing –
  - (a) that it has been obtained in consequence of the commission of an offence or it is evidence in relation to an offence, and 40
  - (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.
- (8) An offence includes an offence committed outside the United Kingdom.
- (9) If the premises contain 2 or more separate dwellings, the power conferred by subsection (2) is a power to enter and search only – 45

- (a) any dwelling in which the arrest took place or in which the person was immediately before his arrest, and
- (b) any parts of the premises which the occupier of any such dwelling uses in common with the occupiers of any other dwelling comprised in the premises.

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#### 164 Search of person on arrest

- (1) This section applies if a person has been arrested under an extradition arrest power at a place other than a police station.
- (2) A constable may search the person if he has reasonable grounds for believing that the person may present a danger to himself or others. 10
- (3) A constable may search the person if he has reasonable grounds for believing that the person may have concealed on him anything –
  - (a) which he might use to assist him to escape from lawful custody;
  - (b) which might be evidence relating to an offence or to the identity of the person. 15
- (4) The power to search conferred by subsection (3) –
  - (a) is a power to search for anything falling within paragraph (a) or (b) of that subsection;
  - (b) is exercisable only to the extent that is reasonably required for the purpose of discovering such a thing. 20
- (5) The powers conferred by subsections (2) and (3) –
  - (a) do not authorise a constable to require a person to remove any of his clothing in public, other than an outer coat, jacket or gloves;
  - (b) authorise a search of a person’s mouth.
- (6) A constable searching a person in exercise of the power conferred by subsection (2) may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to any other person. 25
- (7) A constable searching a person in exercise of the power conferred by subsection (3) may seize and retain anything he finds if he has reasonable grounds for believing – 30
  - (a) that the person might use it to assist him to escape from lawful custody;
  - (b) that it is evidence of an offence or of the identity of the person or has been obtained in consequence of the commission of an offence.
- (8) An offence includes an offence committed outside the United Kingdom. 35
- (9) Nothing in this section affects the power conferred by section 43 of the Terrorism Act 2000 (c. 11).

#### 165 Entry and search of premises after arrest

- (1) This section applies if a person has been arrested under an extradition arrest power. 40
- (2) A constable may enter and search any premises occupied or controlled by the person if the constable has reasonable grounds for suspecting –

- 
- (a) if the person has not been convicted of the relevant offence, that there is on the premises evidence (other than items subject to legal privilege) relating to the relevant offence;
  - (b) in any case, that there is on the premises evidence (other than items subject to legal privilege) relating to the identity of the person. 5
- (3) The relevant offence is the offence –
- (a) referred to in the Part 1 warrant, if the arrest was under a Part 1 warrant;
  - (b) in respect of which the constable has reason to believe that a Part 1 warrant has been or will be issued, if the arrest was under section 5; 10
  - (c) in respect of which extradition is requested, if the arrest was under a warrant issued under section 72;
  - (d) of which the person is accused, if the arrest was under a provisional warrant.
- (4) The power to search conferred by subsection (2) – 15
- (a) if the person has not been convicted of the relevant offence, is a power to search for evidence (other than items subject to legal privilege) relating to the relevant offence;
  - (b) in any case, is a power to search for evidence (other than items subject to legal privilege) relating to the identity of the person. 20
- (5) The power to search conferred by subsection (2) is exercisable only to the extent that it is reasonably required for the purpose of discovering evidence in respect of which the power is available by virtue of subsection (4).
- (6) A constable may seize and retain anything for which he may search by virtue of subsections (4) and (5). 25
- (7) A constable who has entered premises in exercise of the power conferred by subsection (2) may seize and retain anything which is on the premises if he has reasonable grounds for believing –
- (a) that it has been obtained in consequence of the commission of an offence or it is evidence in relation to an offence, and 30
  - (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.
- (8) An offence includes an offence committed outside the United Kingdom.
- (9) The powers conferred by subsections (2) and (6) may be exercised only if a police officer of the rank of inspector or above has given written authorisation for their exercise. 35
- (10) But the power conferred by subsection (2) may be exercised without authorisation under subsection (9) if –
- (a) it is exercised before the person arrested is taken to a police station, and
  - (b) the presence of the person at a place other than a police station is necessary for the effective exercise of the power to search. 40
- (11) Subsections (9) and (10) do not apply to Scotland.

## 166 Additional seizure powers

- (1) The Criminal Justice and Police Act 2001 (c. 16) is amended as follows.

- (2) In Part 1 of Schedule 1 (powers of seizure to which section 50 of that Act applies) at the end add –

*“Extradition Act 2003 (c. 00)*

73B The powers of seizure conferred by sections 157(5), 161(5), 162(4), 163(6) and (7) and 165(6) and (7) of the Extradition Act 2003 (seizure in connection with extradition).” 5

- (3) In Part 2 of Schedule 1 (powers of seizure to which section 51 of that Act applies) at the end add –

*“Extradition Act 2003 (c. 00)*

83A The powers of seizure conferred by section 164(6) and (7) of the Extradition Act 2003 (seizure in connection with extradition).” 10

*Treatment following arrest*

**167 Fingerprints and samples**

- (1) This section applies if a person has been arrested under an extradition arrest power and is detained at a police station. 15
- (2) Fingerprints may be taken from the person only if they are taken by a constable –
- (a) with the appropriate consent given in writing, or
  - (b) without that consent, under subsection (4).
- (3) A non-intimate sample may be taken from the person only if it is taken by a constable – 20
- (a) with the appropriate consent given in writing, or
  - (b) without that consent, under subsection (4).
- (4) Fingerprints or a non-intimate sample may be taken from the person without the appropriate consent only if a police officer of at least the rank of inspector authorises the fingerprints or sample to be taken. 25

**168 Searches and examination**

- (1) This section applies if a person has been arrested under an extradition arrest power and is detained at a police station.
- (2) If a police officer of at least the rank of inspector authorises it, the person may be searched or examined, or both, for the purpose of facilitating the ascertainment of his identity. 30
- (3) An identifying mark found on a search or examination under this section may be photographed –
- (a) with the appropriate consent, or
  - (b) without the appropriate consent, if that consent is withheld or it is not practicable to obtain it. 35
- (4) The only persons entitled to carry out a search or examination, or take a photograph, under this section are –

- (a) constables;
  - (b) persons designated for the purposes of this section by the appropriate police officer.
- (5) A person may not under this section –
- (a) carry out a search or examination of a person of the opposite sex; 5
  - (b) take a photograph of any part of the body (other than the face) of a person of the opposite sex.
- (6) An intimate search may not be carried out under this section.
- (7) Ascertaining a person’s identity includes showing that he is not a particular person. 10
- (8) Taking a photograph includes using a process by means of which a visual image may be produced; and photographing a person must be construed accordingly.
- (9) Mark includes features and injuries and a mark is an identifying mark if its existence in a person’s case facilitates the ascertainment of his identity. 15
- (10) The appropriate police officer is –
- (a) in England and Wales, the chief officer of police for the police area in which the police station in question is situated;
  - (b) in Northern Ireland, the Chief Constable of the Police Service of Northern Ireland. 20

## 169 Photographs

- (1) This section applies if a person has been arrested under an extradition arrest power and is detained at a police station.
- (2) The person may be photographed –
- (a) with the appropriate consent, or 25
  - (b) without the appropriate consent, if that consent is withheld or it is not practicable to obtain it.
- (3) A person proposing to take a photograph of a person under this section –
- (a) may for the purpose of doing so require the removal of any item or substance worn on or over the whole or any part of the head or face of the person to be photographed, and 30
  - (b) if the requirement is not complied with may remove the item or substance himself.
- (4) The only persons entitled to take a photograph under this section are –
- (a) constables; 35
  - (b) persons designated for the purposes of this section by the appropriate police officer.
- (5) Taking a photograph includes using a process by means of which a visual image may be produced; and photographing a person must be construed accordingly. 40
- (6) The appropriate police officer is –
- (a) in England and Wales, the chief officer of police for the police area in which the police station in question is situated;



- (b) in Northern Ireland, the Chief Constable of the Police Service of Northern Ireland.

### 170 Evidence of identity: England and Wales

- (1) The Police and Criminal Evidence Act 1984 (c. 60) is amended as follows.
- (2) In section 54A (searches and examination to ascertain identity) at the end insert— 5  
“(13) Nothing in this section applies to a person arrested under an extradition arrest power.”
- (3) In section 61 (fingerprinting) at the end insert—  
“(10) Nothing in this section applies to a person arrested under an extradition arrest power.” 10
- (4) In section 63 (non-intimate samples) at the end insert—  
“(11) Nothing in this section applies to a person arrested under an extradition arrest power.”
- (5) In section 64A (photographing of suspects etc.) at the end insert— 15  
“(7) Nothing in this section applies to a person arrested under an extradition arrest power.”
- (6) In section 65 (interpretation of Part 5) after the definition of “drug trafficking” and “drug trafficking offence” insert—  
“extradition arrest power” means any of the following— 20  
(a) a Part 1 warrant (within the meaning given by the Extradition Act 2003) in respect of which a certificate under section 2 of that Act has been issued;  
(b) section 5 of that Act;  
(c) a warrant issued under section 72 of that Act; 25  
(d) a provisional warrant (within the meaning given by that Act).”

### 171 Evidence of identity: Northern Ireland

- (1) The Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) is amended as follows.
- (2) In Article 55A (searches and examination to ascertain identity) at the end insert— 30  
“(13) Nothing in this Article applies to a person arrested under an extradition arrest power.”
- (3) In Article 61 (fingerprinting) at the end insert—  
“(10) Nothing in this Article applies to a person arrested under an extradition arrest power.” 35
- (4) In Article 63 (non-intimate samples) at the end insert—  
“(12) Nothing in this Article applies to a person arrested under an extradition arrest power.”

- (5) In Article 64A (photographing of suspects etc.) at the end insert –
- “(7) Nothing in this Article applies to a person arrested under an extradition arrest power.”
- (6) In Article 53 (interpretation) after the definition of “drug trafficking” and “drug trafficking offence” insert – 5
- “extradition arrest power” means any of the following –
- (a) a Part 1 warrant (within the meaning given by the Extradition Act 2003) in respect of which a certificate under section 2 of that Act has been issued;
  - (b) section 5 of that Act; 10
  - (c) a warrant issued under section 72 of that Act;
  - (d) a provisional warrant (within the meaning given by that Act).”

## 172 Other treatment and rights

- (1) This section applies in relation to cases where a person –
- (a) is arrested under an extradition arrest power at a police station; 15
  - (b) is taken to a police station after being arrested elsewhere under an extradition arrest power;
  - (c) is detained at a police station after being arrested under an extradition arrest power.
- (2) In relation to those cases the Secretary of State may by order apply the provisions mentioned in subsections (3) and (4) with specified modifications. 20
- (3) The provisions are these provisions of the Police and Criminal Evidence Act 1984 (c. 60) –
- (a) section 54 (searches of detained persons);
  - (b) section 55 (intimate searches); 25
  - (c) section 56 (right to have someone informed when arrested);
  - (d) section 58 (access to legal advice).
- (4) The provisions are these provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) –
- (a) Article 55 (searches of detained persons); 30
  - (b) Article 56 (intimate searches);
  - (c) Article 57 (right to have someone informed when arrested);
  - (d) Article 59 (access to legal advice).

### *Delivery of seized property*

- ## 173 Delivery of seized property 35
- (1) This section applies to –
- (a) anything which has been seized or produced under this Part, or
  - (b) anything which has been seized under section 50 or 51 of the Criminal Justice and Police Act 2001 (c. 16) in reliance on a power of seizure conferred by this Part. 40
- (2) A constable may deliver any such thing to a person who is or is acting on behalf of an authority if the constable has reason to believe that the authority –

- (a) is an authority of the relevant territory, and
  - (b) has functions such that it is appropriate for the thing to be delivered to it.
- (3) If the relevant seizure power was a warrant issued under this Part, or the thing was produced under an order made under this Part, the relevant territory is the category 1 or category 2 territory specified in the application for the warrant or order. 5
- (4) If the relevant seizure power was section 162(4), 163(6) or (7), 164(6) or (7) or 165(6) or (7), the relevant territory is –
  - (a) the territory in which the Part 1 warrant was issued, in a case where the applicable extradition arrest power is a Part 1 warrant in respect of which a certificate under section 2 has been issued; 10
  - (b) the territory in which a constable has reason to believe that a Part 1 warrant has been or will be issued, in a case where the applicable extradition arrest power is section 5; 15
  - (c) the territory to which a person’s extradition is requested, in a case where the applicable extradition arrest power is a warrant issued under section 72;
  - (d) the territory in which a person is accused of the commission of an offence or has been convicted of an offence, in a case where the applicable extradition arrest power is a provisional warrant. 20
- (5) The applicable extradition arrest power is –
  - (a) the extradition arrest power under which a constable had a power of arrest, if the relevant seizure power was section 162(4);
  - (b) the extradition arrest power under which a person was arrested, if the relevant seizure power was section 163(6) or (7), 164(6) or (7) or 165(6) or (7). 25
- (6) The relevant seizure power is –
  - (a) the power under which the thing was seized, or
  - (b) the power in reliance on which the thing was seized under section 50 or 51 of the Criminal Justice and Police Act 2001 (c. 16). 30
- (7) Subsection (1)(a) applies to Scotland with the insertion after “Part” of “(so far as it applies to Scotland) or for the purposes of this Act (as it so applies) by virtue of an enactment or rule of law”.
- (8) Subsection (2) applies to Scotland with the substitution of “procurator fiscal” for “constable”. 35
- (9) In subsection (7) “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.

*Codes of practice*

- 174 Codes of practice** 40
- (1) The Secretary of State must issue codes of practice in connection with –
    - (a) the exercise of the powers conferred by this Part;
    - (b) the retention, use and return of anything seized or produced under this Part;

- (c) access to and the taking of photographs and copies of anything so seized or produced;
  - (d) the retention, use, disclosure and destruction of fingerprints, a sample or a photograph taken under this Part.
- (2) If the Secretary of State proposes to issue a code of practice under this section he must – 5
- (a) publish a draft of the code;
  - (b) consider any representations made to him about the draft;
  - (c) if he thinks it appropriate, modify the draft in the light of any such representations. 10
- (3) The Secretary of State must lay the code before Parliament.
- (4) When he has done so he may bring the code into operation by order.
- (5) The Secretary of State may revise the whole or any part of a code issued under this section and issue the code as revised; and subsections (2) to (4) apply to such a revised code as they apply to the original code. 15
- (6) A failure by a constable to comply with a provision of a code issued under this section does not of itself make him liable to criminal or civil proceedings.
- (7) A code issued under this section is admissible in evidence in proceedings under this Act and must be taken into account by a judge or court in determining any question to which it appears to the judge or the court to be relevant. 20
- (8) If the Secretary of State publishes a draft code of practice in connection with a matter specified in subsection (1) before the date on which this section comes into force –
- (a) the draft is as effective as one published under subsection (2) on or after that date; 25
  - (b) representations made to the Secretary of State about the draft before that date are as effective as representations made to him about it after that date;
  - (c) modifications made by the Secretary of State to the draft in the light of any such representations before that date are as effective as any such modifications made by him on or after that date. 30

### *General*

#### **175 Interpretation**

- (1) Subsections (2) to (8) apply for the purposes of this Part. 35
- (2) Each of these is an extradition arrest power –
- (a) a Part 1 warrant in respect of which a certificate under section 2 has been issued;
  - (b) section 5;
  - (c) a warrant issued under section 72; 40
  - (d) a provisional warrant.
- (3) “Excluded material” –

- 
- (a) in England and Wales, has the meaning given by section 11 of the 1984 Act;
- (b) in Northern Ireland, has the meaning given by Article 13 of the 1989 Order.
- (4) “Items subject to legal privilege” – 5
- (a) in England and Wales, has the meaning given by section 10 of the 1984 Act;
- (b) in Scotland, has the meaning given by section 412 of the 2002 Act;
- (c) in Northern Ireland, has the meaning given by Article 12 of the 1989 Order. 10
- (5) “Premises” –
- (a) in England and Wales, has the meaning given by section 23 of the 1984 Act;
- (b) in Scotland, has the meaning given by section 412 of the 2002 Act;
- (c) in Northern Ireland, has the meaning given by Article 25 of the 1989 Order. 15
- (6) “Special procedure material” –
- (a) in England and Wales, has the meaning given by section 14 of the 1984 Act;
- (b) in Northern Ireland, has the meaning given by Article 16 of the 1989 Order. 20
- (7) The expressions in subsection (8) have the meanings given –
- (a) in England and Wales, by section 65 of the 1984 Act;
- (b) in Northern Ireland, by Article 53 of the 1989 Order.
- (8) The expressions are – 25
- (a) appropriate consent;
- (b) fingerprints;
- (c) intimate search;
- (d) non-intimate sample.
- (9) The 1984 Act is the Police and Criminal Evidence Act 1984 (c. 60). 30
- (10) The 1989 Order is the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).
- (11) The 2002 Act is the Proceeds of Crime Act 2002 (c. 29).

#### 176 Customs officers

The Treasury may by order provide for any provision of this Part which applies in relation to police officers or persons arrested by police officers to apply with specified modifications in relation to customs officers or persons arrested by customs officers. 35

#### 177 Service policemen

The Secretary of State may by order provide for any provision of this Part which applies in relation to police officers or persons arrested by police officers to apply with specified modifications in relation to service policemen or persons arrested by service policemen. 40

**PART 5**

## MISCELLANEOUS AND GENERAL

*British overseas territories***178 Extradition from British overseas territories**

- |     |  |    |
|-----|--|----|
| (1) | This section applies in relation to extradition –  | 5  |
|     | (a) from a British overseas territory to a category 1 territory;   |    |
|     | (b) from a British overseas territory to the United Kingdom;   |    |
|     | (c) from a British overseas territory to a category 2 territory;   |    |
|     | (d) from a British overseas territory to any of the Channel Islands or the Isle of Man.  | 10 |
| (2) | An Order in Council may provide for any provision of this Act applicable to extradition from the United Kingdom to apply to extradition in a case falling within subsection (1)(a) or (b).                           |    |
| (3) | An Order in Council may provide for any provision of this Act applicable to extradition from the United Kingdom to a category 2 territory to apply to extradition in a case falling within subsection (1)(c) or (d). | 15 |
| (4) | An Order in Council under this section may provide that the provision applied has effect with specified modifications.   |    |

**179 Extradition to British overseas territories**

- |     |  |    |
|-----|--|----|
| (1) | This section applies in relation to extradition –  | 20 |
|     | (a) to a British overseas territory from a category 1 territory;   |    |
|     | (b) to a British overseas territory from the United Kingdom;   |    |
|     | (c) to a British overseas territory from a category 2 territory;   |    |
|     | (d) to a British overseas territory from any of the Channel Islands or the Isle of Man.  | 25 |
| (2) | An Order in Council may provide for any provision of this Act applicable to extradition to the United Kingdom to apply to extradition in a case falling within subsection (1)(a) or (b).                             |    |
| (3) | An Order in Council may provide for any provision of this Act applicable to extradition to the United Kingdom from a category 2 territory to apply to extradition in a case falling within subsection (1)(c) or (d). | 30 |
| (4) | An Order in Council under this section may provide that the provision applied has effect with specified modifications.   |    |

*Competing extradition claims***180 Competing claims to extradition**

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- |     |  |  |
|-----|--|--|
| (1) | This section applies if at the same time –   |  |
|     | (a) there is a Part 1 warrant in respect of a person, a certificate has been issued under section 2 in respect of the warrant, and the person has not been extradited in pursuance of the warrant or discharged, and |  |

- (b) there is a request for the same person’s extradition, a certificate has been issued under section 71 in respect of the request, and the person has not been extradited in pursuance of the request or discharged.
- (2) The Secretary of State may –
  - (a) order proceedings (or further proceedings) on one of them (the warrant or the request) to be deferred until the other one has been disposed of, if neither the warrant nor the request has been disposed of; 5
  - (b) order the person’s extradition in pursuance of the warrant to be deferred until the request has been disposed of, if an order for his extradition in pursuance of the warrant has been made; 10
  - (c) order the person’s extradition in pursuance of the request to be deferred until the warrant has been disposed of, if an order for his extradition in pursuance of the request has been made.
- (3) In applying subsection (2) the Secretary of State must take account in particular of these matters – 15
  - (a) the relative seriousness of the offences concerned;
  - (b) the place where each offence was committed (or was alleged to have been committed);
  - (c) the date when the warrant was issued and the date when the request was received; 20
  - (d) whether, in the case of each offence, the person is accused of its commission (but not alleged to have been convicted) or is alleged to be unlawfully at large after conviction.
- (4) If both the certificates referred to in subsection (1) are issued in Scotland, the preceding provisions of this section apply as if the references to the Secretary of State were to the Scottish Ministers. 25

### 181 Proceedings on deferred warrant or request

- (1) This section applies if –
  - (a) an order is made under this Act deferring proceedings on an extradition claim in respect of a person (the deferred claim) until another extradition claim in respect of the person has been disposed of, and 30
  - (b) the other extradition claim is disposed of.
- (2) The judge may make an order for proceedings on the deferred claim to be resumed. 35
- (3) No order under subsection (2) may be made after the end of the required period.
- (4) If the person applies to the appropriate judge to be discharged, the judge may order his discharge.
- (5) If the person applies to the appropriate judge to be discharged, the judge must order his discharge if – 40
  - (a) the required period has ended, and
  - (b) the judge has not made an order under subsection (2) or ordered the person’s discharge.
- (6) The required period is 21 days starting with the day on which the other extradition claim is disposed of. 45

- (7) If the proceedings on the deferred claim were under Part 1, section 68 applies for determining the appropriate judge.
- (8) If the proceedings on the deferred claim were under Part 2, section 140 applies for determining the appropriate judge.
- (9) An extradition claim is made in respect of a person if – 5
- (a) a Part 1 warrant is issued in respect of him;
  - (b) a request for his extradition is made.

## 182 Proceedings where extradition deferred

- (1) This section applies if – 10
- (a) an order is made under this Act deferring a person’s extradition in pursuance of an extradition claim (the deferred claim) until another extradition claim in respect of him has been disposed of;
  - (b) the other extradition claim is disposed of.
- (2) The judge may make an order for the person’s extradition in pursuance of the deferred claim to cease to be deferred. 15
- (3) No order under subsection (2) may be made after the end of the required period.
- (4) If the person applies to the appropriate judge to be discharged, the judge may order his discharge.
- (5) If the person applies to the appropriate judge to be discharged, the judge must order his discharge if – 20
- (a) the required period has ended, and
  - (b) the judge has not made an order under subsection (2) or ordered the person’s discharge.
- (6) The required period is 21 days starting with the day on which the other extradition claim is disposed of. 25
- (7) If the person’s extradition in pursuance of the deferred claim was ordered under Part 1, section 68 applies for determining the appropriate judge.
- (8) If the person’s extradition in pursuance of the deferred claim was ordered under Part 2, section 140 applies for determining the appropriate judge. 30
- (9) An extradition claim is made in respect of a person if –
- (a) a Part 1 warrant is issued in respect of him;
  - (b) a request for his extradition is made.

### *Legal aid*

## 183 Legal advice, assistance and representation: England and Wales 35

In section 12(2) of the Access to Justice Act 1999 (c. 22) (meaning of “criminal proceedings”) for paragraph (c) substitute –

“(c) proceedings for dealing with an individual under the Extradition Act 2003,”.



**184 Legal aid: Scotland**

The provisions of the Legal Aid (Scotland) Act 1986 (c. 47) apply –

- (a) in relation to proceedings in Scotland before the appropriate judge under Part 1, 2 or 5 of this Act as those provisions apply in relation to summary proceedings;
- (b) in relation to any proceedings on appeal arising out of such proceedings before the appropriate judge as those provisions apply in relation to appeals in summary proceedings.

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**185 Grant of free legal aid: Northern Ireland**

- (1) The appropriate judge may grant free legal aid to a person in connection with proceedings under Part 1 or Part 2 before the judge or the High Court.
- (2) A judge of the High Court may grant free legal aid to a person in connection with proceedings under Part 1 or Part 2 before the High Court or the House of Lords.
- (3) If the appropriate judge refuses to grant free legal aid under subsection (1) in connection with proceedings before the High Court the person may appeal to the High Court against the judge’s decision.
- (4) A judge of the High Court may grant free legal aid to a person in connection with proceedings on an appeal under subsection (3).
- (5) Free legal aid may be granted to a person under subsection (1), (2) or (4) only if it appears to the judge that –
  - (a) the person’s means are insufficient to enable him to obtain legal aid, and
  - (b) it is desirable in the interests of justice that the person should be granted free legal aid.
- (6) On an appeal under subsection (3) the High Court may –
  - (a) allow the appeal;
  - (b) dismiss the appeal.
- (7) The High Court may allow an appeal under subsection (3) only if it appears to the High Court that –
  - (a) the person’s means are insufficient to enable him to obtain legal aid, and
  - (b) it is desirable in the interests of justice that the person should be granted free legal aid.
- (8) If the High Court allows an appeal under subsection (3) it must grant free legal aid to the person in connection with the proceedings under Part 1 or Part 2 before it.
- (9) If on a question of granting free legal aid under this section or of allowing an appeal under subsection (3) there is a doubt as to whether –
  - (a) the person’s means are insufficient to enable him to obtain legal aid, or
  - (b) it is desirable in the interests of justice that the person should be granted free legal aid,the doubt must be resolved in favour of granting him free legal aid.

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- (10) References in this section to granting free legal aid to a person are to assigning to him –
- (a) a solicitor and counsel, or
  - (b) a solicitor only, or
  - (c) counsel only.

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**186 Free legal aid: supplementary**

- (1) The provisions of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I. 1981/228 (N.I. 8)) listed in subsection (2) apply in relation to free legal aid under section 185 in connection with proceedings before the appropriate judge or the High Court as they apply in relation to free legal aid under Part III of the Order. 10
- (2) The provisions are –
- (a) Article 32 (statements of means);
  - (b) Article 36(1) (payment of legal aid);
  - (c) Article 36(3) and (4) (rules); 15
  - (d) Article 36A (solicitors excluded from legal aid work);
  - (e) Article 37 (remuneration of solicitors and counsel);
  - (f) Article 40 (stamp duty exemption).
- (3) As so applied those Articles have effect as if –
- (a) a person granted free legal aid under section 185 had been granted a criminal aid certificate under Part III of the Order; 20
  - (b) section 185 were contained in Part III of the Order.
- (4) The fees of any counsel, and the expenses and fees of any solicitor, assigned to a person under section 185 in connection with proceedings before the House of Lords must be paid by the Lord Chancellor. 25
- (5) The fees and expenses paid under subsection (4) must not exceed the amount allowed by –
- (a) the House of Lords, or
  - (b) such officer or officers of the House of Lords as may be prescribed by order of the House of Lords. 30
- (6) For the purposes of section 185 and this section the appropriate judge is –
- (a) such county court judge or resident magistrate as is designated for the purposes of Part 1 by the Lord Chancellor, if the proceedings are under Part 1;
  - (b) such county court judge or resident magistrate as is designated for the purposes of Part 2 by the Lord Chancellor, if the proceedings are under Part 2. 35

*Re-extradition***187 Re-extradition: preliminary**

- (1) Section 188 applies in relation to a person if the conditions in subsections (2) to (6) are satisfied. 40
- (2) The first condition is that the person was extradited to a territory in accordance with Part 1 or Part 2.

- (3) The second condition is that the person was serving a sentence of imprisonment or another form of detention in the United Kingdom (the UK sentence) before he was extradited.
- (4) The third condition is that –
  - (a) if the person was extradited in accordance with Part 1, the Part 1 warrant in pursuance of which he was extradited contained a statement that it was issued with a view to his extradition for the purpose of being prosecuted for an offence; 5
  - (b) if the person was extradited in accordance with Part 2, the request in pursuance of which the person was extradited contained a statement that the person was accused of the commission of an offence. 10
- (5) The fourth condition is that a certificate issued by a judicial authority of the territory shows that –
  - (a) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment (the overseas sentence) was imposed on the person in the territory; 15
  - (b) the overseas sentence was imposed on him in respect of –
    - (i) the offence specified in the warrant or request, or
    - (ii) any other offence committed before his extradition in respect of which he was permitted to be dealt with in the territory. 20
- (6) The fifth condition is that before serving the overseas sentence the person was returned to the United Kingdom to serve the remainder of the UK sentence.

## 188 Re-extradition hearing

- (1) If this section applies in relation to a person, as soon as practicable after the relevant time the person must be brought before the appropriate judge for the judge to decide whether the person is to be extradited again to the territory in which the overseas sentence was imposed. 25
- (2) The relevant time is the time at which the person would otherwise be released from detention pursuant to the UK sentence (whether or not on licence).
- (3) If subsection (1) is not complied with the person must be taken to be discharged. 30
- (4) The person must be treated as continuing in legal custody until he is brought before the appropriate judge under subsection (1) or he is taken to be discharged under subsection (3).
- (5) If the person is brought before the appropriate judge under subsection (1) the judge must decide whether the territory in which the overseas sentence was imposed is –
  - (a) a category 1 territory;
  - (b) a category 2 territory;
  - (c) neither a category 1 territory nor a category 2 territory. 40
- (6) If the judge decides that the territory is a category 1 territory, section 189 applies.
- (7) If the judge decides that the territory is a category 2 territory, section 190 applies.

- (8) If the judge decides that the territory is neither a category 1 territory nor a category 2 territory, he must order the person's discharge.
- (9) A person's discharge as a result of this section or section 189 or 190 does not affect any conditions on which he is released from detention pursuant to the UK sentence. 5
- (10) Section 140 applies for determining the appropriate judge for the purposes of this section.

### 189 Re-extradition to category 1 territories

- (1) If this section applies, this Act applies as it would if –
- (a) a Part 1 warrant had been issued in respect of the person; 10
  - (b) the warrant contained a statement that –
    - (i) the person was alleged to be unlawfully at large after conviction of the relevant offence, and
    - (ii) the warrant was issued with a view to the person's arrest and extradition to the territory for the purpose of serving a sentence imposed in respect of the relevant offence; 15
  - (c) the warrant were issued by the authority of the territory which issued the certificate referred to in section 187(5);
  - (d) the relevant offence were specified in the warrant;
  - (e) the judge were the appropriate judge for the purposes of Part 1; 20
  - (f) the hearing at which the judge is to make the decision referred to in section 188(1) were the extradition hearing;
  - (g) the proceedings before the judge were under Part 1.
- (2) As applied by subsection (1) this Act has effect with the modifications set out in Part 1 of Schedule 1. 25
- (3) The relevant offence is the offence in respect of which the overseas sentence is imposed.

### 190 Re-extradition to category 2 territories

- (1) If this section applies, this Act applies as it would if –
- (a) a valid request for the person's extradition to the territory had been made; 30
  - (b) the request contained a statement that the person was alleged to be unlawfully at large after conviction of the relevant offence;
  - (c) the relevant offence were specified in the request;
  - (d) the hearing at which the appropriate judge is to make the decision referred to in section 188(1) were the extradition hearing; 35
  - (e) the proceedings before the judge were under Part 2.
- (2) As applied by subsection (1) this Act has effect with the modifications set out in Part 2 of Schedule 1.
- (3) The relevant offence is the offence in respect of which the overseas sentence is imposed. 40

*Conduct of extradition proceedings*

**191 Crown Prosecution Service: role in extradition proceedings**

- (1) The Prosecution of Offences Act 1985 (c. 23) is amended as follows.
- (2) In section 3 (functions of the Director) in subsection (2) after paragraph (e) insert—
  - “(ea) to have the conduct of any extradition proceedings;
  - (eb) to give, to such extent as he considers appropriate, and to such persons as he considers appropriate, advice on any matters relating to extradition proceedings or proposed extradition proceedings.”
- (3) In section 3 after subsection (2) insert—

“(2A) Subsection (2)(ea) above does not require the Director to have the conduct of any extradition proceedings in respect of a person if he has received a request not to do so and—

  - (a) in a case where the proceedings are under Part 1 of the Extradition Act 2003, the request is made by the authority which issued the Part 1 warrant in respect of the person;
  - (b) in a case where the proceedings are under Part 2 of that Act, the request is made on behalf of the territory to which the person’s extradition has been requested.”
- (4) In section 5(1) (conduct of prosecutions on behalf of Crown Prosecution Service) after “criminal proceedings” insert “or extradition proceedings”.
- (5) In section 14 (control of fees and expenses etc paid by the Service) in subsection (1)(a) after “criminal proceedings” insert “or extradition proceedings”.
- (6) In section 15(1) (interpretation of Part 1) in the appropriate place insert—

““extradition proceedings” means proceedings under the Extradition Act 2003;”.

**192 Lord Advocate: role in extradition proceedings**

- (1) The Lord Advocate must—
  - (a) conduct any extradition proceedings in Scotland;
  - (b) give, to such extent as he considers appropriate, and to such persons as he considers appropriate, advice on any matters relating to extradition proceedings or proposed extradition proceedings, in Scotland.
- (2) Subsection (1)(a) does not require the Lord Advocate to conduct any extradition proceedings in respect of a person if he has received a request not to do so and—
  - (a) in a case where the proceedings are under Part 1, the request is made by the authority which issued the Part 1 warrant in respect of the person;
  - (b) in a case where the proceedings are under Part 2, the request is made on behalf of the territory to which the person’s extradition has been requested.

**193 Northern Ireland DPP and Crown Solicitor: role in extradition proceedings**

- (1) The Prosecution of Offences (Northern Ireland) Order 1972 (S.I. 1972/538 (N.I. 1)) is amended as set out in subsections (2) to (4).
- (2) In article 2(2) (interpretation) in the appropriate place insert –  
     ““extradition proceedings” means proceedings under the Extradition Act 2003;”.
- (3) In article 4(7) (conduct of prosecutions on behalf of DPP) after “prosecution” insert “or extradition proceedings”.
- (4) In article 5 (functions of DPP) after paragraph (1) insert –  
     “(1A) The Director may –  
         (a) have the conduct of any extradition proceedings in Northern Ireland;  
         (b) give to such persons as appear to him appropriate such advice as appears to him appropriate on matters relating to extradition proceedings, or proposed extradition proceedings, in Northern Ireland.”
- (5) The Justice (Northern Ireland) Act 2002 (c. 26) is amended as set out in subsections (6) to (8).
- (6) After section 31 insert –  
     **“31A Conduct of extradition proceedings**  
     (1) The Director may have the conduct of any extradition proceedings in Northern Ireland.  
     (2) The Director may give to such persons as appear to him appropriate such advice as appears to him appropriate on matters relating to extradition proceedings, or proposed extradition proceedings, in Northern Ireland.”
- (7) In section 36(2) (conduct of criminal proceedings on behalf of DPP) after “criminal proceedings” insert “or extradition proceedings”.
- (8) In section 44 (interpretation) after subsection (6) insert –  
     “(7) For the purposes of this Part “extradition proceedings” means proceedings under the Extradition Act 2003.”
- (9) The Crown Solicitor for Northern Ireland may –  
     (a) have the conduct of any proceedings under this Act in Northern Ireland;  
     (b) give to such persons as appear to him appropriate such advice as appears to him appropriate on matters relating to proceedings under this Act, or proposed proceedings under this Act, in Northern Ireland.

*Parties to international Conventions***194 Parties to international Conventions**

- (1) A territory may be designated by order made by the Secretary of State if –  
     (a) it is not a category 1 territory or a category 2 territory, and

- (b) it is a party to an international Convention to which the United Kingdom is a party.
- (2) This Act applies in relation to a territory designated by order under subsection (1) as if the territory were a category 2 territory.
- (3) As applied to a territory by subsection (2), this Act has effect as if – 5
  - (a) sections 72(4), 74(5), 75(10)(b), 85(7), 87(7), 138 and 139 were omitted;
  - (b) the conduct that constituted an extradition offence for the purposes of Part 2 were the conduct specified in relation to the territory in the order under subsection (1) designating the territory.
- (4) Conduct may be specified in relation to a territory in an order under subsection (1) designating the territory only if it is conduct to which the relevant Convention applies. 10
- (5) The relevant Convention is the Convention referred to in subsection (1)(b) which is specified in relation to the territory in the order under subsection (1) designating it. 15

*Special extradition arrangements*

**195 Special extradition arrangements**

- (1) This section applies if the Secretary of State believes that –
  - (a) arrangements have been made between the United Kingdom and another territory for the extradition of a person to the territory, and 20
  - (b) the territory is not a category 1 territory or a category 2 territory.
- (2) The Secretary of State may certify that the conditions in paragraphs (a) and (b) of subsection (1) are satisfied in relation to the extradition of the person.
- (3) If the Secretary of State issues a certificate under subsection (2) this Act applies in respect of the person's extradition to the territory as if the territory were a category 2 territory. 25
- (4) As applied by subsection (3), this Act has effect –
  - (a) as if sections 72(4), 74(5), 75(10)(b), 85(7) and 87(7) were omitted;
  - (b) with any other modifications specified in the certificate.
- (5) A certificate under subsection (2) in relation to a person is conclusive evidence that the conditions in paragraphs (a) and (b) of subsection (1) are satisfied in relation to the person's extradition. 30

*Human rights*

**196 Human rights: appropriate tribunal**

- (1) The appropriate judge is the only appropriate tribunal in relation to proceedings under section 7(1)(a) of the Human Rights Act 1998 (c. 42) (proceedings for acts incompatible with Convention rights) if the proceedings relate to extradition under Part 1 or Part 2 of this Act. 35
- (2) If the proceedings relate to extradition under Part 1, section 68 applies for determining the appropriate judge. 40

- (3) If the proceedings relate to extradition under Part 2, section 140 applies for determining the appropriate judge.

*Genocide etc*

**197 Genocide, crimes against humanity and war crimes**

- (1) This section applies if – 5
- (a) a Part 1 warrant in respect of a person is issued in respect of an offence mentioned in subsection (2), or
  - (b) a valid request for a person’s extradition is made in respect of an offence mentioned in subsection (2).
- (2) The offences are – 10
- (a) an offence that if committed in the United Kingdom would be punishable as an offence under section 51 or 58 of the International Criminal Court Act 2001 (c. 17) (genocide, crimes against humanity and war crimes);
  - (b) an offence that if committed in the United Kingdom would be punishable as an offence under section 52 or 59 of that Act (conduct ancillary to genocide, etc. committed outside the jurisdiction); 15
  - (c) an offence that if committed in the United Kingdom would be punishable as an ancillary offence, as defined in section 55 or 62 of that Act, in relation to an offence falling within paragraph (a) or (b); 20
  - (d) an offence that if committed in the United Kingdom would be punishable as an offence under section 1 of the International Criminal Court (Scotland) Act 2001 (asp 13) (genocide, crimes against humanity and war crimes);
  - (e) an offence that if committed in the United Kingdom would be punishable as an offence under section 2 of that Act (conduct ancillary to genocide etc. committed outside the jurisdiction); 25
  - (f) an offence that if committed in the United Kingdom would be punishable as an ancillary offence, as defined in section 7 of that Act, in relation to an offence falling within paragraph (d) or (e); 30
  - (g) any offence punishable in the United Kingdom under section 1 of the Geneva Conventions Act 1957 (c. 52) (grave breach of scheduled conventions).
- (3) It is not an objection to extradition under this Act that the person could not have been punished for the offence under the law in force at the time when and in the place where he is alleged to have committed the act of which he is accused or of which he has been convicted. 35

*Custody and bail*

**198 Custody**

- (1) If a judge remands a person in custody under this Act, the person must be committed to the institution to which he would have been committed if charged with an offence before the judge. 40
- (2) If a person in custody following his arrest under Part 1 or Part 2 escapes from custody, he may be retaken in any part of the United Kingdom in the same way



as he could have been if he had been in custody following his arrest or apprehension under a relevant domestic warrant.

- (3) A relevant domestic warrant is a warrant for his arrest or apprehension issued in the part of the United Kingdom in question in respect of an offence committed there. 5
- (4) Subsection (5) applies if –
- (a) a person is in custody in one part of the United Kingdom (whether under this Act or otherwise);
  - (b) he is required to be removed to another part of the United Kingdom after being remanded in custody under this Act; 10
  - (c) he is so removed by sea or air.
- (5) The person must be treated as continuing in legal custody until he reaches the place to which he is required to be removed.
- (6) An order for a person’s extradition under this Act is sufficient authority for an appropriate person – 15
- (a) to receive him;
  - (b) to keep him in custody until he is extradited under this Act;
  - (c) to convey him to the territory to which he is to be extradited under this Act.
- (7) An appropriate person is – 20
- (a) a person to whom the order is directed;
  - (b) a constable.

### 199 Bail: England and Wales

- (1) The Bail Act 1976 (c. 63) is amended as follows.
- (2) In section 1(1) (meaning of “bail in criminal proceedings”) after paragraph (b) insert – 25
- “, or
  - (c) bail grantable in connection with extradition proceedings in respect of an offence.”
- (3) In section 2(2) (other definitions) omit the definition of “proceedings against a fugitive offender” and in the appropriate places insert – 30
- ““extradition proceedings” means proceedings under the Extradition Act 2003;”;
  - ““prosecutor”, in relation to extradition proceedings, means the person acting on behalf of the territory to which extradition is sought;”.
- (4) In section 4 (general right to bail) in subsection (2) omit the words “or proceedings against a fugitive offender for the offence”. 35
- (5) In section 4 after subsection (2) insert –
- “(2A) This section also applies to a person whose extradition is sought in respect of an offence, when – 40
- (a) he appears or is brought before a court in the course of or in connection with extradition proceedings in respect of the offence, or

- (b) he applies to a court for bail or for a variation of the conditions of bail in connection with the proceedings.
- (2B) But subsection (2A) above does not apply if the person is alleged to be unlawfully at large after conviction of the offence.”
- (6) In section 5B (reconsideration of decisions granting bail) for subsection (1) substitute— 5
- “(A1) This section applies in any of these cases—
- (a) a magistrates’ court has granted bail in criminal proceedings in connection with an offence to which this section applies or proceedings for such an offence; 10
- (b) a constable has granted bail in criminal proceedings in connection with proceedings for such an offence;
- (c) a magistrates’ court or a constable has granted bail in connection with extradition proceedings.
- (1) The court or the appropriate court in relation to the constable may, on application by the prosecutor for the decision to be reconsidered— 15
- (a) vary the conditions of bail,
- (b) impose conditions in respect of bail which has been granted unconditionally, or
- (c) withhold bail.” 20
- (7) In section 7 (liability to arrest for absconding or breaking conditions of bail) after subsection (1) insert—
- “(1A) Subsection (1B) applies if—
- (a) a person has been released on bail in connection with extradition proceedings, 25
- (b) the person is under a duty to surrender into the custody of a constable, and
- (c) the person fails to surrender to custody at the time appointed for him to do so.
- (1B) A magistrates’ court may issue a warrant for the person’s arrest.” 30
- (8) In section 7(4) omit the words from “In reckoning” to “Sunday”.
- (9) In section 7 after subsection (4) insert—
- “(4A) A person who has been released on bail in connection with extradition proceedings and is under a duty to surrender into the custody of a constable may be arrested without warrant by a constable on any of the grounds set out in paragraphs (a) to (c) of subsection (3). 35
- (4B) A person arrested in pursuance of subsection (4A) above shall be brought as soon as practicable and in any event within 24 hours after his arrest before a justice of the peace for the petty sessions area in which he was arrested.” 40
- (10) In section 7(5) after “subsection (4)” insert “or (4B)”.
- (11) In section 7 after subsection (6) insert—
- “(7) In reckoning for the purposes of this section any period of 24 hours, no account shall be taken of Christmas Day, Good Friday or any Sunday.”

- (12) In Part 1 of Schedule 1 (defendants accused or convicted of imprisonable offences) for paragraph 1 substitute –

“1 The following provisions of this Part of this Schedule apply to the defendant if –

- (a) the offence or one of the offences of which he is accused or convicted in the proceedings is punishable with imprisonment, or 5  
(b) his extradition is sought in respect of an offence.”

- (13) In Part 1 of Schedule 1 after paragraph 2A insert –

“2B The defendant need not be granted bail in connection with extradition proceedings if – 10

- (a) the conduct constituting the offence would, if carried out by the defendant in England and Wales, constitute an indictable offence or an offence triable either way; and  
(b) it appears to the court that the defendant was on bail on the date of the offence.” 15

- (14) In Part 1 of Schedule 1 in paragraph 6 after “the offence” insert “or the extradition proceedings”.

## 200 Bail: Scotland

After section 24 of the Criminal Procedure (Scotland) Act 1995 (c. 46) (bail and bail conditions) insert – 20

### “24A Bail: extradition proceedings

- (1) In the application of the provisions of this Part by virtue of section 9(2) or 78(2) of the Extradition Act 2003 (judge’s powers at extradition hearing), those provisions apply with the modifications that – 25

- (a) references to the prosecutor are to be read as references to a person acting on behalf of the territory to which extradition is sought; 25  
(b) the right of the Lord Advocate mentioned in section 24(2) of this Act applies to a person subject to extradition proceedings as it applies to a person charged with any crime or offence; 30  
(c) the following do not apply –  
(i) paragraph (b) of section 24(3); and  
(ii) subsection (3) of section 30; and  
(d) sections 28(1) and 33 apply to a person subject to extradition proceedings as they apply to an accused. 35

- (2) Section 32 of this Act applies in relation to a refusal of bail, the amount of bail or a decision to allow bail or ordain appearance in proceedings under this Part as the Part applies by virtue of the sections of that Act of 2003 mentioned in subsection (1) above. 40

- (3) The Scottish Ministers may, by order, for the purposes of section 9(2) or 78(2) of the Extradition Act 2003 make such amendments to this Part as they consider necessary or expedient. 40

- (4) The order making power in subsection (3) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.”

## 201 Appeal against grant of bail

- (1) Section 1 of the Bail (Amendment) Act 1993 (c. 26) (prosecution right of appeal against grant of bail) is amended as follows. 5
- (2) After subsection (1) insert –
- “(1A) Where a magistrates’ court grants bail to a person in connection with extradition proceedings, the prosecution may appeal to a judge of the Crown Court against the granting of bail.” 10
- (3) In subsection (3) for “Such an appeal” substitute “An appeal under subsection (1) or (1A)”.
- (4) In subsection (4) –
- (a) after subsection (1) insert “or (1A)”;  
 (b) for “magistrates’ court” substitute “court which has granted bail”; 15  
 (c) omit “such”.
- (5) In subsection (5) for “magistrates’ court” substitute “court which has granted bail”.
- (6) In subsection (6) for “magistrates’ court” substitute “court which has granted bail”. 20
- (7) In subsection (8) –
- (a) after “subsection (1)” insert “or (1A)”;  
 (b) omit “magistrates”.
- (8) In subsection (10)(b) for “reference in subsection (5) above to remand in custody is” substitute “references in subsections (6) and (9) above to remand in custody are”. 25
- (9) After subsection (11) insert –
- “(12) In this section –
- “extradition proceedings” means proceedings under the Extradition Act 2003; 30
- “magistrates’ court” and “court” in relation to extradition proceedings means a District Judge (Magistrates’ Courts) designated for the purposes of Part 1 or Part 2 of the Extradition Act 2003 by the Lord Chancellor;
- “prosecution” in relation to extradition proceedings means the person acting on behalf of the territory to which extradition is sought.” 35

## 202 Remand to local authority accommodation

- (1) Section 23 of the Children and Young Persons Act 1969 (c. 54) (remand to local authority accommodation) is amended as set out in subsections (2) to (11). 40
- (2) In subsection (1) after “following provisions of this section” insert “(except subsection (1A))”.

- (3) After subsection (1) insert –
- “(1A) Where a court remands a child or young person in connection with extradition proceedings and he is not released on bail the remand shall be to local authority accommodation.”
- (4) In subsection (4) after “subsections (5)” insert “, (5ZA)”. 5
- (5) In subsection (5) after “security requirement” insert “in relation to a person remanded in accordance with subsection (1) above”.
- (6) After subsection (5) insert –
- “(5ZA) A court shall not impose a security requirement in relation to a person remanded in accordance with subsection (1A) above unless – 10
- (a) he has attained the age of twelve and is of a prescribed description;
- (b) one or both of the conditions set out in subsection (5ZB) below is satisfied; and
- (c) the condition set out in subsection (5AA) below is satisfied. 15
- (5ZB) The conditions mentioned in subsection (5ZA)(b) above are –
- (a) that the conduct constituting the offence to which the extradition proceedings relate would if committed in the United Kingdom constitute an offence punishable in the case of an adult with imprisonment for a term of fourteen years or more; 20
- (b) that the person has previously absconded from the extradition proceedings or from proceedings in the United Kingdom or the requesting territory which relate to the conduct constituting the offence to which the extradition proceedings relate. 25
- (5ZC) For the purposes of subsection (5ZB) above a person has absconded from proceedings if in relation to those proceedings –
- (a) he has been released subject to a requirement to surrender to custody at a particular time and he has failed to surrender to custody at that time, or 30
- (b) he has surrendered into the custody of a court and he has at any time absented himself from the court without its leave.”
- (7) In subsection (5AA) for “subsection (5)” substitute “subsections (5) and (5ZA)”.
- (8) In subsection (12) for the definition of “relevant court” substitute –
- ““relevant court” – 35
- (a) in relation to a person remanded to local authority accommodation under subsection (1) above, means the court by which he was so remanded, or any magistrates’ court having jurisdiction in the place where he is for the time being;
- (b) in relation to a person remanded to local authority accommodation under subsection (1A) above, means the court by which he was so remanded.” 40
- (9) In subsection (12) in the appropriate places insert –
- ““extradition proceedings” means proceedings under the Extradition Act 2003;” 45

““requesting territory” means the territory to which a person’s extradition is sought in extradition proceedings;”.

- (10) In section 98(1) of the Crime and Disorder Act 1998 (c. 37) (modifications of section 23 of the Children and Young Persons Act 1969 (c. 54) in relation to 15 and 16 year old boys) after paragraph (b) insert “; and 5
- (c) is not remanded in connection with proceedings under the Extradition Act 2003.”

### *Evidence*

#### **203 Receivable documents**

- (1) A Part 1 warrant may be received in evidence in proceedings under this Act. 10
- (2) Any other document issued in a category 1 territory may be received in evidence in proceedings under this Act if it is duly authenticated.
- (3) A document issued in a category 2 territory may be received in evidence in proceedings under this Act if it is duly authenticated.
- (4) A document issued in a category 1 or category 2 territory is duly authenticated if (and only if) one of these applies – 15
- (a) it purports to be signed by a judge, magistrate or other judicial authority of the territory;
- (b) it purports to be authenticated by the oath or affirmation of a witness.
- (5) Subsections (2) and (3) do not prevent a document that is not duly authenticated from being received in evidence in proceedings under this Act. 20

#### **204 Documents sent by facsimile**

- (1) This section applies if a document to be sent in connection with proceedings under this Act is sent by facsimile transmission.
- (2) This Act has effect as if the document received by facsimile transmission were the document used to make the transmission. 25

#### **205 Part 1 warrant: transmission by other electronic means**

- (1) This section applies if a Part 1 warrant is issued and the information contained in the warrant – 30
- (a) is transmitted to the designated authority by electronic means (other than by facsimile transmission), and
- (b) is received by the designated authority in a form in which it is intelligible and which is capable of being used for subsequent reference.
- (2) This Act has effect as if the information received by the designated authority were the Part 1 warrant. 35
- (3) A copy of the information received by the designated authority may be received in evidence as if it were the Part 1 warrant.

**206 Written statements and admissions**

- (1) The provisions mentioned in subsection (2) apply in relation to proceedings under this Act as they apply in relation to proceedings for an offence.
- (2) The provisions are—
  - (a) section 9 of the Criminal Justice Act 1967 (c. 80) (proof by written statement in criminal proceedings); 5
  - (b) section 10 of the Criminal Justice Act 1967 (proof by formal admission in criminal proceedings);
  - (c) section 1 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 (c. 28) (proof by written statement in criminal proceedings); 10
  - (d) section 2 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 (proof by formal admission in criminal proceedings).
- (3) As applied by subsection (1) in relation to proceedings under this Act, section 10 of the Criminal Justice Act 1967 and section 2 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 have effect as if—
  - (a) references to the defendant were to the person whose extradition is sought (or who has been extradited);
  - (b) references to the prosecutor were to the category 1 or category 2 territory concerned; 20
  - (c) references to the trial were to the proceedings under this Act for the purposes of which the admission is made;
  - (d) references to subsequent criminal proceedings were to subsequent proceedings under this Act. 25

**207 Burden and standard of proof**

- (1) This section applies if, in proceedings under this Act, a question arises as to burden or standard of proof.
- (2) The question must be decided by applying any enactment or rule of law that would apply if the proceedings were proceedings for an offence. 30
- (3) Any enactment or rule of law applied under subsection (2) to proceedings under this Act must be applied as if—
  - (a) the person whose extradition is sought (or who has been extradited) were accused of an offence;
  - (b) the category 1 or category 2 territory concerned were the prosecution. 35
- (4) Subsections (2) and (3) are subject to any express provision of this Act.
- (5) In this section “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.

*Other miscellaneous provisions*

**208 Extradition for more than one offence**

40

The Secretary of State may by order provide for this Act to have effect with specified modifications in relation to a case where—

- (a) a Part 1 warrant is issued in respect of more than one offence;

- (b) a request for extradition is made in respect of more than one offence.

## 209 National security

- (1) This section applies if the Secretary of State believes that the conditions in subsections (2) to (4) are satisfied in relation to a person.
- (2) The first condition is that the person's extradition is sought or will be sought under Part 1 or Part 2 in respect of an offence. 5
- (3) The second condition is that –
- (a) in engaging in the conduct constituting (or alleged to constitute) the offence the person was acting for the purpose of assisting in the exercise of a function conferred or imposed by or under an enactment, or 10
  - (b) as a result of an authorisation given by the Secretary of State the person is not liable under the criminal law of any part of the United Kingdom for the conduct constituting (or alleged to constitute) the offence.
- (4) The third condition is that the person's extradition in respect of the offence would be against the interests of national security. 15
- (5) The Secretary of State may certify that the conditions in subsections (2) to (4) are satisfied in relation to the person.
- (6) If the Secretary of State issues a certificate under subsection (5) he may –
- (a) direct that a Part 1 warrant issued in respect of the person and in respect of the offence is not to be proceeded with, or 20
  - (b) direct that a request for the person's extradition in respect of the offence is not to be proceeded with.
- (7) If the Secretary of State issues a certificate under subsection (5) he may order the person's discharge (instead of or in addition to giving a direction under subsection (6)). 25
- (8) These rules apply if the Secretary of State gives a direction under subsection (6)(a) in respect of a warrant –
- (a) if the designated authority has not issued a certificate under section 2 in respect of the warrant it must not do so;
  - (b) if the person is arrested under the warrant or under section 5 there is no requirement for him to be brought before the appropriate judge and he must be discharged; 30
  - (c) if the person is brought before the appropriate judge under section 4 or 6 the judge is no longer required to proceed or continue proceeding under sections 7 and 8; 35
  - (d) if the extradition hearing has begun the judge is no longer required to proceed or continue proceeding under sections 10 to 26;
  - (e) if the person has consented to his extradition, the judge is no longer required to order his extradition;
  - (f) if an appeal to the High Court or House of Lords has been brought, the court is no longer required to hear or continue hearing the appeal; 40
  - (g) if the person's extradition has been ordered there is no requirement for him to be extradited.
- (9) These rules apply if the Secretary of State gives a direction under subsection (6)(b) in respect of a request – 45



- (a) if he has not issued a certificate under section 71 in respect of the request he is no longer required to do so;
  - (b) if the person is arrested under a warrant issued under section 72 or under a provisional warrant there is no requirement for him to appear or be brought before the appropriate judge and he must be discharged; 5
  - (c) if the person appears or is brought before the appropriate judge the judge is no longer required to proceed or continue proceeding under sections 73, 75, 76 and 77;
  - (d) if the extradition hearing has begun the judge is no longer required to proceed or continue proceeding under sections 79 to 92; 10
  - (e) if the person has given his consent to his extradition to the appropriate judge, the judge is no longer required to send the case to the Secretary of State for his decision whether the person is to be extradited;
  - (f) if an appeal to the High Court or House of Lords has been brought, the court is no longer required to hear or continue hearing the appeal; 15
  - (g) if the person’s extradition has been ordered there is no requirement for him to be extradited.
- (10) These must be made under the hand of the Secretary of State –
- (a) a certificate under subsection (5);
  - (b) a direction under subsection (6); 20
  - (c) an order under subsection (7).
- (11) The preceding provisions of this section apply to Scotland with these modifications –
- (a) in subsection (9)(a) for “he has” substitute “the Scottish Ministers have” and for “he is” substitute “they are”; 25
  - (b) in subsection (9)(e) for “Secretary of State for his” substitute “Scottish Ministers for their”.
- (12) In subsection (3) the reference to an enactment includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament. 30

## 210 Reasonable force

A person may use reasonable force, if necessary, in the exercise of a power conferred by this Act.

## 211 Rules of court

- (1) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings under this Act. 35
- (2) In Scotland any rules of court under this Act are to be made by Act of Adjournal.

## 212 Service of notices

Service of a notice on a person under section 55, 57, 59, 130, 131 or 132 may be effected in any of these ways – 40

- (a) by delivering the notice to the person;
- (b) by leaving it for him with another person at his last known or usual place of abode;

- (c) by sending it by post in a letter addressed to him at his last known or usual place of abode.

### 213 Article 95 alerts: transitional provision

- (1) This section applies in a case where an article 95 alert is issued before 1 January 2004 by an authority of a category 1 territory. 5
- (2) In such a case, this Act applies as if –
- (a) the alert were a Part 1 warrant issued by the authority;
  - (b) any information sent with the alert relating to the case were included in the warrant.
- (3) As applied by subsection (2), this Act has effect with these modifications – 10
- (a) in sections 2(7) and (8), 29(1), 31(1) and (4)(d), 33(2)(b), 34(6)(b), 36(4)(b), 37(3)(b), 48(3)(b) and 50(3)(b), for “authority which issued the Part 1 warrant” substitute “authority at the request of which the alert was issued”;
  - (b) omit section 5; 15
  - (c) in sections 34(4)(b), 43(2)(a), 44(2)(a) and (4) and 62(1)(d) and (e), for “authority which issued the warrant” substitute “authority at the request of which the alert was issued”;
  - (d) in section 67(2), for the words from “believes” to the end substitute “believes is the authority at the request of which the alert was issued”. 20
- (4) An article 95 alert is an alert issued pursuant to article 95 of the Convention implementing the Schengen agreement of 14th June 1985.

### *Interpretation*

### 214 Disposal of Part 1 warrant and extradition request

- (1) A Part 1 warrant issued in respect of a person is disposed of – 25
- (a) when an order is made for the person’s discharge in respect of the warrant and there is no further possibility of an appeal;
  - (b) when the person is taken to be discharged in respect of the warrant;
  - (c) when an order is made for the person’s extradition in pursuance of the warrant and there is no further possibility of an appeal. 30
- (2) A request for a person’s extradition is disposed of –
- (a) when an order is made for the person’s discharge in respect of the request and there is no further possibility of an appeal;
  - (b) when the person is taken to be discharged in respect of the request;
  - (c) when an order is made for the person’s extradition in pursuance of the request and there is no further possibility of an appeal. 35
- (3) There is no further possibility of an appeal against an order for a person’s discharge or extradition –
- (a) when the period permitted for giving notice of an appeal to the High Court ends, if notice is not given before the end of that period; 40
  - (b) when the decision of the High Court on an appeal becomes final, if there is no appeal to the House of Lords against that decision;

- (c) when the decision of the House of Lords on an appeal is made, if there is such an appeal.
- (4) The decision of the High Court on an appeal becomes final—
  - (a) when the period permitted for applying to the High Court for leave to appeal to the House of Lords ends, if there is no such application; 5
  - (b) when the period permitted for applying to the House of Lords for leave to appeal to it ends, if the High Court refuses leave to appeal and there is no application to the House of Lords for leave to appeal;
  - (c) when the House of Lords refuses leave to appeal to it;
  - (d) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the House of Lords is granted, if no such appeal is brought before the end of that period. 10
- (5) These must be ignored for the purposes of subsections (3) and (4)—
  - (a) any power of a court to extend the period permitted for giving notice of appeal or for applying for leave to appeal; 15
  - (b) any power of a court to grant leave to take a step out of time.
- (6) Subsections (3) to (5) do not apply to Scotland.

## 215 Disposal of charge

- (1) A charge against a person is disposed of—
  - (a) if the person is acquitted in respect of it, when he is acquitted; 20
  - (b) if the person is convicted in respect of it, when there is no further possibility of an appeal against the conviction.
- (2) There is no further possibility of an appeal against a conviction—
  - (a) when the period permitted for giving notice of application for leave to appeal to the Court of Appeal against the conviction ends, if the leave of the Court of Appeal is required and no such notice is given before the end of that period; 25
  - (b) when the Court of Appeal refuses leave to appeal against the conviction, if the leave of the Court of Appeal is required and notice of application for leave is given before the end of that period; 30
  - (c) when the period permitted for giving notice of appeal to the Court of Appeal against the conviction ends, if notice is not given before the end of that period;
  - (d) when the decision of the Court of Appeal on an appeal becomes final, if there is no appeal to the House of Lords against that decision; 35
  - (e) when the decision of the House of Lords on an appeal is made, if there is such an appeal.
- (3) The decision of the Court of Appeal on an appeal becomes final—
  - (a) when the period permitted for applying to the Court of Appeal for leave to appeal to the House of Lords ends, if there is no such application; 40
  - (b) when the period permitted for applying to the House of Lords for leave to appeal to it ends, if the Court of Appeal refuses leave to appeal and there is no application to the House of Lords for leave to appeal;
  - (c) when the House of Lords refuses leave to appeal to it; 45

- (d) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the House of Lords is granted, if no such appeal is brought before the end of that period.
- (4) These must be ignored for the purposes of subsections (2) and (3) –
- (a) any power of a court to extend the period permitted for giving notice of appeal or of application for leave to appeal or for applying for leave to appeal; 5
- (b) any power of a court to grant leave to take a step out of time.
- (5) Subsections (2) to (4) do not apply to Scotland.
- 216 European framework list 10**
- (1) The European framework list is the list of conduct set out in Schedule 2.
- (2) The Secretary of State may by order amend Schedule 2 for the purpose of ensuring that the list of conduct set out in the Schedule corresponds to the list of conduct set out in article 2.2 of the European framework decision.
- (3) The European framework decision is the framework decision of the Council of the European Union made on 13 June 2002 on the European arrest warrant and the surrender procedures between member states (2002/584/JHA). 15
- 217 Other interpretative provisions**
- (1) References to a category 1 territory must be read in accordance with section 1.
- (2) References to a category 2 territory must be read in accordance with section 70. 20
- (3) References to the designated authority must be read in accordance with section 2(9).
- (4) References to a Part 1 warrant must be read in accordance with section 2.
- (5) References to a Part 3 warrant must be read in accordance with section 143.
- (6) References to a valid request for a person’s extradition must be read in accordance with section 71. 25
- (7) “Asylum claim” has the meaning given by section 113(1) of the Nationality, Immigration and Asylum Act 2002 (c. 41).
- (8) A customs officer is a person commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979 (c. 2). 30
- (9) “High Court” in relation to Scotland means the High Court of Justiciary.
- (10) In relation to Scotland, references to an appeal being discontinued are to be construed as references to its being abandoned.
- (11) “Police officer” in relation to Northern Ireland has the same meaning as in the Police (Northern Ireland) Act 2000 (c. 32). 35
- (12) A provisional warrant is a warrant issued under section 74(3).
- (13) A service policeman is a member of the Royal Navy Regulating Branch, the Royal Marines Police, the Royal Military Police or the Royal Air Force Police.

(14) The Provost Marshal of the Royal Air Force and any officer appointed to exercise the functions conferred on provost officers by the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) are to be taken to be members of the Royal Air Force Police for the purposes of subsection (13).

(15) This section and sections 214 to 216 apply for the purposes of this Act. 5

### *General*

#### **218 Form of documents**

The Secretary of State may by regulations prescribe the form of any document required for the purposes of this Act.

#### **219 Existing legislation on extradition** 10

These Acts shall cease to have effect –

- (a) the Backing of Warrants (Republic of Ireland) Act 1965 (c. 45);
- (b) the Extradition Act 1989 (c. 33).

#### **220 Amendments**

(1) Schedule 3 contains miscellaneous and consequential amendments. 15

(2) The Secretary of State may by order make –  
(a) any supplementary, incidental or consequential provision, and  
(b) any transitory, transitional or saving provision,  
which he considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to any provision of this Act. 20

(3) An order under subsection (2) may, in particular –  
(a) provide for any provision of this Act which comes into force before another such provision has come into force to have effect, until that other provision has come into force, with such modifications as are specified in the order, and  
(b) amend, repeal or revoke any enactment other than one contained in an Act passed in a Session after that in which this Act is passed. 25

(4) The amendments that may be made under subsection (3)(b) are in addition to those made by or under any other provision of this Act.

#### **221 Repeals** 30

Schedule 3 contains repeals.

#### **222 Commencement**

The preceding provisions of this Act come into force in accordance with provision made by the Secretary of State by order.

#### **223 Channel Islands and Isle of Man** 35

An Order in Council may provide for this Act to extend to any of the Channel Islands or the Isle of Man with the modifications (if any) specified in the Order.

**224 Orders and regulations**

- (1) References in this section to subordinate legislation are to—
- (a) an order of the Secretary of State under this Act (other than an order within subsection (2));
  - (b) an order of the Treasury under this Act; 5
  - (c) regulations under this Act.
- (2) The orders referred to in subsection (1)(a) are—
- (a) an order for a person’s extradition or discharge;
  - (b) an order deferring proceedings on a warrant or request;
  - (c) an order deferring a person’s extradition in pursuance of a warrant or request. 10
- (3) Subordinate legislation—
- (a) may make different provision for different purposes;
  - (b) may include supplementary, incidental, saving or transitional provisions. 15
- (4) A power to make subordinate legislation is exercisable by statutory instrument.
- (5) No order mentioned in subsection (6) may be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (6) The orders are— 20
- (a) an order under any of these provisions—
    - section 1(1);
    - section 70(1);
    - section 72(4);
    - section 74(5); 25
    - section 75(10)(b);
    - section 85(7);
    - section 87(7);
    - section 143(9);
    - section 174(4); 30
    - section 216(2);
  - (b) an order under section 220(2) which contains any provision (whether alone or with other provisions) amending or repealing any Act or provision of an Act.
- (7) A statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament if it contains subordinate legislation other than an order mentioned in subsection (6) or an order under section 222. 35
- (8) A territory may be designated by being named in an order made by the Secretary of State under this Act or by falling within a description set out in such an order. 40
- (9) An order made by the Secretary of State under section 1(1) or 70(1) may provide that this Act has effect in relation to a territory designated by the order with specified modifications.

**225 Orders in Council**

- (1) An Order in Council under section 178 or 179 is subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) An Order in Council under this Act—
  - (a) may make different provision for different purposes; 5
  - (b) may include supplementary, incidental, saving or transitional provisions.

**226 Finance**

- The following are to be paid out of money provided by Parliament—
- (a) any expenditure incurred by the Lord Chancellor under this Act; 10
  - (b) any increase attributable to this Act in the sums payable out of money provided by Parliament under any other enactment.

**227 Extent**

- (1) Sections 158 to 161, 167 to 169, 172, 174 and 206 do not extend to Scotland.
- (2) Sections 155, 199, 201 and 202 extend to England and Wales only. 15
- (3) Sections 184 and 200 extend to Scotland only.
- (4) Sections 185 and 186 extend to Northern Ireland only.

**228 Short title**

This Act may be cited as the Extradition Act 2003.

## SCHEDULES

## SCHEDULE 1

Sections 189 and 190

## RE-EXTRADITION: MODIFICATIONS

## PART 1

## CATEGORY 1 TERRITORIES

5

- 1 In section 11(1), omit paragraphs (c), (g) and (h).
- 2 Omit sections 14, 18 and 19.
- 3 In section 21(3), for “must” substitute “may”.
- 4 In section 32(2), for paragraphs (a) and (b) substitute “would (apart from section 188(1)) be released from detention pursuant to the UK sentence (whether or not on licence)”. 10
- 5 In section 40(2)(a), for “a certificate is issued under section 2 in respect of the warrant” substitute “the person would (apart from section 188(1)) be released from detention pursuant to the UK sentence (whether or not on licence)”. 15
- 6 In section 45(2)(a), for “following his arrest under this Part” substitute “under section 188(1)”.
- 7 In section 46(1), for the words from “arrested” to “issued” substitute “brought before the appropriate judge under section 188(1) may consent to his extradition to the territory in which the overseas sentence was imposed”. 20

## PART 2

## CATEGORY 2 TERRITORIES

- 8 In section 79, omit subsections (2), (3), (5) and (8).
- 9 In section 79, for subsection (4) substitute –  
     “(4) The judge must decide whether the offence specified in the request is an extradition offence.” 25
- 10 In section 79(6), for “any of the questions” substitute “the question”.
- 11 In section 79(7), for “those questions” substitute “that question”.
- 12 In section 80(1), omit paragraph (c).
- 13 Omit section 83. 30



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- 14 In section 88(3), for the words from “must send the case” to “extradited” substitute “may order the person to be extradited to the category 2 territory”.
- 15 In section 88, after subsection (3) insert –
- “(4) If the judge makes an order under subsection (3) he must remand the person in custody or on bail to wait for his extradition to the territory. 5
- (5) If the judge remands the person in custody he may later grant bail.”
- 16 In section 104(1) –
- (a) for the words from “sends a case” to “extradited” substitute “orders a person’s extradition under this Part”; and
- (b) for “the relevant decision” substitute “the order”. 10
- 17 In section 104(2), for the words from “the person” to “the Secretary of State” substitute “the order is made under section 129”.
- 18 In section 104, omit subsections (3), (5), (6), (7) and (8).
- 19 In section 104(9), for the words from “the Secretary of State” to “person” substitute “the order is made”. 15
- 20 In section 105, omit subsections (1)(b), (6) and (7).
- 21 In section 107, omit subsections (1)(b), (7) and (8).
- 22 In section 118(1)(a), for “the Secretary of State” substitute “the appropriate judge”.
- 23 In section 118(1)(b), for the words from “permitted period” to “extradition” substitute “period permitted under that section”. 20
- 24 In section 118, after subsection (1) insert –
- “(1A) But this section does not apply if the order is made under section 129.”
- 25 In section 118(2), for “the Secretary of State” substitute “the judge”. 25
- 26 In section 120(1)(a), for “the Secretary of State” substitute “the appropriate judge”.
- 27 In section 120, in subsections (2) to (6) and in each place in subsection (7), for “the Secretary of State” substitute “the judge”.
- 28 In section 121, after subsection (1) insert – 30
- “(1A) But this section does not apply if the order for the person’s extradition is made under section 129.”
- 29 In section 122(2)(a), for “a certificate is issued under section 71 in respect of the request” substitute “the person would (apart from section 188(1)) be released from detention pursuant to the UK sentence (whether or not on licence)”. 35
- 30 In section 128(1), for the words from “arrested” to “requested” substitute “brought before the appropriate judge under section 188(1) may consent to his extradition to the territory in which the overseas sentence was imposed”.

- 
- 31 In section 128(3), before paragraph (a) insert –  
     “(aa) must be given before the appropriate judge;”.
- 32 In section 128, omit subsections (4) and (5).
- 33 In section 129, after subsection (1) insert –  
     “(1A) The judge must remand the person in custody or on bail. 5  
     (1B) If the judge remands the person in custody he may later grant bail.”
- 34 In section 129(4), for the words from “send the case” to “extradited”  
 substitute “within the period of 10 days starting with the day on which  
 consent is given order the person’s extradition to the category 2 territory”.
- 35 In section 129, after subsection (5) insert – 10  
     “(6) Subsection (4) has effect subject to section 128B.  
     (7) If subsection (4) is not complied with and the person applies to the  
     judge to be discharged the judge must order his discharge.”
- 36 After section 129 insert –
- “128A Extradition to category 2 territory following consent 15**
- (1) This section applies if the appropriate judge makes an order under  
 section 129(4) for a person’s extradition to a category 2 territory.
- (2) The person must be extradited to the category 2 territory before the  
 end of the required period, which is 28 days starting with the day on  
 which the order is made. 20
- (3) If subsection (2) is not complied with and the person applies to the  
 judge to be discharged the judge must order his discharge, unless  
 reasonable cause is shown for the delay.
- 128B Extradition claim following consent**
- (1) This section applies if – 25  
     (a) a person consents under section 128 to his extradition to a  
     category 2 territory, and  
     (b) before the judge orders his extradition under section 129(4),  
     the judge is informed that the conditions in subsection (2) or  
     (3) are met. 30
- (2) The conditions are that –  
     (a) the Secretary of State has received another valid request for  
     the person’s extradition to a category 2 territory;  
     (b) the other request has not been disposed of.
- (3) The conditions are that – 35  
     (a) a certificate has been issued under section 2 in respect of a  
     Part 1 warrant issued in respect of the person;  
     (b) the warrant has not been disposed of.
- (4) The judge must not make an order under section 129(4) until he is  
 informed what order has been made under section 127(2) or 180(2). 40

- (5) If the order under section 127(2) or 180(2) is for further proceedings on the request under consideration to be deferred until the other request, or the warrant, has been disposed of, the judge must remand the person in custody or on bail.
- (6) If the judge remands the person in custody he may later grant bail. 5
- (7) If—
- (a) the order under section 127(2) or 180(2) is for further proceedings on the request under consideration to be deferred until the other request, or the warrant, has been disposed of, and 10
  - (b) an order is made under section 181 for proceedings on the request under consideration to be resumed, the period specified in section 129(4) must be taken to be 10 days starting with the day on which the order under section 181 is made.
- (8) If the order under section 127(2) or 180(2) is for further proceedings on the other request, or the warrant, to be deferred until the request under consideration has been disposed of, the period specified in section 129(4) must be taken to be 10 days starting with the day on which the judge is informed of the order. 15
- 128C Extradition following deferral for competing claim 20**
- (1) This section applies if—
- (a) an order is made under section 129(4) for a person to be extradited to a category 2 territory in pursuance of a request for his extradition;
  - (b) before the person is extradited to the territory an order is made under section 127(2) or 180(2) for the person’s extradition in pursuance of the request to be deferred; 25
  - (c) the appropriate judge makes an order under section 182(2) for the person’s extradition in pursuance of the request to cease to be deferred. 30
- (2) The required period for the purposes of section 128A(2) is 28 days starting with the day on which the order under section 182(2) is made.”

SCHEDULE 2

Section 216

EUROPEAN FRAMEWORK LIST

35

- 1 Participation in a criminal organisation.
- 2 Terrorism.
- 3 Trafficking in human beings.
- 4 Sexual exploitation of children and child pornography.
- 5 Illicit trafficking in narcotic drugs and psychotropic substances. 40
- 6 Illicit trafficking in weapons, munitions and explosives.

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7	Corruption.	
8	Fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests.	
9	Laundering of the proceeds of crime.	5
10	Counterfeiting currency, including of the euro.	
11	Computer-related crime.	
12	Environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties.	
13	Facilitation of unauthorised entry and residence.	10
14	Murder, grievous bodily injury.	
15	Illicit trade in human organs and tissue.	
16	Kidnapping, illegal restraint and hostage-taking.	
17	Racism and xenophobia.	
18	Organised or armed robbery.	15
19	Illicit trafficking in cultural goods, including antiques and works of art.	
20	Swindling.	
21	Racketeering and extortion.	
22	Counterfeiting and piracy of products.	
23	Forgery of administrative documents and trafficking therein.	20
24	Forgery of means of payment.	
25	Illicit trafficking in hormonal substances and other growth promoters.	
26	Illicit trafficking in nuclear or radioactive materials.	
27	Trafficking in stolen vehicles.	
28	Rape.	25
29	Arson.	
30	Crimes within the jurisdiction of the International Criminal Court.	
31	Unlawful seizure of aircraft/ships.	
32	Sabotage.	

SCHEDULE 3

Section 220

AMENDMENTS

*Introduction*

- 1 The amendments specified in this Schedule shall have effect.

*Parliamentary Commissioner Act 1967 (c. 13)* 5

- 2 In Schedule 3 to the Parliamentary Commissioner Act 1967 (c. 13) (matters not subject to investigation) for paragraph 4 substitute –

“4 Action taken by the Secretary of State under the Extradition Act 2003.”

*Criminal Justice Act 1967 (c. 80)* 10

- 3 Section 34 of the Criminal Justice Act 1967 (c. 80) (committal of persons under twenty-one accused of extradition crimes) shall cease to have effect.

*Suppression of Terrorism Act 1978 (c. 26)*

- 4 Sections 1 (offences not to be regarded as of a political character) and 2 (restrictions on return of criminal under Extradition Act 1870 or to Republic of Ireland) of the Suppression of Terrorism Act 1978 (c. 26) shall cease to have effect. 15

- 5 For section 5 of the Suppression of Terrorism Act 1978 substitute –

**“5 Power to apply section 4 to non-convention countries**

- (1) The Secretary of State may by order direct that section 4 above shall apply in relation to a country falling within subsection (2) below as it applies in relation to a convention country, subject to the exceptions (if any) specified in the order. 20

- (2) A country falls within this subsection if –  
(a) it is not a convention country; and 25  
(b) it is a category 1 territory or a category 2 territory within the meaning of the Extradition Act 2003.”

*Criminal Justice (International Co-operation) Act 1990 (c. 5)*

- 6 Section 22(1) of the Criminal Justice (International Co-operation) Act 1990 (c. 5) (offences to which an Order in Council under the Extradition Act 1870 can apply) shall cease to have effect. 30

*Computer Misuse Act 1990 (c. 18)*

- 7 Section 15 of the Computer Misuse Act 1990 (c. 18) (extradition where Schedule 1 to the Extradition Act 1989 applies) shall cease to have effect.

*Aviation and Maritime Security Act 1990 (c. 31)*

- 8 Section 49 of the Aviation and Maritime Security Act 1990 (c. 31) (extradition by virtue of Orders in Council under Extradition Act 1870) shall cease to have effect.

*Criminal Justice Act 1991 (c. 53)*

5

- 9 In section 47 of the Criminal Justice Act 1991 (c. 53) (persons extradited to the United Kingdom) subsection (4) shall cease to have effect.

*United Nations Personnel Act 1997 (c. 13)*

- 10 Section 6(1) of the United Nations Personnel Act 1997 (c. 13) (offences to which an Order in Council under section 2 of the Extradition Act 1870 can apply) shall cease to have effect.

10

*Terrorism Act 2000 (c. 11)*

- 11 Section 64(5) of the Terrorism Act 2000 (c. 11) (offences to which an Order in Council under section 2 of the Extradition Act 1870 can apply) shall cease to have effect.

15

*International Criminal Court Act 2001 (c. 17)*

- 12 Section 71 of the International Criminal Court Act 2001 (c. 17) (extradition: Orders in Council under the Extradition Act 1870) shall cease to have effect.

- 13 (1) Part 2 of Schedule 2 to the International Criminal Court Act 2001 (delivery up to International Criminal Court of persons subject to extradition proceedings) is amended as follows.

20

- (2) For paragraph 7 (meaning of “extradition proceedings”) substitute –

“7 In this Part of this Schedule “extradition proceedings” means proceedings before a court or judge in the United Kingdom under the Extradition Act 2003.”

25

- (3) In paragraph 8 (extradition proceedings in England and Wales or Northern Ireland) after sub-paragraph (5) add –

“(6) References in this paragraph to a court include references to a judge.”

- (4) In paragraph 9 (extradition proceedings in Scotland) after sub-paragraph (3) add –

30

“(4) References in this paragraph to a court include references to a judge.”

- (5) In paragraph 10 (power to suspend or revoke warrant or order) for sub-paragraph (1) substitute –

35

“(1) Where a court makes a delivery order in respect of a person whose extradition has been ordered under the Extradition Act 2003, it may make any such order as is necessary to enable the delivery order to be executed.”

- (6) In paragraph 10(2) omit the words “by a court or judicial officer”.

40

*Enterprise Act 2002 (c. 40)*

- 14 Section 191 of the Enterprise Act 2002 (c. 40) (offences to which an Order in Council under the Extradition Act 1870 can apply) shall cease to have effect.

SCHEDULE 4

Section 221

REPEALS

5

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Backing of Warrants (Republic of Ireland) Act 1965 (c. 45)	The whole Act.	
Criminal Justice Act 1967 (c. 80)	Section 34.	
Criminal Jurisdiction Act 1975 (c. 59)	In Schedule 3, paragraph 1.	10
Bail Act 1976 (c. 63)	In section 2(2) the definition of “proceedings against a fugitive offender”. In section 4(2) the words “or proceedings against a fugitive offender for the offence”. In section 7(4) the words from “In reckoning” to “Sunday”. In Schedule 2, paragraph 33.	15
Criminal Law Act 1977 (c. 45)	In Schedule 12, in the entry for the Bail Act 1976, paragraph 4.	20
Suppression of Terrorism Act 1978 (c. 26)	Sections 1 and 2. In section 8 – (a) subsection (5)(a); (b) in subsection (6) the words from “an order made under section 1(4)” to “or”.	25
Extradition Act 1989 (c. 33)	The whole Act.	
Criminal Justice (International Co-operation) Act 1990 (c. 5)	Section 22.	
Computer Misuse Act 1990 (c. 18)	Section 15.	30
Aviation and Maritime Security Act 1990 (c. 31)	Section 49.	
Criminal Justice Act 1991 (c. 53)	Section 47(4).	
Bail (Amendment) Act 1993 (c. 26)	In section 1 – (a) in subsection (4), the word “such”; (b) in subsection (8), the word “magistrates”.	35
Criminal Justice Act 1993 (c. 36)	Section 72. Section 79(7).	
Criminal Justice and Public Order Act 1994 (c. 33)	Sections 158 and 159.	40

<i>Short title and chapter</i>	<i>Extent of repeal</i>
United Nations Personnel Act 1997 (c. 13)	Section 6.
Justices of the Peace Act 1997 (c. 25)	In Schedule 5, paragraph 9.
Access to Justice Act 1999 (c. 22)	In Schedule 11, paragraphs 18 and 31 to 36.
Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)	In Schedule 9, paragraph 124.
Terrorism Act 2000 (c. 11)	Section 64.
International Criminal Court Act 2001 (c. 17)	Sections 71 to 73. In paragraph 10(2) of Schedule 2, the words “by a court or judicial officer”.
Proceeds of Crime Act 2002 (c. 29)	In Schedule 11, paragraph 18.
Enterprise Act 2002 (c. 40)	Section 191.



# Extradition Bill

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# B I L L

[AS AMENDED ON REPORT]

To make provision about extradition.

*Brought from the Commons on 26th March 2003*

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*Ordered to be Printed, 30th October 2003*

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