



Anti-social Behaviour, Crime and Policing Act 2014

2014 CHAPTER 12

PART 12

EXTRADITION

Amendments of the Extradition Act 2003

155 Date of extradition hearing

In section 8 of the Extradition Act 2003 (date of extradition hearing etc: extradition to category 1 territory) after subsection (4) there is inserted—

“(4A) But if proceedings in respect of the extradition are adjourned under section 8A or 8B, the permitted period is extended by the number of days for which the proceedings are so adjourned.”

156 Extradition barred if no prosecution decision in requesting territory

(1) In section 11 of the Extradition Act 2003 (bars to extradition), after paragraph (a) of subsection (1) there is inserted—

“(aa) absence of prosecution decision;”.

(2) After section 12 of that Act there is inserted—

“12A Absence of prosecution decision

(1) A person’s extradition to a category 1 territory is barred by reason of absence of prosecution decision if (and only if)—

(a) it appears to the appropriate judge that there are reasonable grounds for believing that—

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- (i) the competent authorities in the category 1 territory have not made a decision to charge or have not made a decision to try (or have made neither of those decisions), and
 - (ii) the person’s absence from the category 1 territory is not the sole reason for that failure,
- and
- (b) those representing the category 1 territory do not prove that—
 - (i) the competent authorities in the category 1 territory have made a decision to charge and a decision to try, or
 - (ii) in a case where one of those decisions has not been made (or neither of them has been made), the person’s absence from the category 1 territory is the sole reason for that failure.
- (2) In this section “to charge” and “to try”, in relation to a person and an extradition offence, mean—
- (a) to charge the person with the offence in the category 1 territory, and
 - (b) to try the person for the offence in the category 1 territory.”
- (3) In a case where the Part 1 warrant (within the meaning of the Extradition Act 2003) has been issued before the time when the amendments made by this section come into force, those amendments apply to the extradition concerned only if, at that time, the judge has not yet decided all of the questions in section 11(1) of that Act.

157 Proportionality

- (1) In section 11 of the Extradition Act 2003 (bars to extradition), in subsection (5), for “21” there is substituted “21A”.
- (2) After section 21 of that Act there is inserted—

“21A Person not convicted: human rights and proportionality

- (1) If the judge is required to proceed under this section (by virtue of section 11), the judge must decide both of the following questions in respect of the extradition of the person (“D”)—
 - (a) whether the extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998;
 - (b) whether the extradition would be disproportionate.
- (2) In deciding whether the extradition would be disproportionate, the judge must take into account the specified matters relating to proportionality (so far as the judge thinks it appropriate to do so); but the judge must not take any other matters into account.
- (3) These are the specified matters relating to proportionality—
 - (a) the seriousness of the conduct alleged to constitute the extradition offence;
 - (b) the likely penalty that would be imposed if D was found guilty of the extradition offence;
 - (c) the possibility of the relevant foreign authorities taking measures that would be less coercive than the extradition of D.

- (4) The judge must order D's discharge if the judge makes one or both of these decisions—
 - (a) that the extradition would not be compatible with the Convention rights;
 - (b) that the extradition would be disproportionate.
 - (5) The judge must order D to be extradited to the category 1 territory in which the warrant was issued if the judge makes both of these decisions—
 - (a) that the extradition would be compatible with the Convention rights;
 - (b) that the extradition would not be disproportionate.
 - (6) If the judge makes an order under subsection (5) he must remand the person in custody or on bail to wait for extradition to the category 1 territory.
 - (7) If the person is remanded in custody, the appropriate judge may later grant bail.
 - (8) In this section "relevant foreign authorities" means the authorities in the territory to which D would be extradited if the extradition went ahead."
- (3) In section 2 of that Act (Part 1 warrant and certificate), after subsection (7) there is inserted—
- “(7A) But in the case of a Part 1 warrant containing the statement referred to in subsection (3), the designated authority must not issue a certificate under this section if it is clear to the designated authority that a judge proceeding under section 21A would be required to order the person's discharge on the basis that extradition would be disproportionate.
- In deciding that question, the designated authority must apply any general guidance issued for the purposes of this subsection.
- (7B) Any guidance under subsection (7A) may be revised, withdrawn or replaced.
- (7C) The function of issuing guidance under subsection (7A), or of revising, withdrawing or replacing any such guidance, is exercisable by the Lord Chief Justice of England and Wales with the concurrence of—
- (a) the Lord Justice General of Scotland, and
 - (b) the Lord Chief Justice of Northern Ireland.”
- (4) In deciding any question whether section 21A of the Extradition Act 2003 is compatible with European Union law, regard must be had (in particular) to Article 1(3) of 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) (which provides that that decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union).
- (5) In a case where the Part 1 warrant (within the meaning of the Extradition Act 2003) has been issued before the time when the amendments made by this section come into force, those amendments apply to the extradition concerned only if, at that time, the judge has not yet decided all of the questions in section 11(1) of that Act.

158 Hostage-taking considerations

- (1) Section 16 of the Extradition Act 2003 (extradition to category 1 territory barred by reason of hostage-taking considerations) is repealed.
- (2) In section 11 of that Act (bars to extradition), paragraph (e) of subsection (1) is omitted.
- (3) In a case where the Part 1 warrant (within the meaning of the Extradition Act 2003) has been issued before the time when the amendments made by this section come into force, those amendments apply to the extradition concerned only if, at that time, the judge has not yet decided all of the questions in section 11(1) of that Act.

159 Request for temporary transfer etc

Before section 22 of the Extradition Act 2003 there is inserted—

“21B Request for temporary transfer etc

- (1) This section applies if—
 - (a) a Part 1 warrant is issued which contains the statement referred to in section 2(3) (warrant issued for purposes of prosecution for offence in category 1 territory), and
 - (b) at any time before or in the extradition hearing, the appropriate judge is informed that a request under subsection (2) or (3) has been made.
- (2) A request under this subsection is a request by a judicial authority of the category 1 territory in which the warrant is issued (“the requesting territory”)—
 - (a) that the person in respect of whom the warrant is issued be temporarily transferred to the requesting territory, or
 - (b) that arrangements be made to enable the person to speak with representatives of an authority in the requesting territory responsible for investigating, prosecuting or trying the offence specified in the warrant.
- (3) A request under this subsection is a request by the person in respect of whom the warrant is issued—
 - (a) to be temporarily transferred to the requesting territory, or
 - (b) that arrangements be made to enable the person to speak with representatives of an authority in the requesting territory responsible for investigating, prosecuting or trying the offence specified in the warrant.
- (4) The judge must order further proceedings in respect of the extradition to be adjourned if the judge thinks it necessary to do so to enable the person (in the case of a request under subsection (2)) or the authority by which the warrant is issued (in the case of a request under subsection (3)) to consider whether to consent to the request.

An adjournment under this subsection must not be for more than 7 days.

- (5) If the person or authority consents to the request, the judge must—
 - (a) make whatever orders and directions seem appropriate for giving effect to the request;

- (b) order further proceedings in respect of the extradition to be adjourned for however long seems necessary to enable the orders and directions to be carried out.
- (6) If the request, or consent to the request, is withdrawn before effect (or full effect) has been given to it—
 - (a) no steps (or further steps) may be taken to give effect to the request;
 - (b) the judge may make whatever further orders and directions seem appropriate (including an order superseding one made under subsection (5)(b)).
- (7) A person may not make a request under paragraph (a) or (b) of subsection (3) in respect of a warrant if the person has already given consent to a request under the corresponding paragraph of subsection (2) in respect of that warrant (even if that consent has been withdrawn).
- (8) A person may not make a further request under paragraph (a) or (b) of subsection (3) in respect of a warrant if the person has already made a request under that paragraph in respect of that warrant (even if that request has been withdrawn).
- (9) If—
 - (a) a request under subsection (2) or (3) is made before a date has been fixed on which the extradition hearing is to begin, and
 - (b) the proceedings are adjourned under this section,the permitted period for the purposes of fixing that date (see section 8(4)) is extended by the number of days for which the proceedings are so adjourned.”

160 Appeals

- (1) In section 26 of the Extradition Act 2003 (appeal against extradition order: category 1 territory)—
 - (a) in subsection (3), for “section may” there is substituted “section—
 - (a) may”;
 - (b) at the end of that subsection there is inserted “, but
 - (b) lies only with the leave of the High Court.”;
 - (c) after subsection (4) there is inserted—
 - “(5) But where a person gives notice of application for leave to appeal after the end of the permitted period, the High Court must not for that reason refuse to entertain the application if the person did everything reasonably possible to ensure that the notice was given as soon as it could be given.”
- (2) In section 28 of that Act (appeal against discharge at extradition hearing: category 1 territory)—
 - (a) in subsection (4), for “section may” there is substituted “section—
 - (a) may”;
 - (b) at the end of that subsection there is inserted “, but
 - (b) lies only with the leave of the High Court.”
- (3) In section 103 of that Act (appeal where case sent to Secretary of State)—

- (a) in subsection (4), for “section may” there is substituted “section—
(a) may”;
- (b) at the end of that subsection there is inserted “, but
(b) lies only with the leave of the High Court.”;
- (c) after subsection (9) there is inserted—

“(10) But where a person gives notice of application for leave to appeal after the end of the permitted period, the High Court must not for that reason refuse to entertain the application if the person did everything reasonably possible to ensure that the notice was given as soon as it could be given.”

- (4) In section 105 of that Act (appeal against discharge at extradition hearing: category 2 territory)—

- (a) in subsection (4), for “section may” there is substituted “section—
(a) may”;
- (b) at the end of that subsection there is inserted “, but
(b) lies only with the leave of the High Court.”

- (5) In section 108 of that Act (appeal against extradition order: category 2 territory)—

- (a) in subsection (3), for “section may” there is substituted “section—
(a) may”;
- (b) at the end of that subsection there is inserted “, but
(b) lies only with the leave of the High Court.”;
- (c) after subsection (7) there is inserted—

“(7A) Where a person gives notice of application for leave to appeal after the end of the permitted period (whether or not the application is for leave to appeal on human rights grounds), the High Court must not for that reason refuse to entertain the application if the person did everything reasonably possible to ensure that the notice was given as soon as it could be given.”

- (6) In section 110 of that Act (appeal against discharge by Secretary of State)—

- (a) in subsection (4), for “section may” there is substituted “section—
(a) may”;
- (b) at the end of that subsection there is inserted “, but
(b) lies only with the leave of the High Court.”

161 Judge informed after extradition hearing or order that person is charged with offence or serving sentence in United Kingdom

- (1) After section 36A of the Extradition Act 2003 there is inserted—

“36B Judge informed after extradition hearing that person is charged with offence in United Kingdom

- (1) This section applies if—
 - (a) an order has been made for the extradition of the person in respect of whom the Part 1 warrant is issued, and

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- (b) before the extradition order is carried out the appropriate judge is informed that the person is charged with an offence in the United Kingdom.
- (2) The appropriate judge must order the extradition order not to be carried out 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;
 - (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 appropriate judge may order the extradition order not to be carried out until the person is released from detention pursuant to the sentence (whether on licence or otherwise).
- (4) Rules of court may provide that where there is an appeal against the extradition order —
- (a) a reference in this section to the appropriate judge has effect, in prescribed circumstances, as if it were a reference to the court hearing the appeal, and
 - (b) this section has effect with any other prescribed modifications.

36C Judge informed after extradition hearing that person is serving sentence in United Kingdom

- (1) This section applies if—
- (a) an order has been made for the extradition of the person in respect of whom the Part 1 warrant is issued, and
 - (b) before the extradition order is carried out the appropriate judge is informed that the person is serving a sentence of imprisonment or another form of detention in the United Kingdom.
- (2) The appropriate judge may order the extradition order not to be carried out until the person is released from detention pursuant to the sentence (whether on licence or otherwise).
- (3) Rules of court may provide that where there is an appeal against the extradition order —
- (a) a reference in this section to the appropriate judge has effect, in prescribed circumstances, as if it were a reference to the court hearing the appeal, and
 - (b) this section has effect with any other prescribed modifications.”
- (2) After section 118B of that Act there is inserted—

“118C Judge informed after extradition order that person is charged with offence in United Kingdom

- (1) This section applies if—

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- (a) the Secretary of State has made an order for a person’s extradition under this Part, and
 - (b) before the extradition order is carried out the appropriate judge is informed that the person is charged with an offence in the United Kingdom.
- (2) The appropriate judge must order the extradition order not to be carried out 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;
 - (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 appropriate judge may order the extradition order not to be carried out until the person is released from detention pursuant to the sentence (whether on licence or otherwise).
- (4) Rules of court may provide that where there is an appeal against the extradition order —
- (a) a reference in this section to the appropriate judge has effect, in prescribed circumstances, as if it were a reference to the court hearing the appeal, and
 - (b) this section has effect with any other prescribed modifications.

118D Judge informed after extradition order that person is serving sentence in United Kingdom

- (1) This section applies if—
- (a) the Secretary of State has made an order for a person’s extradition under this Part, and
 - (b) before the extradition order is carried out the appropriate judge is informed that the person is serving a sentence of imprisonment or another form of detention in the United Kingdom.
- (2) The appropriate judge may order the extradition order not to be carried out until the person is released from detention pursuant to the sentence (whether on licence or otherwise).
- (3) Rules of court may provide that where there is an appeal against the extradition order—
- (a) a reference in this section to the appropriate judge has effect, in prescribed circumstances, as if it were a reference to the court hearing the appeal, and
 - (b) this section has effect with any other prescribed modifications.”

162 Asylum etc

- (1) In section 39 of the Extradition Act 2003 (asylum claim: extradition to category 1 territory)—
- (a) subsections (1) and (2) are repealed;

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- (b) in subsection (3), for “The person” there is substituted “If—
 - (a) an order is made under this Part for a person to be extradited in pursuance of a Part 1 warrant, and
 - (b) the person has made an asylum claim (whether before or after the issue of the warrant),the person”.

- (2) In section 121 of that Act (asylum claim: extradition to category 2 territory)—
 - (a) subsections (1) and (2) are repealed;
 - (b) in subsection (3), for “The person” there is substituted “If—
 - (a) an order is made under this Part for a person to be extradited in pursuance of a request, and
 - (b) the person has made an asylum claim (whether before or after the making of the request),the person”.

- (3) In section 93 of that Act (Secretary of State’s consideration of case)—
 - (a) in subsection (4)(c), after “he orders the person’s discharge” there is inserted “under subsection (6A) or”;
 - (b) after subsection (6) there is inserted—
 - “(6A) The Secretary of State may order the person’s discharge if the person—
 - (a) has been recorded by the Secretary of State as a refugee within the meaning of the Refugee Convention, or
 - (b) has been granted leave to enter or remain in the United Kingdom on the ground that it would be a breach of Article 2 or 3 of the Human Rights Convention to remove the person to the territory to which extradition is requested.”

163 Consent to extradition not to be taken as waiver of speciality rights

In the Extradition Act 2003 the following provisions are repealed—

- (a) section 45(3);
- (b) section 128(5).

164 Definition of “extradition offence”

- (1) For sections 64 and 65 of the Extradition Act 2003 there is substituted—

“64 Extradition offences: person not sentenced for offence

- (1) This section sets out whether a person’s conduct constitutes an “extradition offence” for the purposes of this Part in a case where the person—
 - (a) is accused in a category 1 territory of an offence constituted by the conduct, or
 - (b) has been convicted in that territory of an offence constituted by the conduct but not sentenced for it.

- (2) The conduct constitutes an extradition offence in relation to the category 1 territory if the conditions in subsection (3), (4) or (5) are satisfied.
- (3) The conditions in this subsection are that—
 - (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) 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.
- (4) The conditions in this subsection are that—
 - (a) the conduct occurs outside the category 1 territory;
 - (b) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the relevant part of the United Kingdom;
 - (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.
- (5) The conditions in this subsection are that—
 - (a) the conduct occurs in the category 1 territory;
 - (b) no part of the conduct occurs in the United Kingdom;
 - (c) a certificate issued by an appropriate authority of the category 1 territory shows that the conduct falls within the European framework list;
 - (d) 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.
- (6) For the purposes of subsections (3)(b) and (4)(b)—
 - (a) if the conduct relates to a tax or duty, it does not matter whether the law of the relevant part of the United Kingdom imposes the same kind of tax or duty or contains 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 does not matter whether the law of the relevant part of the United Kingdom contains rules of the same kind as those of the law of the category 1 territory.

65 Extradition offences: person sentenced for offence

- (1) This section sets out whether a person’s conduct constitutes an “extradition offence” for the purposes of this Part in a case where the person—
 - (a) has been convicted in a category 1 territory of an offence constituted by the conduct, and
 - (b) has been sentenced for the offence.
- (2) The conduct constitutes an extradition offence in relation to the category 1 territory if the conditions in subsection (3), (4) or (5) are satisfied.
- (3) The conditions in this subsection are that—

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- (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.
- (4) The conditions in this subsection are that—
 - (a) the conduct occurs outside the category 1 territory;
 - (b) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the relevant 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) The conditions in this subsection are that—
 - (a) the conduct occurs in the category 1 territory;
 - (b) no part of the conduct occurs in the United Kingdom;
 - (c) a certificate issued by an appropriate authority of the category 1 territory shows that the conduct falls within the European framework list;
 - (d) the certificate shows that 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.
- (6) For the purposes of subsections (3)(b) and (4)(b)—
 - (a) if the conduct relates to a tax or duty, it does not matter whether the law of the relevant part of the United Kingdom imposes the same kind of tax or duty or contains 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 does not matter whether the law of the relevant part of the United Kingdom contains rules of the same kind as those of the law of the category 1 territory.”
- (2) In section 66 (supplementary provision for the purposes of sections 64 and 65) after subsection (1) there is inserted—

“(1A) References to “conduct” (except in the expression “equivalent conduct”) are to the conduct specified in the Part 1 warrant.”
- (3) In section 137 of that Act (definition of extradition offence for the purposes of Part 2 of the Act: person not sentenced for offence) for subsections (1) to (5) there is substituted—

“(1) This section sets out whether a person’s conduct constitutes an “extradition offence” for the purposes of this Part in a case where the person—

 - (a) is accused in a category 2 territory of an offence constituted by the conduct, or
 - (b) has been convicted in that territory of an offence constituted by the conduct but not sentenced for it.

- (2) The conduct constitutes an extradition offence in relation to the category 2 territory if the conditions in subsection (3), (4) or (5) are satisfied.
- (3) The conditions in this subsection are that—
- (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;
 - (c) the conduct is so punishable under the law of the category 2 territory.
- (4) The conditions in this subsection are that—
- (a) the conduct occurs outside the category 2 territory;
 - (b) 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;
 - (c) the conduct is so punishable under the law of the category 2 territory.
- (5) The conditions in this subsection are that—
- (a) the conduct occurs outside the category 2 territory;
 - (b) no part of the conduct occurs in the United Kingdom;
 - (c) the conduct constitutes, or if committed in the United Kingdom would constitute, an offence mentioned in subsection (6);
 - (d) 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.”
- (4) After subsection (7) of that section there is inserted—
- “(7A) References in this section to “conduct” (except in the expression “equivalent conduct”) are to the conduct specified in the request for the person’s extradition”.
- (5) In section 138 of that Act (definition of “extradition offence” for the purposes of Part 2 of the Act: person sentenced for offence) for subsections (1) to (5) there is substituted—
- “(1) This section sets out whether a person’s conduct constitutes an “extradition offence” for the purposes of this Part in a case where the person—
- (a) has been convicted, in the category 2 territory to which extradition is requested, of an offence constituted by the conduct, and
 - (b) has been sentenced for the offence.
- (2) The conduct constitutes an extradition offence in relation to the category 2 territory if the conditions in subsection (3), (4) or (5) are satisfied.
- (3) The conditions in this subsection are that—
- (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;

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- (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.
- (4) The conditions in this subsection are that—
- (a) the conduct occurs outside the category 2 territory;
 - (b) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the relevant part of the United Kingdom punishable as mentioned in subsection (3)(b);
 - (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.
- (5) The conditions in this subsection are that—
- (a) the conduct occurs outside the category 2 territory;
 - (b) no part of the conduct occurs in the United Kingdom;
 - (c) the conduct constitutes, or if committed in the United Kingdom would constitute, an offence mentioned in subsection (6);
 - (d) 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.”
- (6) After subsection (7) of that section there is inserted—
- “(7A) References in this section to “conduct” (except in the expression “equivalent conduct”) are to the conduct specified in the request for the person’s extradition”.

165 Extradition to the United Kingdom to be sentenced or to serve a sentence

In section 142 of the Extradition Act 2003 (issue of Part 3 warrant), for subsection (2A) there is substituted—

- “(2A) The condition is that—
- (a) the person has been convicted of an extradition offence by a court in the United Kingdom,
 - (b) his extradition is sought for the purpose of his being sentenced for the offence or of his serving a sentence of imprisonment or another form of detention imposed in respect of the offence, and
 - (c) either a domestic warrant has been issued in respect of the person or the person may be arrested without a warrant.”

166 Detention of extradited person for trial in England and Wales for other offences

- (1) In sections 150 and 151A of the Extradition Act 2003 (dealing with extradited person for other offences), at the end of subsection (2) there is inserted—

“This is subject to section 151B.”

- (2) After section 151A of that Act there is inserted—

“151B Detention of person for trial in England and Wales for other offences

- (1) Section 150 or 151A does not prevent a person in whose case that section applies from being detained with a view to trial in England and Wales for an offence if the conditions in subsection (2) are satisfied.
- (2) The conditions are that—
 - (a) the United Kingdom and the territory from which the person was extradited have each made a declaration under Article 14(3) of the Extradition Convention, and the declarations are still in force;
 - (b) the Secretary of State makes a request for the consent referred to in section 150(3)(c) or 151A(3)(c) in respect of the offence (“the consent request”);
 - (c) the Secretary of State gives notification, which is explicitly acknowledged on behalf of the territory, of the date on which the detention is to begin (“the notified date”).
- (3) The Extradition Convention is the European Convention on Extradition done at Paris on 13 December 1957.
- (4) This section applies only to detention during the period beginning with the notified date and ending with whichever of the following occurs first—
 - (a) if a notification of opposition to the detention is given on behalf of the territory, the date on which Secretary of State receives it;
 - (b) the date on which the Secretary of State receives notification given on behalf of the territory as to whether the consent request is granted or refused;
 - (c) the expiry of the period of 90 days beginning with the date on which the consent request is received.”

167 Proceedings on deferred warrant or request etc

- (1) In section 180 of the Extradition Act 2003 (proceedings on deferred warrant or request) —
 - (a) in subsection (1), at the end of paragraph (b) there is inserted “in the person’s favour”;
 - (b) after subsection (9) there is inserted—
 - “(10) An extradition claim made in respect of a person is disposed of in the person’s favour if—
 - (a) in the case of a Part 1 warrant, the warrant is disposed of as mentioned in subsection (1)(a) or (b) of section 213;
 - (b) in the case of a request for extradition, the request is disposed of as mentioned in subsection (2)(a) or (b) of that section.”
- (2) In section 181 of that Act (proceedings where extradition deferred)—
 - (a) in subsection (1), at the end of paragraph (b) there is inserted “in the person’s favour”;
 - (b) after subsection (9) there is inserted—

Status: This is the original version (as it was originally enacted).

- “(10) An extradition claim made in respect of a person is disposed of in the person’s favour if—
- (a) in the case of a Part 1 warrant, the warrant is disposed of as mentioned in subsection (1)(a) or (b) of section 213;
 - (b) in the case of a request for extradition, the request is disposed of as mentioned in subsection (2)(a) or (b) of that section.”

168 Non-UK extradition: transit through the United Kingdom

After section 189 of the Extradition Act 2003 there is inserted—

“Non-UK extradition: transit through the United Kingdom

189A Facilitating transit through the United Kingdom

- (1) The relevant UK authority may issue a transit certificate in relation to the non-UK extradition of a person if that authority has been requested to facilitate the transit of the person through the United Kingdom for the purposes of the extradition.
- (2) If the relevant UK authority issues a transit certificate in relation to the non-UK extradition of a person, an authorised officer may do any or all of the following—
 - (a) escort the person from, or to, any means of transport used for the purposes of the extradition;
 - (b) take the person into custody to facilitate the transit of the person through the United Kingdom for the purposes of the extradition;
 - (c) search the person, and any item in the possession of the person, for any item which the person might use to cause physical injury to that person or any other person;
 - (d) in a case where the person has been taken into custody under paragraph (b), search the person, and any item in the possession of the person, for any item which the person might use to escape from custody.
- (3) An authorised officer searching a person in the exercise of a power conferred by subsection (2)(c) or (d) may seize any item found if the officer has reasonable grounds for believing that the person searched might use the item—
 - (a) to cause physical injury to that person or any other person; or
 - (b) in a case where the person has been taken into custody, to escape from custody.
- (4) If no request is made under subsection (1) in relation to the non-UK extradition of a person, or if such a request is made but a transit certificate is not issued, that does not—
 - (a) prevent the transit of the person through the United Kingdom for the purposes of the extradition; or
 - (b) affect the powers which an authorised officer has (otherwise than under this section) in relation to the person while in the United Kingdom.

189B Unscheduled arrival in the United Kingdom

- (1) This section applies in a case where—
 - (a) a person is being extradited,
 - (b) the extradition is a non-UK extradition, and
 - (c) the person makes an unscheduled arrival in the United Kingdom.
- (2) An authorised officer may do any or all of the following—
 - (a) take the person into custody to facilitate the transit of the person through the United Kingdom for the purposes of the extradition;
 - (b) search the person, and any item in the possession of the person, for any item which the person might use to cause physical injury to that person or any other person;
 - (c) in a case where the person has been taken into custody under paragraph (a), search the person, and any item in the possession of the person, for any item which the person might use to escape from custody.
- (3) Any power conferred by subsection (2) may be exercised—
 - (a) upon the unscheduled arrival, or
 - (b) at any later time when the person is still in the United Kingdom after the unscheduled arrival.
- (4) A person taken into custody under this section may be kept in custody until the expiry of the period of 72 hours beginning with the time when the person is taken (or first taken) into custody under this section.
- (5) But if a transit certificate is issued under section 189A in respect of the non-UK extradition of the person, the person must not be kept in custody under this section after the issue of the certificate.
- (6) Subsection (5) does not prevent the person from being taken into custody under section 189A.
- (7) An authorised officer searching a person in the exercise of a power conferred by subsection (2)(b) or (c) may seize any item found if the officer has reasonable grounds for believing that the person searched might use the item—
 - (a) to cause physical injury to that person or any other person; or
 - (b) in a case where the person has been taken into custody, to escape from custody.

189C Exercise of the extradition transit powers

- (1) The extradition transit powers include power to use reasonable force when necessary.
- (2) An authorised officer may not, when exercising a relevant search power, require a person to remove any clothing other than an outer coat, jacket, headgear or gloves.
- (3) Any item seized from a person in the exercise of a relevant search power may be retained while the person is in transit through the United Kingdom.

189D Codes of practice

- (1) The Secretary of State must issue a code of practice in connection with—
 - (a) the exercise of extradition transit powers;
 - (b) the retention, use and return of anything seized under a relevant search power.
- (2) If the Secretary of State proposes to issue a code of practice under this section the Secretary of State must—
 - (a) publish a draft of the code;
 - (b) consider any representations made to the Secretary of State about the draft;
 - (c) if the Secretary of State thinks it appropriate, modify the draft in the light of any such representations.
- (3) The Secretary of State must lay the code before Parliament.
- (4) After doing so the Secretary of State 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.
- (6) A failure by an authorised officer to comply with a provision of a code issued under this section does not of itself make the authorised officer liable to criminal or civil proceedings.
- (7) A code issued under this section is admissible in evidence in any proceedings and must be taken into account by a court in determining any question to which it appears to the court to be relevant.
- (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;
 - (b) representations made to the Secretary of State about the draft before that date are as effective as such representations made 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 on or after that date.

189E Sections 189A to 189D: interpretation

- (1) An “authorised officer” is—
 - (a) a constable, or
 - (b) a person who is of a description specified by the Secretary of State by order.
- (2) A National Crime Agency officer, prison officer, or any other person who has the powers of a constable (but is not a constable)—

Status: This is the original version (as it was originally enacted).

- (a) does not have the extradition transit powers by virtue of having the powers of a constable; and
 - (b) accordingly, has the extradition transit powers only if the person is of a description specified under subsection (1)(b).
- (3) These expressions have the meanings given—
- “extradition transit powers” means the powers under—
 - (a) section 189A (except the power to issue transit certificates), and
 - (b) section 189B;
 - “foreign territory” means a territory outside the United Kingdom;
 - “non-UK extradition” means extradition from one foreign territory to another foreign territory;
 - “relevant search power” means a power of search under—
 - (a) section 189A(2)(c) or (d), or
 - (b) section 189B(2)(b) or (c);
 - “relevant UK authority” means—
 - (a) the National Crime Agency (in the case of a non-UK extradition to a category 1 territory), or
 - (b) the Secretary of State (in any other case).
- (4) A reference to the transit of a person through the United Kingdom is a reference to the person arriving in, being in, and departing from the United Kingdom (whether or not the person travels within the United Kingdom between arrival and departure).
- (5) This section applies for the purposes of section 189A to 189D (and this section).”

169 Extradition to a territory that is party to an international Convention

For section 193 of the Extradition Act 2003 there is substituted—

“193 Parties to international Conventions

- (1) The Secretary of State may by order—
 - (a) designate an international Convention to which the United Kingdom is a party, and
 - (b) specify conduct to which the Convention applies.
- (2) If the Secretary of State believes, in respect of a request for a person’s extradition, that—
 - (a) the request is for extradition to a territory that is a party to a Convention designated under subsection (1)(a),
 - (b) the territory is not a category 1 territory or a category 2 territory, and
 - (c) the conduct specified in the request is conduct specified under subsection (1)(b),
 the Secretary of State may certify that the conditions in paragraphs (a) to (c) 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.
- (4) As applied by subsection (3), this Act has effect as if—
- (a) sections 71(4), 73(5), 74(11)(b), 84(7), 86(7), 137 and 138 were omitted;
 - (b) the conduct that constituted an extradition offence for the purposes of Part 2 were the conduct specified under subsection (1)(b).
- (5) A certificate under subsection (3) in relation to a person is conclusive evidence that the conditions in paragraphs (a) to (c) of subsection (2) are satisfied in relation to the person's extradition."

170 Electronic transmission of European arrest warrant etc

In section 204 of the Extradition Act 2003 (warrant issued by category 1 territory: transmission by electronic means), in subsection (5)—

- (a) for "subsection (1), a" there is substituted "subsection (1)—
 - (a) a";
- (b) at the end there is inserted—
 - (b) information contained in the warrant is treated as being received by the designated authority in a form in which it is intelligible if the authority receives—
 - (i) a summary of that information in English, and
 - (ii) the text of the warrant itself,in a form in which it is legible."

Time spent in custody awaiting extradition to the United Kingdom

171 Discount on sentence for time spent in custody awaiting extradition: England and Wales

In section 49 of the Prison Act 1952 (persons unlawfully at large), after subsection (3) there is inserted—

- “(3A) Where—
- (a) a person is extradited to the United Kingdom from a category 1 territory for the purpose of serving a term of imprisonment or another form of detention mentioned in subsection (2) of this section, and
 - (b) the person was for any time kept in custody in that territory with a view to the extradition (and not also for any other reason),
- the Secretary of State shall exercise the power under that subsection to direct that account shall be taken of that time in calculating the period for which the person is liable to be detained.
- (3B) In subsection (3A) of this section “category 1 territory” means a territory designated under the Extradition Act 2003 for the purposes of Part 1 of that Act.”

172 Discount on sentence for time spent in custody awaiting extradition: Scotland

(1) Section 210 of the Criminal Procedure (Scotland) Act 1995 (consideration of time spent in custody) is amended as follows.

(2) In subsection (1)—

- (a) in paragraph (a), after “United Kingdom” there is inserted “otherwise than from a category 1 territory”;
- (b) in paragraph (c)(ii), for “for the purposes of this section” there is substituted “who was extradited to the United Kingdom otherwise than from a category 1 territory”.

(3) After subsection (1) there is inserted—

“(1A) Subsection (1B) applies where—

- (a) a court is passing a sentence of imprisonment or detention on a person for an offence, and
- (b) the person is an extradited prisoner who was extradited to the United Kingdom from a category 1 territory.

(1B) The court shall specify—

- (a) the period of time spent in custody awaiting extradition, and
- (b) the date of commencement of the sentence in accordance with subsection (1C).

(1C) The date of commencement of the sentence is to be a date the relevant number of days earlier than the date the sentence would have commenced had the person not spent time in custody awaiting extradition.

(1D) In subsection (1C), “the relevant number of days” means the number of days in the period specified under subsection (1B)(a).”

(4) After subsection (2) there is inserted—

“(2A) In this section, “category 1 territory” means a territory designated under the Extradition Act 2003 for the purposes of Part 1 of that Act.”

(5) Subsection (3) is repealed.

173 Discount on sentence for time spent in custody awaiting extradition: Northern Ireland

(1) In section 38 of the Prison Act (Northern Ireland) 1953 (arrest, etc, of persons unlawfully at large), for subsection (3) there is substituted—

“(3) The provisions of subsection (2) shall not apply to any period during which any such person—

- (a) is detained in pursuance of any other sentence of any court in the United Kingdom in a prison or other institution, or
- (b) is kept in custody in a category 1 territory before, and only for the purpose of, being extradited to the United Kingdom to serve the term of imprisonment or detention referred to in that subsection,

but shall apply in addition to any other provisions of this Act imposing any punishment for an escape.

- (3A) In subsection (3) “category 1 territory” means a territory designated under the Extradition Act 2003 for the purposes of Part 1 of that Act.”
- (2) In section 26 of the Treatment of Offenders Act (Northern Ireland) 1968 (duration of sentence), at the end of subsection (2A) there is inserted “; or
- (c) any period during which he was in custody in a category 1 territory with a view to his being extradited to the United Kingdom to be tried or sentenced for that offence (and not for any other reason).

In paragraph (c) “category 1 territory” means a territory designated under the Extradition Act 2003 for the purposes of Part 1 of that Act.”

Procedure rules

174 Criminal Procedure Rules to apply to extradition proceedings etc

- (1) In section 68 of the Courts Act 2003 (Criminal Procedure Rules: meaning of “criminal court”), at the end there is inserted—
- “(c) the High Court in relation to its jurisdiction under the Extradition Act 2003.”
- (2) In section 1 of the Civil Procedure Act 1997 (Civil Procedure Rules), in subsection (1) (b), after “the High Court” there is inserted “except in relation to its jurisdiction under the Extradition Act 2003”.
- (3) In section 157 of the Extradition Act 2003 (production orders), after subsection (8) there is inserted—
- “(9) Criminal Procedure Rules may make provision about applications under this section to a circuit judge.”
- (4) In section 160 of that Act (warrants: special procedure material and excluded material), after subsection (9) there is inserted—
- “(10) Criminal Procedure Rules may make provision about applications under this section to a circuit judge.”