

# EXTRADITION ACT 2003

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## EXPLANATORY NOTES

### TERRITORIAL APPLICATION: WALES

#### Part 1

#### Extradition to Category 1 Territories

##### *Section 1: Extradition to category 1 territories*

16. This section defines the territories that are covered by Part 1 of the Act.
17. *Subsections (1) and (2)* explain that Part 1 of the Act deals with extradition from the United Kingdom to those territories designated as category 1 territories by order made by the Secretary of State. Under *subsection (3)* a territory may not be designated as a category 1 territory if the death penalty is retained as a punishment under the general criminal law of that country.

##### *Section 2: Part 1 warrant and certificate*

18. This section sets out the arrangements for certifying a Part 1 warrant when it is received by the designated authority (defined below).
19. *Subsection (2)* defines a Part 1 warrant as an arrest warrant which has been issued by a judicial authority in the relevant category 1 country. It must contain either the statement given in *subsection (3)* and the information in *subsection (4)*, or the statement given in *subsection (5)* and the information in *subsection (6)*.
20. The subsection (3) statement must state that the person in question is accused in the territory issuing the warrant of the commission of a specified offence and that the warrant has been issued for the purposes of arrest and prosecution. The information required by subsection (4) is:
  - details of the person's identity;
  - details of any other warrant relating to the same offence issued in the requesting country;
  - details of the circumstances surrounding the alleged commission of the offence, including the person's alleged conduct, where and when the offence allegedly took place and the applicable provision of the law in the requesting country;
  - details of the sentence which could be imposed if the person is ultimately convicted of the offence.
21. The subsection (5) statement must state that the person is unlawfully at large after conviction of a specified offence by a court in the territory issuing the warrant, and that the warrant has been issued for the purposes of his being sentenced or serving a custodial sentence in respect of that offence. The information required by subsection (6) is:
  - details of the person's identity;

- details of the conviction;
  - details of any other warrant relating to the same offence issued in the requesting country;
  - where the person has not yet been sentenced for the offence, details of the sentence which could be imposed if the person is ultimately convicted of the offence;
  - where the person has already been sentenced for the offence, details of the sentence which has been imposed.
22. *Subsection (7)* gives the designated authority power to issue a certificate if it believes that the Part 1 warrant has been issued by a judicial authority in the category 1 territory which has the function of issuing arrest warrants in that territory. *Subsection (8)* requires the certificate to state that the authority has the function referred to in subsection (7).
23. *Subsection (9)* defines the designated authority as being the authority that has been specified in an order made by the Secretary of State to perform this role. *Subsection (10)* enables more than one authority to be designated and enables an order to specify authorities for different parts of the United Kingdom. (The authorities for the United Kingdom are intended to be the National Criminal Intelligence Service and, in Scotland, the Crown Office.)

### ***Section 3: Arrest under certified Part 1 Warrant***

24. This section sets out the procedure for arrest on the basis of a certified Part 1 warrant.
25. *Subsection (2)* provides that an arrest on the basis of a Part 1 warrant can be made by a police constable or customs officer anywhere in the United Kingdom. A warrant can also be executed by a service policeman, but only if the person arrested is subject to the relevant service law, and in a place where the service policeman would have the authority to arrest the person under that law (*subsections (3), (4) and (6)*). The arresting officer need not have the warrant in his possession at the time of arrest in order to make that arrest (*subsection (5)*).

### ***Section 4: Person arrested under Part 1 warrant***

26. This section applies when a person has been arrested under the powers conferred in section 3 (*subsection (1)*).
27. *Subsection (2)* requires a copy of the warrant to be given to the arrested person as soon as is practicable after his arrest. If this requirement is not met and the person applies to the judge, the judge may order the person's discharge (*subsection (4)*).
28. *Subsection (3)* requires the arrested person to be brought before the appropriate judge (defined in section 67) as soon as practicable. If this requirement is not met and the arrested person applies to the judge, the judge must order the person's discharge (*subsection (5)*). A person is considered to be in legal custody until he is brought before the judge or discharged (*subsection (6)*).

### ***Section 5: Provisional arrest***

29. This section sets out the procedure for arrest where there are reasonable grounds to believe that a Part 1 warrant has been, or shortly will be, issued by a recognised authority in a category 1 territory.
30. *Subsection (1)* describes who may make an arrest in these circumstances. As with an arrest under section 3, a constable or a customs officer may make a provisional arrest anywhere in the United Kingdom. A service policeman may arrest a person who is subject to the relevant service law, in a place where he would have the authority to arrest that person under that law (*subsections (2) to (5)*).

### **Section 6: Person arrested under section 5**

31. This section applies when a person has been arrested under the powers conferred in section 5 (*subsection (1)*).
32. *Subsection (2)* requires any person provisionally arrested to be brought, within 48 hours of arrest (*subsection (3)*), before the appropriate judge. Specific documents must also be produced to the judge within this period, being the relevant Part 1 warrant and certificate (as described in section 2) (*subsection (4)*). If this requirement is not met and the arrested person applies to the judge, the judge must order the person's discharge (*subsection (6)*).
33. Under *subsection (5)* the person must be given a copy of the Part 1 warrant as soon as practicable after his arrest. However, if this requirement is not met and the person applies to the judge, the judge may order the person's discharge under *subsection (7)*. A person is considered to be in legal custody until he is brought before the judge or discharged (*subsection (6)*).

### **Section 7: Identity of person arrested**

34. This section requires the judge to establish that the person brought before him is the person in respect of whom the warrant was issued.
35. *Subsection (1)* explains that this section applies where a person who has been arrested, either under a Part 1 warrant or provisionally, is brought before the judge. *Subsection (2)* requires the judge to decide if the person brought before him is the person in respect of whom the warrant was issued. The judge is required to make this decision on the balance of probabilities (*subsection (3)*). If the judge decides the person brought before him is not the person in respect of whom the warrant was issued, then he must order his discharge (*subsection (4)*). If the judge decides the person brought before him is the person in respect of whom the warrant was issued, then he must proceed under the provisions of section 8 (*subsection (5)*).
36. *Subsection (6)* gives the judge the same powers (as nearly as possible) as a magistrates' court would have if the proceedings were a summary trial in England and Wales. In Scotland the judge is to have the same powers (as nearly as possible) as if the proceedings were summary proceedings (*subsection (7)*). In Northern Ireland the judge has the same powers (as nearly as possible) as a magistrates' court would have if the proceedings were the hearing and determination of a complaint (*subsection (8)*). These powers include the power to adjourn the proceedings. If the judge does adjourn the proceedings he must remand the arrested person on bail or in custody (*subsection (9)*). If he remands the person in custody he may subsequently grant him bail (*subsection (10)*).

### **Section 8: Remand etc.**

37. This section deals with the arrangements for the remand of the arrested person and the judge's duty to inform the person of the contents of the warrant, and to explain that the person may consent to his extradition.
38. *Subsection (1)* requires the judge to:
  - fix a date for the extradition hearing. The date must be within 21 days of arrest (*subsection (4)*). This period can be extended by the judge where it is in the interests of justice (*subsection (5)*). If the hearing does not begin on or before the fixed date, and no reasonable cause is shown for the delay, then the judge must order the person's discharge (*subsections (6) to (8)*);
  - inform the person of the contents of the warrant;
  - give the person the required information about consent. This is outlined below;
  - remand the person in custody or on bail. The judge may also grant bail to a person originally remanded in custody (*subsection (2)*).

39. Under *subsection (3)* the required information about consent is:
- that the person may consent to his extradition;
  - an explanation of the effect of giving consent and the procedure that will apply (this is explained in section 45);
  - that consent must be given before the judge and is irrevocable.

### ***Section 9: Judge's powers at extradition hearing***

40. The section provides for the powers available to the judge at the extradition hearing under this Part of the Act.
41. The powers available to the judge at an extradition hearing in England & Wales are (as nearly as possible) the same as those available to a magistrates' court at a summary trial in England and Wales. In Scotland the judge has the same powers (as nearly as possible) as if the proceedings were summary proceedings; in Northern Ireland the judge has the same powers (as nearly as possible) as a magistrates' court would have in the hearing and determination of a complaint (*subsections (1) to (3)*). The judge therefore has the power to adjourn the hearing and remand a person in custody or on bail (*subsections (4) and (5)*).

### ***Section 10: Initial stage of extradition hearing***

42. This section requires the judge to consider whether the offence specified in the warrant is an extradition offence, where a person is brought before him at an extradition hearing under this Part of the Act.
43. If the judge is satisfied that the offence is an extradition offence then he must proceed to consider whether there are any statutory bars to extradition (*subsection (4)*), under the provisions of section 11. If the judge decides that the offence is not an extradition offence then he must order the person's discharge (*subsection (3)*).

### ***Section 11: Bars to extradition***

44. This section establishes a number of statutory bars to extradition. The judge must consider whether any of these bars prevent the extradition of the person. The person must be discharged if any of the bars are applicable.
45. The bars are:
- the rule against double jeopardy;
  - extraneous considerations;
  - the passage of time;
  - the person's age;
  - hostage-taking considerations;
  - speciality;
  - the person's earlier extradition to the United Kingdom from another category 1 territory;
  - the person's earlier extradition to the United Kingdom from a non-category 1 territory.
46. **Sections 12 to 19** explain what is meant by each bar (*subsection (2)*). *Subsection (3)* requires the judge to order the person's discharge if any of the bars in *subsection (1)* apply. If the judge decides that none of the statutory bars apply, and the person is

accused of being unlawfully at large after conviction (described in these notes as being a “conviction case”) then the judge must proceed under section 20 (*subsection (4)*). If the judge decides that none of the bars apply, and the person is accused of having committed the extradition offence (described in these notes as being an “accusation case”), then *subsection (5)* requires that the judge proceed to consider human rights issues under section 21.

### ***Section 12: Rule against double jeopardy***

47. The effect of this section is to bar the extradition of a person if he would be entitled to be discharged if charged with the offence in question in the part of the United Kingdom where the judge exercises jurisdiction, because of rules of law relating to a previous acquittal or conviction.

### ***Section 13: Extraneous considerations***

48. The effect of this section is to bar a person's extradition if it appears that the Part 1 warrant (although purporting to be issued in respect of the extradition offence) has actually been issued for the purpose of prosecuting or punishing him for reasons of his race, religion, nationality, gender, sexual orientation or political opinions. His extradition would also be barred if it appears that he would be prejudiced at trial, or his liberty restricted, for any of the same reasons.

### ***Section 14: Passage of time***

49. The effect of this section is to bar the extradition of a person where it appears that it would be unjust or oppressive to extradite him because of the time which has passed since he is alleged to have committed the extradition offence, or since he is alleged to have become unlawfully at large.

### ***Section 15: Age***

50. The effect of this section is to bar the extradition of a person who would have been under the age of criminal responsibility, had the offence occurred in the part of the United Kingdom where the hearing is taking place, at the time the extradition offence was committed.

### ***Section 16: Hostage-taking considerations***

51. A person's extradition is barred if the category 1 territory requesting extradition is a party to the Hostage-taking Convention and certain conditions apply. These are that, if extradited, communication between the person and the appropriate (consular) authorities would not be possible and the conduct constituting an extradition offence would constitute an offence under section 1 of the Taking of Hostages Act 1982 or an attempt to commit such an offence (*subsection (1)*).
52. *Subsections (2) to (4)* make interpretative provision relating to the hostage-taking bar to extradition.

### ***Section 17: Speciality***

53. The speciality rule is a long-standing protection in extradition. It prohibits a person from being prosecuted in the requesting territory after his extradition for an offence committed before his extradition. The exceptions to this rule are where the offence is that in respect of which he was extradited, where the consent of the requested state is obtained or the person has had an opportunity to leave the country to which he was extradited but has failed to do so.
54. The effect of this section is to bar extradition if there are no speciality arrangements with the category 1 territory where the Part 1 warrant was issued (*subsection (1)*).

55. *Subsection (2)* provides that there are considered to be speciality arrangements in place if a person may be dealt with in the requesting territory for an offence committed before his extradition only if the offence falls within *subsection (3)* or if the condition in *subsection (4)* is met. The offences in *subsection (3)* are:
- the offences for which the person was extradited;
  - an extradition offence disclosed by the same facts as the offence;
  - an extradition offence to which the appropriate judge has given consent under section 54;
  - an offence not punishable by imprisonment or detention;
  - an offence for which the person will not be detained in connection with his trial, sentence or appeal;
  - an offence in respect of which the person has waived his speciality protection.
56. The condition in *subsection (4)* is that the person is given the opportunity to leave the category 1 territory and does not do so within 45 days (*subsection (5)*) or leaves within that period and then returns to that country.
57. Under *subsection (6)* speciality arrangements may be made with any Commonwealth country or British overseas territory in category 1, either for a specific case or more generally. A certificate issued by or under the authority of the Secretary of State, stating the existence and terms of such arrangements, is conclusive evidence of those matters (*subsection (7)*).

### ***Section 18: Earlier extradition to United Kingdom from category 1 territory***

58. 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 (the extraditing territory), unless consent to his further extradition has been given on behalf of the extraditing territory. This applies only if the extradition arrangements between the United Kingdom and the extraditing territory require consent to be given.

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

59. A person's extradition is barred by reason of his earlier extradition to the United Kingdom from a non-category 1 territory (the extraditing territory), unless consent to his further extradition has been given on behalf of the extraditing territory. This applies only if the extradition arrangements between the United Kingdom and the extraditing territory require consent to be given to dealing with him in the United Kingdom for the offence under consideration.

### ***Section 20: Case where person has been convicted***

60. This section deals with conviction cases – that is those where the person has already been tried for the offence for which extradition is sought and has been found guilty.
61. *Subsection (1)* requires the judge to consider whether the person was convicted in his presence or in his absence. If the person was convicted in his presence, the judge must proceed with the extradition hearing under section 21 (*subsection (2)*).
62. If the person was convicted in his absence, the judge must then decide whether he deliberately absented himself from the trial (*subsection (3)*). If the person deliberately absented himself from his trial, the judge must proceed with the extradition hearing (*subsection (4)*).

63. If the person did not deliberately absent himself from his trial, the judge must then decide whether he would be entitled to a retrial or review amounting to a retrial on return to the requesting territory (*subsection (5)*).
64. If the person would be entitled to such a retrial, the judge must proceed with the extradition hearing. If he would not, the judge must order the person's discharge (*subsections (6) and (7)*).
65. *Subsection (8)* provides that a person's extradition must not be ordered unless retrial proceedings would include specific rights for the person. These include the right to defend himself, be provided with free legal aid if necessary and to examine witnesses called to give evidence against him. These rights can be found in Article 6.3 of the European Convention on Human Rights.

### ***Section 21: Human rights***

66. Under this section the judge must decide whether the person's extradition would be compatible with his human rights. The rights in question are those set out in the European Convention on Human Rights, incorporated into United Kingdom domestic legislation by the Human Rights Act 1998. The judge must order the person's extradition if it would be compatible with these rights (*subsection (3)*), but must order his discharge if it would not (*subsection (2)*). If the judge orders the person's extradition, he must remand the person in custody or on bail pending the extradition (*subsections (4) and (5)*).

### ***Section 22: Person charged with offence in United Kingdom***

67. This section applies if a person who is subject to an extradition request has also been charged with an offence in the United Kingdom.
68. *Subsection (1)* explains that this section applies if the judge is informed that the person has been charged with an offence in the United Kingdom. In these circumstances the judge must adjourn the extradition hearing until (*subsection (2)*):
  - the charge is disposed of (see section 214 below) or withdrawn;
  - proceedings on the charge are discontinued; or
  - proceedings on the charge are discontinued with the option that a fresh prosecution on the same charge could be brought in the future.
69. Where the person is given a custodial sentence for the United Kingdom offence, the extradition hearing can be adjourned until the sentence has been served (*subsection (3)*). If the judge has considered the question of double jeopardy under section 11 before adjourning the hearing, he must consider it again (*subsection (4)*).

### ***Section 23: Person serving sentence in United Kingdom***

70. This section applies if the judge is informed that the person who is the subject of a Part 1 warrant is also serving a custodial sentence in the United Kingdom (*subsection (1)*). Under these circumstances the judge is allowed to adjourn the extradition hearing until the sentence has been served (*subsection (2)*).

### ***Section 24: Extradition request***

71. This section deals with the situation where, during the extradition hearing, the judge is notified that the Secretary of State has issued a certificate under section 70 in respect of an extradition request. This section applies where that request has not yet been disposed of and an order has been made under section 179(2) for proceedings on the Part 1 warrant to be deferred until the category 2 request has been disposed of (*subsection (1)*).

(Section 213 below defines the disposal of a Part 1 warrant and of an extradition request.)

72. The judge is required, in these circumstances, to remand the person in custody or on bail. If he is remanded in custody the person may later be granted bail (*subsections (2) and (3)*).

### ***Section 25: Physical or mental condition***

73. This section sets out what is to happen if the judge decides, at any time during the extradition hearing, that the person is not physically or mentally fit to be extradited (*subsection (1)*).
74. If it appears to the judge that, by reason of the person's mental or physical condition, it would be unjust or oppressive to extradite him (*subsection (2)*), the judge must either order the person's discharge or adjourn the hearing. The hearing would continue at such time as the person's condition has improved to the extent that extradition would no longer be unjust or oppressive (*subsection (3)*).

### ***Section 26: Appeal against extradition order***

75. This section gives a person a right to appeal against the decision of the judge to order extradition under Part 1 of the Act.
76. *Subsection (1)* explains that a person may appeal to the High Court against a decision of a judge to order extradition, except where (*subsection (2)*) the person has consented to his extradition (see sections 46 and 48). Appeals may be made on a question of law or fact (*subsection (3)*) and notice of an appeal must be given to the High Court within 7 days of the extradition order being made by the judge (*subsection (4)*).

### ***Section 27: Court's powers on appeal under section 26***

77. This section sets out the powers available to the High Court following an appeal against the extradition order.
78. The High Court may allow the appeal (*subsection (1)*) only if the conditions in *subsection (3)* or those in *subsection (4)* are met (*subsection (2)*). The conditions in *subsection (3)* are that the judge ought to have decided a question before him at the extradition hearing differently and, if he had done so, he would have been required to order the person's discharge.
79. The conditions in *subsection (4)* are that:
- an issue is raised or evidence is available that was not raised or available at the extradition hearing;
  - the issue or evidence would have resulted in the judge making a different decision at the hearing; and
  - this would have resulted in the judge ordering the person's discharge.
80. The High Court must order the person's discharge and quash the order for his extradition if it allows the appeal (*subsection (5)*).

### ***Section 28: Appeal against discharge at extradition hearing***

81. This section gives an authority of the requesting state a right to appeal against a decision at the extradition hearing to order the person's discharge.
82. *Subsections (1), (3) and (4)* allow the authority that issued the Part 1 warrant to appeal to the High Court against the decision that resulted in the order to discharge the person. The appeal may be on any question of law or fact. The exception to this right of appeal,

*These notes refer to the Extradition Act 2003 (c.41)  
which received Royal Assent on 20th November 2003*

in *subsection (2)*, is when the discharge was made under section 41, i.e. as a result of the warrant being withdrawn.

83. The court must be notified of an appeal within 7 days of the order for the person's discharge being made (*subsection (5)*).

### ***Section 29: Court's powers on appeal under section 28***

84. This section sets out the powers available to the High Court following an appeal against any order to discharge the person at the extradition hearing.

85. The High Court may allow the appeal (*subsection (1)*) only if the conditions in *subsection (3)* or those in *subsection (4)* are met (*subsection (2)*). The conditions in *subsection (3)* are that the judge ought to have decided a question before him at the extradition hearing differently and, if he had done so, he would not have been required to order the person's discharge.

86. The conditions in *subsection (4)* are that:

- an issue is raised or evidence is available that was not raised or available at the extradition hearing;
- the issue or evidence would have resulted in the judge making a different decision at the hearing; and
- as a result the judge would not have been required to order the person's discharge.

87. If the High Court allows the appeal, the order discharging the person is quashed and the case sent back to the judge with a direction to proceed as he would have been required to do if he had decided the relevant question differently. *Subsection (6)* defines a relevant question as one that resulted in the order for the person's discharge.

### ***Section 30: Detention pending conclusion of appeal under section 28***

88. This section sets out the arrangements for detaining a person if an authority of the requesting state gives notice of its intention to appeal against a decision at the extradition hearing to discharge the person.

89. *Subsection (1)* states that this section applies if, immediately after the judge orders the person's discharge, the judge is informed that the requesting authority intends to appeal under the provisions of section 28 above. The judge must remand the person in custody or on bail for so long as the appeal is pending, but he may later grant bail if the person is remanded in custody (*subsections (2)* and *(3)*). The appeal ceases to be pending, under *subsection (4)*, when the earliest of any of these applies:

- the proceedings on the appeal are discontinued;
- the High Court dismisses the appeal and the court is not immediately informed that the authority intends to apply for leave to appeal to the House of Lords (except for Scotland);
- the High Court dismisses the appeal (Scotland only – see *subsection (5)*);
- leave to appeal to the House of Lords has been granted but no appeal is brought by the authority within 28 days (except for Scotland);
- there are no further avenues of appeal available to the authority.

### ***Section 31: Appeal to High Court: time limit for start of hearing***

90. This section provides for the time limits within which the High Court must begin to hear an appeal under section 26 or 28.

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91. *Subsection (1)* states that rules of court must prescribe the period within which the High Court must begin to hear the appeal. The period will start from the date on which the person was arrested under the Part 1 warrant, or the date of provisional arrest (*subsection (2)*). The High Court must begin to hear the appeal before the end of the period (*subsection (3)*). The relevant period for these purposes is intended to be 40 days.
92. The High Court may extend the relevant period, under *subsection (4)*, where it is in the interests of justice to do so, and may do so after the period has expired (*subsection (5)*).
93. *Subsection (6)* sets out what happens if the appeal is against a decision to order extradition (under section 26) and the High Court does not begin to hear the case within the set time period. In these circumstances the appeal will be considered to have been allowed, the person must be discharged and the order for the person's extradition quashed. If the appeal is by an authority of the requesting state (under section 28) and the High Court does not begin to hear the case within the set time period, the appeal will be considered to have been dismissed (*subsection (7)*).

### ***Section 32: Appeal to House of Lords***

94. This section provides a right of appeal to the House of Lords
95. An appeal can be made to the House of Lords from a decision of the High Court on an appeal brought under section 26 or 28 (*subsection (1)*). It can be made by either the person who has been arrested under the Part 1 warrant or the authority that issued the warrant (*subsection (2)*). But it can be made only with the leave of the High Court or the House of Lords (*subsection (3)*). Under *subsection (4)*, leave may be granted only if:
  - the High Court has certified that there is a point of law of general importance; and
  - the court granting leave considers the point to be one which should be considered by the House of Lords.
96. An application for leave to the High Court must be made within 14 days of the date that the court makes its decision (*subsection (5)*); an application for leave to the House of Lords must be made within 14 days of a High Court decision to refuse leave (*subsection (6)*). An appeal to the House of Lords must be brought within 28 days of leave being granted (*subsection (7)*). If it is not, the appeal is deemed to have been dismissed immediately after the end of the period permitted under *subsection (7)* (*subsection (8)*), ignoring any powers of a court to extend the period for bringing the appeal or to grant leave to take a step out of time (*subsection (9)*). The High Court has the power to grant bail to a person appealing or seeking leave to appeal under this section (*subsection (10)*). *Subsections (11)* and *(12)* apply provisions of the Appellate Jurisdiction Act 1876 which concern the composition of the House of Lords for the hearing and determination of appeals.
97. *Subsection (13)* states that this section does not apply to Scotland. This is because the High Court of Justiciary (see section 216 below) is the final court of criminal appeal in Scotland and so the House of Lords has no jurisdiction in Scottish criminal matters.

### ***Section 33: Powers of House of Lords on appeal under section 32***

98. This section sets out the powers available to the House of Lords on an appeal by the person who is the subject of the request or by the authority of the requesting state.
99. *Subsections (1)* to *(3)* allow the House of Lords to allow or dismiss an appeal under section 32 made by a person who is the subject of an extradition order. If the appeal is allowed an order for the person's discharge must be made and the order for his extradition quashed.
100. *Subsections (4)* and *(5)* provide that if the House of Lords allows an appeal by the authority of the requesting state against a decision of the High Court to discharge a

person, the House of Lords is required to quash the order discharging the person and order his extradition.

101. *Subsections (6) to (9)* apply where the authority of the requesting state appeals successfully to the House of Lords against a decision of the High Court to dismiss its earlier appeal against the discharge of a person at the extradition hearing. Where the judge would have been required to order the person's extradition if he had reached a different decision on the question which led to the order for the person's discharge (in other words, if it was the final matter on which the judge was required to take a view), then the House of Lords must quash the discharge order and order the person to be extradited. Otherwise, the House of Lords must remit the case to the judge and require him to proceed as he would have been required to do if he had reached a different decision on the question which resulted in the person's discharge.

### ***Section 34: Appeals: general***

102. This section provides that a decision of a judge under this Part can be questioned only by means of the appeals procedure set out in this Part of the Act.

### ***Section 35: Extradition where no appeal***

103. This section gives the time limit for a person's extradition where he does not appeal against the extradition order.
104. *Subsection (1)* states that this section applies where the judge has ordered extradition and no appeal has been lodged within 7 days, ignoring any powers of a court to extend the period for giving notice of appeal or to grant leave to take a step out of time (see *subsection (6)*). It does not apply where a person's extradition is ordered with his consent, under the provisions of section 46 or 48 (*subsection (2)*). *Subsections (3) to (5)* provide that the person must be extradited within 10 days of the date the judge makes the order, or if the judge and the requesting state agree a later date, 10 days starting from the later date. If the deadlines are not complied with the judge must, on the person's application, order his discharge, unless reasonable cause is shown for the delay.

### ***Section 36: Extradition following appeal***

105. This section provides the time limit for extraditing a person subject to an extradition order where an appeal has been brought and the outcome is that he is to be extradited.
106. *Subsection (1)* states that this section applies where an appeal to the High Court under section 26 has been brought and the result of the final decision on the appeal is that the person is to be extradited. *Subsections (2) and (3)* require the person to be extradited within 10 days of the date on which the appeal decision becomes final or proceedings are discontinued. However, if the relevant court which made the appeal decision and the requesting state agree a later date, it must be 10 days starting from the later date. If the deadlines are not complied with the judge must, on the person's application, order his discharge, unless reasonable cause is shown for the delay (*subsection (8)*). *Subsection (4)* defines the relevant court as the High Court, where there is no appeal to the House of Lords, or the House of Lords if there is such an appeal. *Subsection (5)* explains that the decision of the High Court becomes final:
- when the period permitted for applying to the High Court for leave to appeal to the House of Lords ends, if no application for leave is made;
  - when the period permitted for applying to the House of Lords for leave to appeal to it ends, if leave is refused by the High Court and there is no application for leave to the House of Lords;
  - when the House of Lords refuses leave to appeal;

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- after 28 days from the day on which leave to appeal to the House of Lords is granted, if no such appeal is brought in that time.
107. For the purposes of determining when the decision of the High Court is final, any powers of a court to extend the period for applying for leave to appeal or to grant leave to take a step out of time must be ignored (*subsection (6)*).
108. The decision of the House of Lords is immediately final (*subsection (7)*).
109. *Subsection (9)* includes the relevant modifications for this section to apply to Scotland. For this purpose the relevant court in this section will always be the High Court and all references to the House of Lords are omitted.

***Section 37: Undertaking in relation to person serving sentence in United Kingdom***

110. This section allows the appropriate judge to make an extradition order subject to a condition that extradition will not take place until he has received certain undertakings on behalf of the category 1 territory that submitted the extradition request. This section applies if the person is serving a custodial sentence in the United Kingdom (*subsection (1)*). However, this section does not apply if the extradition order was made under section 46 or 48 after the person has consented to his extradition (*subsection (2)*).
111. The judge can specify the terms of any such undertaking. The terms include terms that the person is kept in custody during the entire proceedings in the category 1 territory. He may also require the person to be returned to the United Kingdom to serve his domestic sentence, on conclusion of those proceedings or after serving any sentence(s) imposed in the category 1 territory (*subsections (3) to (5)*).
112. *Subsections (6) to (8)* apply where the judge makes an order subject to the receipt of an undertaking. Where the undertaking is not received within 21 days, and the person applies to the judge, the judge must order the person's discharge (*subsection (7)*).
113. Where the judge imposes a condition on an extradition order under the power given by this section, and section 35 (extradition where no appeal) applies, the 10-day period described in section 35 begins on the day the judge receives the undertaking. Where a condition is imposed and section 36 (extradition following appeal) applies, the 10 days start from the day that the appeal decision becomes final or, if later, the day the judge receives the undertaking (*subsection (8)*).

***Section 38: Extradition following deferral for competing claim***

114. This section applies where a person's extradition has been ordered under Part 1 but deferred, in the event of a competing Part 1 warrant or category 2 extradition request, and the judge subsequently orders that extradition to go ahead under section 181 (*subsection (1)*). However, this does not apply if the original order for the person's extradition was made under section 46 or 48 after he had consented to his extradition (*subsection (2)*).
115. Where these circumstances occur and no appeal is made (see section 35, extradition where no appeal), the 10-day period described in section 35 begins on the day the judge makes the order under section 181 (*subsection (3)*). Where this situation occurs and there is an appeal (see section 36, extradition following appeal), the 10 days start from the day that the appeal decision becomes final or, if later, the day the judge makes the order under section 181 (*subsection (4)*).

***Section 39: Position where asylum claimed***

116. This section sets out what is to happen where a person makes an asylum claim at any time during extradition proceedings under this Part of the Act. This section applies where such a claim is made by the person at any time between the issue of a certificate

on a Part 1 warrant under section 2 and the person's extradition in pursuance of that warrant (*subsections (1) and (2)*).

117. *Subsection (3)* states that the person in question must not be extradited until his asylum claim is finally determined. (Sections 35, 36, 47 and 49 set out the procedure for a person's extradition and take effect subject to this subsection.) *Subsection (4)* explains that this is also subject to section 40.
118. Under *subsection (5)* an asylum claim is finally determined, if it is allowed, when the Secretary of State has made this decision. Where the Secretary of State rejects the claim, it is finally determined when the Secretary of State makes his decision, if there is no right to appeal that decision. Where there is a right of appeal, the claim is finally determined when the period allowed to appeal against the decision has lapsed (and no appeal has been brought), or when the appeal is finally determined, withdrawn or abandoned (*subsection (6)*). An appeal has been finally determined when a final decision on it has been made, it has been withdrawn or abandoned and there is no further possibility of appeal or applying for leave to appeal. The remittal of an appeal does not amount to final determination (*subsections (7) and (8)*). Under *subsection (9)* the possibility of leave to appeal out of time against the Secretary of State's decision on an asylum claim must be ignored.

#### ***Section 40: Certificate in respect of asylum claimant***

119. *Subsection (1)* provides that a person's extradition is not prevented (under section 39) before his asylum claim is finally determined where the Secretary of State has certified that certain conditions apply.
120. The conditions set out in *subsection (2)* are that the requesting category 1 territory has accepted responsibility for considering the person's asylum claim and that the person is not a citizen of that country.
121. Alternatively, under *subsection (3)*, the conditions are that the Secretary of State believes that the person is not a citizen of the requesting territory, that he will not face persecution if returned to that territory and that he would not be removed from that territory other than in accordance with the Refugee Convention. *Subsection (4)* provides definitions to the terms used in this section.

#### ***Section 41: Withdrawal of warrant before extradition***

122. This section applies where the judge is informed that a Part 1 warrant is withdrawn before the person is extradited or discharged.
123. In these circumstances the judge is required to order the person's discharge (*subsection (3)*). *Subsection (4)* requires the judge to inform the person of his discharge as soon as practicable if the person is not present when it is ordered.

#### ***Section 42: Withdrawal of warrant while appeal to High Court pending***

124. This section applies if the High Court is informed that a Part 1 warrant is withdrawn before the end of the appeal hearing.
125. Where these circumstances occur and the appeal is brought by the person (under section 26), the court is required to order his discharge and quash the extradition order. If the appeal has been brought by the issuing authority (under section 28), the court must dismiss the appeal (*subsection (3)*). *Subsection (4)* requires the court to inform the person of his discharge as soon as practicable if he is not present when it is ordered.

#### ***Section 43: Withdrawal of warrant while appeal to House of Lords pending***

126. This section applies if the House of Lords is informed that a Part 1 warrant is withdrawn before the House of Lords has given its decision on the case.

127. Where these circumstances occur and the appeal is brought by the person, the House of Lords is required to order his discharge and quash the extradition order if one has been made (*subsection (3)*). If the appeal has been brought by the issuing authority the House of Lords must dismiss the appeal under *subsection (4)*. *Subsection (7)* requires the House of Lords to inform the person of his discharge as soon as practicable if he is not present when it is ordered.

#### ***Section 44: Competing Part 1 warrants***

128. This section relates to the situation where two Part 1 warrants are issued in respect of the same person.
129. Under *subsections (1) to (3)* this section applies if, at any time during proceedings on a Part 1 warrant before the person is extradited or discharged, the judge is informed that:
- another Part 1 warrant has been issued in respect of the same person;
  - the judge (or another judge in the United Kingdom) is required to deal with the other warrant; and
  - the competing warrant has not yet been disposed of.
130. The judge may order proceedings on the warrant under consideration to be deferred pending disposal of the other warrant. Where an order has already been made for the person's extradition on the basis of the first warrant the judge may order that extradition be deferred pending disposal of the other warrant (*subsection (4)*). *Subsection (5)* means that the judge, if he makes such an order, is required to remand the person in custody or on bail, if the person is not already in custody or on bail. If the person is remanded in custody he may later be granted bail (*subsection (6)*).
131. In deciding whether to make an order under *subsection (4)* the judge must take account of the following issues in particular (*subsection (7)*):
- the relative seriousness of the offences;
  - the place each offence was committed or is alleged to have been committed;
  - the date each warrant was issued; and
  - whether the person is accused of the offences or unlawfully at large after conviction of an offence.

#### ***Section 45: Consent to extradition***

132. *Subsections (1) and (2)* allow a person arrested under Part 1 of the Act to consent to extradition to the category 1 territory issuing the warrant. A person who consents is considered to have waived his right to speciality protection (as to which, see paragraph 53 above) and can therefore be proceeded against in the category 1 territory for any offences committed before his extradition (*subsection (3)*). Consent must be given to the appropriate judge and recorded in writing; once given, consent cannot be revoked (*subsection (4)*).
133. *Subsections (5) and (6)* provide that a person may only give his consent to extradition under certain circumstances. These are that the person is legally represented at the time he consents, or that he has been informed of his right to apply for legal aid but has failed to exercise this right, or legal aid has been refused or withdrawn. This has the effect that no person can consent to his extradition without having received, or having had the opportunity to receive, legal advice. *Subsections (7) and (8)* provide definitions for the purposes of this section.

***Section 46: Extradition order following consent***

134. This section provides for the extradition of a person who consents to his extradition.
135. If a person consents under section 45 the judge must remand the person in custody or on bail, although he may later grant bail if he initially remands the person in custody (*subsections (1) to (3)*). The judge does not have to set a date for the extradition hearing if he has not already done so (*subsection (4)*). If the extradition hearing has started, the judge is no longer required to proceed with it (*subsection (5)*). He must order the person's extradition within 10 days of consent, subject to sections 48 and 51 below. If this is not done the judge must, on the person's application, discharge him (*subsections (6) to (8)*).

***Section 47: Extradition to category 1 territory following consent***

136. This section applies when a judge has ordered a person's extradition under section 46, following that person's consent to extradition (*subsection (1)*). Extradition must, under *subsection (2)*, take place within the required period. This is 10 days from the date the order is made or, if the judge and the category 1 territory agree a later date, 10 days from the agreed date (*subsection (3)*).
137. If the person has not been extradited within the 10-day period, the judge must, on the person's application, order his discharge, unless reasonable cause is shown for the delay (*subsection (4)*).
138. *Subsection (5)* explains what is to happen when, after the judge has ordered a person's extradition following their consent, the relevant Part 1 warrant is withdrawn. Where the judge is informed of the withdrawal and the person has not yet been extradited, the requirement in *subsection (2)* for the person to be extradited within the required period no longer applies and the judge must order the person's discharge.

***Section 48: Other warrant issued following consent***

139. This section provides for the situation where the person has consented to his extradition under section 45 and a second Part 1 warrant is issued in respect of him before the judge orders his extradition (*subsections (1) and (2)*).
140. The judge is not required to order the person's extradition, but he may do so or he may postpone the proceedings until the other warrant has been disposed of (*subsection (3)*). This is subject to section 51 below (*subsection (4)*). In deciding whether or not to order extradition he must also take into account (*subsection (5)*) the following issues in particular:
- the relative seriousness of the offences;
  - the place where each offence was committed or is alleged to have been committed;
  - the date each warrant was issued; and
  - whether the person is accused of having committed the offences or of being unlawfully at large after conviction.

***Section 49: Other warrant issued: extradition to category 1 territory***

141. This section applies when a judge is informed that another Part 1 warrant has been issued and has ordered a person's extradition under section 48(3)(a), following that person's consent to extradition on the basis of the first warrant (*subsection (1)*). Extradition must, under *subsection (2)*, take place within the required period. This is 10 days from the date the order is made or, if the judge and the category 1 territory agree a later date, 10 days from the agreed date (*subsection (3)*).

142. If the person has not been extradited within the relevant 10-day period, the judge must, on the person's application, order his discharge, unless reasonable cause is shown for the delay (*subsection (4)*).
143. *Subsection (5)* explains what is to happen when, after the judge has ordered a person's extradition following his consent, the first Part 1 warrant is withdrawn. Where the judge is informed of the withdrawal and the person has not yet been extradited, the requirement in subsection (2) for the person to be extradited within the required period no longer applies. Furthermore, the judge must order the person's discharge.

***Section 50: Other warrant issued: proceedings deferred***

144. The context of this section is that a person has consented to his extradition under a Part 1 warrant but has not yet been extradited. This section applies if the judge is then informed that a competing Part 1 warrant has been issued and he orders, under section 48(3)(b), that further proceedings on the first warrant be deferred until the competing warrant has been disposed of (*subsection (1)*).
145. In these circumstances the judge must remand the person in custody or on bail. If he remands the person in custody he may later grant bail (*subsections (2) and (3)*).
146. If an order is subsequently made under section 180 for the deferred proceedings on the first warrant to be resumed, the judge then has 10 days from the time that order is made to order the person's extradition, under *subsection (4)*.

***Section 51: Extradition request following consent***

147. This section applies if the person consents to his extradition under a Part 1 warrant but, before the judge orders his extradition, the judge is informed that an extradition request in respect of that person has been made by a category 2 territory (*subsections (1) and (2)*).
148. If the judge has been so informed he must not make an order for extradition to the category 1 territory on the basis of consent, until he is informed what order has been made under section 179(2) (*subsection (3)*). (Section 179(2) provides for the Secretary of State to order which of the Part 1 warrant and the Part 2 request is to proceed first.)
149. If the order made under section 179(2) is for proceedings on the Part 1 warrant to be deferred until the Part 2 request has been disposed of, the judge must remand the person in custody or on bail (*subsection (4)*). If he remands the person in custody he may later grant bail (*subsection (5)*). If an order is subsequently made under section 180 for the resumption of deferred proceedings on the Part 1 warrant, the judge then has 10 days from the time that order is made to order the person's extradition, under *subsection (6)*.
150. If, however, the order made under section 179(2) is for proceedings on the competing request to be deferred until the Part 1 warrant has been disposed of, the judge must, under *subsection (6)*, order the person's extradition to the category 1 territory within 10 days of being informed of the order.

***Section 52: Undertaking in relation to person serving sentence***

151. This section applies where an extradition order is made under section 46(6) or 48(3)(a) after a person has consented to his extradition, and that person is serving a custodial sentence in the United Kingdom. (*subsection (1)*). It allows the judge to make an extradition order subject to a condition that extradition will not take place until he has received certain undertakings on behalf of the category 1 territory that submitted the extradition request (*subsection (2)*).
152. The judge can specify the terms of any such undertaking, including a requirement that the person is kept in custody during the entire proceedings in the category 1 territory. The judge may also require the person to be returned to the United Kingdom to serve his

domestic sentence. This would apply on conclusion of the proceedings in the category 1 territory in respect of which the extradition order was made, or after serving any sentence(s) imposed in the category 1 territory in respect of either the extradition offence or any other offence in respect of which he is permitted to be dealt with in the category 1 territory (*subsections (3) and (4)*).

153. Where the judge imposes a condition on an extradition order under the power given by this section, the 10-day period in which the person is to be extradited (under section 47(2) or 49(2)) begins on the day the judge receives the undertaking (*subsection (5)*).

### ***Section 53: Extradition following deferral for competing claim***

154. This section applies where a person has consented to his extradition, which has then been deferred because of a competing Part 1 warrant or category 2 extradition request, and the judge subsequently orders that extradition is to go ahead under section 181(2) (*subsection (1)*).
155. Where these circumstances occur the 10-day period in which the person is to be extradited (under section 47(2) or 49(2)) begins on the day the judge makes the order under section 181(2) (*subsection (2)*).

### ***Section 54: Request for consent to other offence being dealt with***

156. *Subsection (1)* states that this section applies if, after a person has been extradited under this Part of the Act, a judge receives a certified request from a category 1 territory asking for his consent to the person being prosecuted for an offence other than that for which the person was extradited. The relevant designated authority in the United Kingdom may, under *subsection (2)*, certify such a request if it is satisfied that it has come from the proper judicial authority for making such requests in that country.
157. The judge must then serve notice on the person that a request for consent has been received, unless it would not be practicable to do so (*subsection (4)*).
158. The consent hearing is required to begin within 21 days of the designated authority receiving the request (*subsection (5)*). The judge has the power to extend this time if he considers it to be in the interests of justice and he may do so more than once (*subsection (6)*), and even after the 21 days has passed (*subsection (7)*).
159. The judge is required to refuse consent under *subsection (8)* if the hearing has not started by the end of the given time and no extension has been granted. *Subsection (9)* allows the judge to adjourn the hearing at any time and *subsection (10)* defines the consent hearing as being that at which the judge is to consider the request for consent.

### ***Section 55: Questions for decision at consent hearing***

160. This section specifies the questions that the judge is required to decide at a consent hearing under section 54.
161. The judge must first decide whether his consent is necessary (*subsection (1)*). If he decides it is not, the judge must inform the requesting authority of this decision (*subsection (2)*). If the judge decides that consent is necessary, he must then consider whether the offence to which the request relates is an extradition offence (*subsection (3)*). If he decides that it is not an extradition offence, consent must be refused (*subsection (4)*). If, however, the judge concludes that the offence is an extradition offence, then he must decide, in accordance with *subsection (5)*, whether he would have ordered the person's extradition under sections 11 to 25 if the person were in the United Kingdom. If the judge decides that he would have done so, he must give consent (*subsection (6)*). If he decides that he would not have done so, consent must be refused (*subsection (7)*).

162. *Subsections (8) and (9) provide that consent is not required where the person has been given the opportunity to leave the territory in question and has not done so within 45 days, or has done so and then returned to that country. Subject to this exception, the judge must decide whether he is required to give consent by reference to what he believes to be the applicable law in the territory in question or the extradition arrangements between that country and the United Kingdom (subsection (10)).*

***Section 56: Request for consent to further extradition to category 1 territory***

163. This section applies if a person has been extradited to a category 1 territory and a judge receives a certified request for his consent to the person's extradition to another category 1 territory (*subsection (1)*). The relevant designated authority in the United Kingdom may, under *subsection (2)*, certify such a request if it is satisfied that it has come from the proper judicial authority for making such requests in that country.
164. The judge must then serve notice on the person that a request for consent has been received, unless it would not be practicable to do so (*subsection (4)*).
165. The consent hearing is required to begin within 21 days of the designated authority receiving the request (*subsection (5)*). The judge has the power to extend this time if he considers it to be in the interests of justice and he may do so more than once (*subsection (6)*), and even after the 21 days has passed (*subsection (7)*).
166. The judge is required to refuse consent under *subsection (8)* if the hearing has not started by the end of the given time and no extension has been granted. *Subsection (9)* provides for the judge to adjourn the hearing at any time and *subsection (10)* defines the consent hearing as being that at which the judge is to consider the request for consent.

***Section 57: Questions for decision at consent hearing***

167. This section specifies the questions that the judge is required to decide at a consent hearing under section 56.
168. The judge must first decide whether his consent is necessary (*subsection (1)*). If he decides it is not, he must inform the requesting authority of this decision (*subsection (2)*). If the judge decides that consent is necessary, he must then consider whether the offence to which the request relates is an extradition offence in relation to the further category 1 territory (*subsection (3)*). If he decides that it is not an extradition offence, consent must be refused (*subsection (4)*). If, however, the judge decides that the offence is an extradition offence, he must then decide, in accordance with *subsection (5)*, whether he would have ordered the person's extradition under sections 11 to 25 if the person were in the United Kingdom. If the judge decides that he would have done so, he must give consent (*subsection (6)*). If he decides that he would not have done so, consent must be refused (*subsection (7)*).
169. *Subsections (8) and (9) provide that consent is not required where the person has been given the opportunity to leave the territory in question and has not done so within 45 days, or has done so and then returned to that country. Subject to this exception in the given circumstances, the judge must decide whether he is required to give consent by reference to what he believes to be the applicable law in the territory in question or the extradition arrangements between that country and the United Kingdom (subsection (10)).*

***Section 58: Consent to further extradition to category 2 territory***

170. *Subsection (1) states that the section applies if a person has been extradited to a category 1 territory and the Secretary of State receives a certified request for consent to extradite the person from the category 1 territory to a category 2 territory. The relevant designated authority in the United Kingdom may, under subsection (2), certify such a request if it*

is satisfied that it has come from the proper judicial authority for making such requests in the requesting territory.

171. The Secretary of State must then serve notice on the person that a request for consent has been received, unless it would not be practicable to do so (*subsection (4)*).
172. *Subsection (5)* requires the Secretary of State to decide whether the offence is an extradition offence, as defined in section 137, in relation to the category 2 territory. If he decides that it is not, he must refuse consent (*subsection (6)*).
173. If the Secretary of State decides that the offence is an extradition offence, then he must decide whether the appropriate judge would send the case to him under sections 79 to 91 if the person were in the United Kingdom (*subsection (7)*). If he decides that the judge would not, he must refuse consent (*subsection (8)*).
174. If he decides that the judge would send him the case, the Secretary of State must then decide whether the person's extradition would have been barred, if the person were in the United Kingdom (*subsection (9)*). He must consider reasons relating to the death penalty, speciality or his earlier extradition from another territory (see sections 94 to 96). If it would not have been barred, the Secretary of State may then give his consent under *subsection (10)*. If it would have been barred, the Secretary of State must refuse consent to re-extradition to the category 2 territory (*subsection (11)*).
175. For the purposes of this section, where any of these functions are exercised solely in relation to cases in Scotland, references to the Secretary of State are to be read as references to the Scottish Ministers (*subsection (12)*).

#### ***Section 59: Return of person to serve remainder of sentence***

176. This section applies where a person who was serving a custodial sentence in the United Kingdom is extradited and then returned to this country to serve the rest of his domestic sentence (*subsection (1)*). In this situation the person is liable to be detained to serve the sentence and, if he is at large, he is to be regarded as being unlawfully at large (*subsections (2) and (3)*).
177. Time spent out of the United Kingdom in connection with the person's extradition does not count as time served towards his sentence in the United Kingdom (*subsection (4)*), unless he is acquitted of the extradition offence or any other offence for which he was allowed to be dealt with in the requesting territory (*subsection (5)*). In this situation, as set out in *subsection (6)*, time spent in custody outside the United Kingdom, in connection with these offences, does count as time served for the purposes of the United Kingdom sentence.

#### ***Section 60: Costs where extradition ordered***

178. This section allows for an order for costs to be made against a person who unsuccessfully challenges proceedings held under this Part of the Act. This is based on section 18 of the Prosecution of Offences Act 1985, which allows a court in a criminal case to make an award of costs against the accused.
179. *Subsection (1)* states that this section applies when any of these occur:
  - a person's extradition is ordered in pursuance of a Part 1 warrant;
  - the High Court dismisses a person's appeal against an order for his extradition (brought under section 26);
  - the High Court or House of Lords refuses a person leave to appeal a decision of the High Court under section 32;
  - the House of Lords dismisses a person's appeal under section 32.

180. In each of the above cases the relevant judge or court has the power to make an order for the person to pay costs that he/it considers just and reasonable (*subsections (2) and (3)*). Such an order for costs must specify the amount to be paid and may name of the person to whom the costs are to be paid (*subsection (4)*).

### ***Section 61: Costs where discharge ordered***

181. This section allows an order for costs to be made in favour of a person who is discharged or taken to be discharged under this Part of the Act.
182. *Subsection (1)* states that this section applies when any of these occur:
- a person's discharge is ordered under Part 1;
  - a person is taken to be discharged under this Part;
  - the High Court dismisses an appeal against an order for a person's discharge (brought under section 28);
  - the High Court or House of Lords refuses the authority which issued a Part 1 warrant leave to appeal a decision of the High Court under section 32;
  - the House of Lords dismisses the appeal of the authority which issued a Part 1 warrant under section 32.
183. In each of the above cases the relevant judge or court has the power to make an order for costs in the discharged person's favour (*subsections (2) to (4)*). *Subsection (5)* provides for such an order to be an order for payment of an amount to be made out of money provided by Parliament. The amount is that which the relevant judge or court think is reasonably sufficient to compensate the person in question for any expenses incurred as a result of extradition proceedings under this Part of the Act (*subsection (6)*).
184. *Subsection (7)* allows the relevant judge or court to come to a different decision where it is considered inappropriate for the person to recover the full amount under *subsection (6)*. In this situation the judge or court is required to assess the amount considered to be just and reasonable and specify that as the appropriate amount in the order. In other circumstances, according to *subsection (8)*, the appropriate amount must be specified in the order, where it is considered appropriate to do so and the discharged person agrees the amount, failing which the amount must be calculated in accordance with regulations made by the Lord Chancellor.

### ***Section 62: Costs where discharge ordered: supplementary***

185. *Subsections (1) and (2)* of this section mean that section 20(1) and (3) of the Prosecution of Offences Act 1985 apply to section 61 in the same way that they apply in relation to Part 2 of that Act. In Northern Ireland (*subsection (3)*) the relevant provision is section 7 of the Costs in Criminal Cases Act (Northern Ireland) 1968, which applies to section 61 as it does to sections 2 to 5 of that Act.

### ***Section 63: Persons serving sentences outside territory where convicted***

186. This section applies when a Part 1 warrant is issued in relation to a person who has been convicted of an offence in one territory (the convicting territory), is repatriated to another territory (the imprisoning territory) under an international arrangement to serve his sentence, and is unlawfully at large from a prison in that other territory (*subsections (1) and (2)*).
187. *Subsections (3) and (4)* modify the application of the relevant sections in this Part of the Act to allow extradition of a person in these circumstances, where the warrant is issued by the relevant authority in either the convicting territory or the imprisoning territory.

**Section 64: Extradition offences: person not sentenced for offence**

188. This section defines the different types of conduct that constitute an extradition offence in respect of category 1 territories, but only in cases where the person is accused, but not yet convicted, of the offence in the category 1 territory or has been convicted of the offence but not yet sentenced, for it (*subsection (1)*).
189. *Subsection (2)* states that conduct constitutes an extradition offence if the following conditions are satisfied. These are that:
- the conduct occurs in the category 1 territory and no part of it occurs in the United Kingdom;
  - a certificate issued by the category 1 territory confirms that the offence falls within the European framework list (see section 215);
  - the certificate confirms that the offence is punishable in the law of the category 1 territory with detention for a period of three years or more.
190. Under *subsection (3)* conduct also constitutes an extradition offence if:
- the conduct occurs in the category 1 territory;
  - the conduct would constitute an offence under the law of the United Kingdom if it occurred in the United Kingdom;
  - the conduct is punishable under the law of the category 1 territory with imprisonment for a period of 12 months or more.
191. *Subsections (4) to (6)* relate to extra-territorial conduct. This is conduct in respect of which a category 1 territory claims jurisdiction (and therefore the right to prosecute) even though the conduct did not take place on its soil. Extra-territorial conduct constitutes an extradition offence if (*subsection (4)*):
- the conduct occurs outside the category 1 territory;
  - the offence is punishable in the law of the category 1 territory with detention for a period of 12 months or more;
  - in corresponding circumstances the equivalent conduct would constitute an extra-territorial offence against the law of the United Kingdom which is punishable with imprisonment for a period of 12 months or more.
192. Under *subsection (5)* conduct constitutes an extradition offence where:
- the conduct occurs outside the category 1 territory and no part of it occurs in the United Kingdom;
  - the conduct would constitute an offence under the law of the United Kingdom punishable with imprisonment for a period of 12 months or more if it had occurred here;
  - the conduct is similarly punishable under the law of the category 1 territory.
193. Under *subsection (6)* conduct also constitutes an extradition offence if:
- the conduct occurs outside the category 1 territory and no part of it occurs in the United Kingdom;
  - the offence is punishable in the law of the category 1 territory with detention for a period of 12 months or more;
  - the conduct would constitute an offence referred to in *subsection (7)*.

194. The offences in subsection (7) are those covered by sections 51, 52, 58 and 59 of the International Criminal Court Act 2001 relating to genocide, crimes against humanity and war crimes, and ancillary offences under section 55 or 62 of that Act. For Scotland the relevant corresponding offences are those covered by sections 1 and 2 of the International Criminal Court (Scotland) Act 2001 and ancillary offences under section 7 of that Act.
195. *Subsection (8)* applies where equivalent circumstances in the United Kingdom are mentioned under subsections (3)(b), (4)(c) and (5)(b). Where the applicable conduct relates to a tax, duty, customs or exchange, subsection (8) explains that it is immaterial that United Kingdom law does not contain rules of the same kind as those of the category 1 territory.

***Section 65: Extradition offences: person sentenced for offence***

196. This section defines the different types of conduct that constitute an extradition offence in respect of category 1 territories in cases where the person is unlawfully at large, having been convicted and sentenced for the offence (*subsection (1)*).
197. In these cases conduct constitutes an extradition offence (*subsection (2)*) if:
- the conduct occurs in the category 1 territory and no part of it occurs in the United Kingdom;
  - a certificate is issued by a category 1 territory which shows that the conduct falls within the European framework list; and
  - the certificate confirms that a sentence of detention for a term of 12 months or more has been imposed.
198. *Subsection (3)* states that conduct also constitutes an extradition offence if:
- the conduct occurs in the category 1 territory;
  - the conduct would constitute an offence in the United Kingdom;
  - a sentence of detention for a period of 4 months or more has been imposed.
199. Conduct also constitutes an extradition offence if (*subsection (4)*):
- the conduct occurs outside the category 1 territory;
  - a sentence of detention for a period of 4 months or more has been imposed in the category 1 territory for the conduct,
  - the equivalent conduct would constitute an extra-territorial offence under the law of the United Kingdom in the corresponding circumstances, punishable with imprisonment for a period of 12 months or more.
200. Conduct also constitutes an extradition offence if (*subsection (5)*):
- the conduct occurs outside the category 1 territory and no part of it occurs in the United Kingdom;
  - it would constitute an offence in the United Kingdom punishable with imprisonment for a period of 12 months or more if it occurred in this country;
  - a custodial sentence of 4 months or more has been imposed in the category 1 territory for the conduct.
201. Under *subsection (6)* conduct also constitutes an extradition offence if:
- the conduct occurs outside the category 1 territory and no part of it occurs in the United Kingdom;

*These notes refer to the Extradition Act 2003 (c.41)  
which received Royal Assent on 20th November 2003*

- a custodial sentence of 4 months or more has been imposed in the category 1 territory for the conduct;
  - the conduct constitutes, or would do if it occurred in the United Kingdom, an offence referred to in *subsection (7)*.
202. The offences in subsection (7) are those covered by sections 51, 52, 58 and 59 of the International Criminal Court Act 2001 relating to genocide, crimes against humanity and war crimes, and ancillary offences under section 55 or 62 of that Act. For Scotland the relevant corresponding offences are those covered by sections 1 and 2 of the International Criminal Court (Scotland) Act 2001 and ancillary offences under section 7 of that Act.
203. *Subsection (8)* applies where equivalent circumstances in the United Kingdom are mentioned under subsections (3)(b), (4)(c) and (5)(b). Where the applicable conduct relates to a tax, duty, customs or exchange, subsection (8) explains that it is immaterial that United Kingdom law does not contain rules of the same kind as those of the category 1 territory.

### ***Section 66: Extradition offences: supplementary***

204. This section provides definitions of the terms used in sections 64 and 65 relating to extradition offences for this Part of the Act. The appropriate authority of the category 1 territory is a judicial authority which the judge believes has the function of issuing arrest warrants (*subsection (2)*).
205. *Subsection (3)* provides that the law of a territory relates only to the general criminal law of that territory. Where there is reference in either section to the relevant part of the United Kingdom this means the part of the United Kingdom where the proceedings (in which the question arises of whether conduct is an extradition offence) are taking place (*subsections (4) and (5)*).

### ***Section 67: The appropriate judge***

206. This section defines who is the appropriate judge for hearing extradition cases under this Part of the Act.
207. *Subsection (1)* defines the appropriate judge in England and Wales, Scotland and Northern Ireland. *Subsections (2) and (3)* allow the Lord Chancellor to make one or more designations under subsection (1), for all cases or for specific cases.

### ***Section 68: Other interpretative provisions***

208. This section defines the extradition hearing for the purposes of this Part of the Act.