

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

EXTRADITION ACT 2003

EXPLANATORY NOTES

TERRITORIAL APPLICATION: WALES

Part 5

Miscellaneous and General Provisions

Section 177: Extradition from British overseas territories

511. This section provides for the extension of provisions of this Act to apply to extradition from a British overseas territory to the United Kingdom, category 1 or 2 territories, the Channel Islands and the Isle of Man.
512. This can be done by Order in Council, with certain restrictions and appropriate modifications (*subsections (2) to (4)*). Extradition from a British overseas territory to the United Kingdom or any of the United Kingdom's extradition partners designated in category 1 can be subject to any provisions of the Act, including any provisions which apply to category 1 territories in the United Kingdom. However, extradition from a British overseas territory to any of the United Kingdom's extradition partners designated in category 2 or any of the Channel Islands or the Isle of Man can be subject to any provisions, except those which apply only to category 1 territories.

Section 178: Extradition to British overseas territories

513. This section provides for the extension of provisions of this Act to apply to extradition to a British overseas territory from the United Kingdom, category 1 or 2 territories, the Channel Islands and the Isle of Man.
514. This can be done by Order in Council, with certain restrictions and appropriate modifications (*subsections (2) to (4)*). Extradition to a British overseas territory from the United Kingdom or any of the United Kingdom's extradition partners designated in category 1 can be subject to any provisions of the Act, including any provisions which apply to category 1 territories in the United Kingdom. However, extradition to a British overseas territory from any of the United Kingdom's extradition partners designated in category 2 or any of the Channel Islands or the Isle of Man can be subject to any provisions, except those which apply only to category 1 territories.

Section 179: Competing claims to extradition

515. *Subsection (1)* applies if, at the same time, there is a Part 1 warrant in respect of a person and a request for the person's extradition under Part 2. Where the person has not yet been extradited or discharged under either category, the Secretary of State may order proceedings on either the Part 1 warrant or the Part 2 request to be deferred until the other one has been disposed of (*subsection (2)*), taking into account in particular (*subsection (3)*):
- the relative seriousness of the offences;

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

- the place where the offence occurred/was alleged to have occurred;
- the dates the warrant and request were issued; and
- whether the person is accused of the offences or is alleged to be unlawfully at large after conviction of them.

516. Under subsection (2), if an order for the person's extradition has already been made (either on the warrant or the request), the Secretary of State may order the extradition itself to be deferred pending the disposal of the competing extradition proceedings.

517. *Subsection (4)* provides for the situation where both of the competing extradition claims were certified in Scotland. In these circumstances the references in this section to the Secretary of State are to be read as references to the Scottish Ministers.

Section 180: Proceedings on deferred warrant or request

518. This section applies when an order has been made under this Act on competing extradition claims (a claim being a Part 1 warrant or a request from a category 2 territory – *subsection (9)*) and proceedings on one of them are deferred until the other has been disposed of. This section sets out what is to happen with the deferred claim once the other claim has been disposed of (*subsection (1)*). The judge may order that proceedings on the deferred claim be resumed, but only before the required period (explained below) has expired (*subsections (2) and (3)*).

519. Under *subsection (4)* the judge may, if the person applies to him at any time, order the person's discharge. However, the judge must order the person's discharge if the person applies to him, the required period has expired and the judge has not already ordered that the deferred proceedings be resumed or that the person be discharged (*subsection (5)*). For the purposes of this section, under *subsection (6)*, the required period is 21 days from the day on which the competing claim is disposed of (see section 213).

520. *Subsections (7) and (8)* define who is the appropriate judge for the purposes of this section, depending on whether the deferred proceedings were under Part 1 or Part 2 of the Act.

Section 181: Proceedings where extradition deferred

521. This section applies when an order has been made under this Act on competing extradition claims and a person's extradition under one of the claims is deferred until the other has been disposed of. This section sets out what is to happen with the deferred extradition once the other claim has been disposed of (*subsection (1)*). The judge may order that the deferred extradition be resumed, but only before the required period (explained below) has expired (*subsections (2) and (3)*).

522. Under *subsection (4)* the judge may, if the person applies to him at any time, order the person's discharge. However, the judge must order the person's discharge if the person applies to him, the required period has expired and the judge has not already ordered that the deferred extradition be resumed or that the person be discharged (*subsection (5)*). For the purposes of this section, under *subsection (6)*, the required period is 21 days from the day on which the competing claim is disposed of (see section 213).

523. *Subsections (7) and (8)* define who is the appropriate judge for the purposes of this section, depending on whether the deferred proceedings were under Part 1 or Part 2 of the Act.

Section 182: Legal advice, assistance and representation: England and Wales

524. This section provides that the provisions of Part 1 of the Access to Justice Act 1999 apply to extradition proceedings (including any subsequent appeal), under this Act, in the same way that they apply to criminal proceedings in England and Wales.

Section 183: Legal aid: Scotland

525. This section provides that the provisions of the Legal Aid (Scotland) Act 1986 apply to extradition proceedings (including any subsequent appeal) in Scotland, under Part 1, 2 or 5 of this Act, in the same way that they apply to summary proceedings in Scotland.

Section 184: Grant of free legal aid: Northern Ireland

526. This section gives an appropriate judge and the High Court the power to grant free legal aid to a person in connection with proceedings under Part 1 or 2 of the Act in Northern Ireland (see section 226).
527. *Subsection (1)* provides for the appropriate judge to grant free legal aid to a person in connection with extradition proceedings before the judge or the High Court. Similarly, a judge of the High Court can grant a person free legal aid in connection with extradition proceedings before that court or the House of Lords (*subsection (2)*). Where a judge refuses to grant free legal aid in connection with proceedings before the High Court, the person can appeal this decision to the High Court. The High Court may itself then grant free legal aid (*subsection (3)*). A judge of the High Court may grant free legal aid in connection with proceedings on such an appeal (*subsection (4)*). On such an appeal the High Court may either allow or dismiss the appeal. If it allows the appeal it must then grant the person free legal aid in connection with the relevant proceedings under Part 1 or 2 of this Act (*subsections (6) and (8)*).
528. *Subsections (5) and (7)* set out the criteria on which the judge or court is to decide whether free legal aid is to be granted. The judge or court may grant free legal aid, or allow an appeal against refusal of free legal aid, only where it appears that:
- the person's means are insufficient to enable him to obtain legal aid, and
 - it is desirable in the interests of justice that free legal aid be granted.
529. If, in deciding this question, there is any doubt as to whether either test is satisfied, the decision must be made in the person's favour (*subsection (9)*).
530. Where this section refers to "free legal aid" it means appointing for the person a solicitor and/or counsel to represent him (*subsection (10)*).

Section 185: Free legal aid: supplementary

531. This section sets out supplementary provisions regarding the provision of free legal aid in Northern Ireland in connection with extradition proceedings under Part 1 or 2 of this Act.
532. *Subsections (1) to (3)* apply the existing legislation in Northern Ireland about legal aid in criminal cases to legal aid under section 184 in proceedings before the judge or High Court, so that existing rules operate in relation to legal aid in extradition cases. The provisions relate to (*subsection (2)*):
- the person's statement of means in connection with a grant of legal aid;
 - the payment of legal aid coming from money provided by Parliament;
 - the Lord Chancellor's power to make rules regarding the practical arrangements for legal aid;
 - the exclusion of certain solicitors from legal aid work;
 - the amounts payable to solicitors and counsel for legal aid work;
 - the exemption of legal aid certificates from stamp duty.

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

533. *Subsection (3)* applies the relevant provisions described above as if section 184 formed part of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.
534. Any expenses or fees of counsel or a solicitor assigned to a person under section 184 in proceedings before the House of Lords must be paid by the Lord Chancellor (*subsection (4)*). Under *subsection (5)* such fees or expenses must not exceed the amount allowed by the House of Lords or an officer(s) of the House designated by order.
535. *Subsection (6)* makes clear that, as section 184 applies only to Northern Ireland, the appropriate judge in this context is any county court judge or resident magistrate designated for proceedings under either Part 1 or 2, as appropriate.

Section 186: Re-extradition: preliminary

536. This section sets out the circumstances in which section 187 applies, concerning re-extradition. Each of the following conditions must be met for a re-extradition hearing to occur.
537. The first condition is that the person was extradited under either Part 1 or Part 2 of the Act (*subsection (2)*). The second is that, prior to his extradition, the person was serving a custodial sentence in the United Kingdom (*subsection (3)*).
538. The third condition, provided in *subsection (4)*, is that the person was extradited for the purpose of being prosecuted for the offence (i.e. it was an accusation case). The fourth condition is that the person has been given a custodial sentence of four months or more, in the country to which he was extradited, in respect of the extradition offence or another offence for which permission was given for him to be dealt with (*subsection (5)*). The fifth and final condition is that, before the person serves the custodial sentence in the country to which he was extradited, he was returned to the United Kingdom to serve the original sentence here (*subsection (6)*).

Section 187: Re-extradition hearing

539. Where this section applies, the conditions in section 186 having all been met, the person must be brought before the appropriate judge (see section 139) for a re-extradition hearing. This is to happen as soon as practicable after the point at which the person would otherwise be released from detention, having served his domestic sentence in the United Kingdom (*subsections (1) and (2)*).
540. If the person is not brought before the judge in accordance with these provisions, and he applies to the judge, the judge must order his discharge, under *subsection (3)*. The person must be treated as being in legal custody until he is either brought before the judge or discharged (*subsection (4)*).
541. At the re-extradition hearing the judge is to decide whether the person is to be extradited again to the requesting territory. The judge must first decide whether the territory is a category 1 or a category 2 territory, or neither. If it is a category 1 or 2 territory, section 188 or 189 applies respectively. If it is neither, the judge must order the person's discharge (*subsections (5) to (8)*). If the judge does order a person's discharge under section 187, 188 or 189, this does not affect any condition on which he is released from custody in this country (*subsection (9)*).

Section 188: Re-extradition to category 1 territories

542. Where this section applies by virtue of section 187(6), the provisions of this Act apply to the proceedings as if it were a Part 1 case. The Act is to be applied in the same way as if a valid Part 1 warrant has been issued in respect of the person, having been convicted of a specified offence, and as if the re-extradition hearing was the extradition hearing under Part 1. In these circumstances some modification of the Part 1 provisions are required, which are set out in Part 1 of Schedule 1 to the Act.

Section 189: Re-extradition to category 2 territories

543. Where this section applies by virtue of section 187(7), the provisions of this Act apply to the proceedings as if it were a Part 2 case. The Act is to be applied in the same way as if a valid extradition request has been made in respect of the person, having been convicted of a specified offence, and as if the re-extradition hearing was the extradition hearing under Part 2. In these circumstances some modification of the Part 2 provisions are required, which are set out in Part 2 of Schedule 1 to the Act.

Section 190: Crown Prosecution Service: role in extradition proceedings

544. This section amends provisions of the Prosecution of Offences Act 1985. The effect of the amendments is that the Crown Prosecution Service is required to act and advise as appropriate, on behalf of the requesting territory, in extradition proceedings under this Act (*subsections (1) and (2)*).
545. *Subsection (3)* provides that the Crown Prosecution Service is not required to act where the relevant authority in the requesting territory specifically requests that it does not do so.

Section 191: Lord Advocate: role in extradition proceedings

546. This section provides that the Lord Advocate is required to act and advise as appropriate, on behalf of the requesting territory, in extradition proceedings in Scotland under this Act (*subsection (1)*).
547. *Subsection (2)* provides that the Lord Advocate is not required to act where the relevant authority in the requesting territory specifically requests that he does not do so.

Section 192: Northern Ireland DPP and Crown Solicitor: role in extradition proceedings

548. This section amends provisions of the Prosecution of Offences (Northern Ireland) Order 1972 and the Justice (Northern Ireland) Act 2002 (*subsections (1) to (8)*). The effect of the amendments is that the Northern Ireland Director of Public Prosecutions has the power to act and advise as appropriate, on behalf of the requesting territory, in extradition proceedings under this Act.
549. *Subsection (9)* provides that the Crown Solicitor for Northern Ireland also has the power to act and advise as appropriate, on behalf of the requesting territory, in extradition proceedings

Section 193: Parties to international Conventions

550. This section provides for extradition arrangements in specific circumstances between the United Kingdom and other countries which are not category 1 or category 2 territories. This applies where the United Kingdom is a party to an international Convention, as is another country which is not otherwise an extradition partner with the United Kingdom. In these circumstances, a country will be designated by order made by the Secretary of State (*subsection (1)*).
551. *Subsection (2)* provides that, in this situation, Part 2 procedures would apply in respect of a request made by the relevant country. *Subsection (3)* provides that the following provisions of Part 2 do not apply in respect of such a request:
- sections 71(4), 73(5), 84(7) and 86(7) – possibility of being designated with the effect of providing "information" in place of "evidence";
 - section 74(11)(b) – possibility of the 45-day period, within which a full extradition request is required following arrest under a provisional warrant, being extended;
 - sections 137 and 138 – the definition of "extradition offences".

552. In place of sections 137 and 138, the extradition offences which apply in relation to a specific country, by virtue of the applicable international Convention, will be specified in the appropriate designation order made under subsection (1) (*subsections (4) and (5)*).

Section 194: Special extradition arrangements

553. This section provides for special extradition arrangements to be made with a country which is not an extradition partner with the United Kingdom. Where the Secretary of State believes that such arrangements have been made and that the country is neither a category 1 nor a category 2 territory, he may issue a certificate to that effect, in relation to the extradition of a person (*subsections (1) and (2)*).
554. *Subsection (3)* provides that, in this situation, Part 2 procedures would apply in respect of a request made by the relevant country. *Subsection (4)* provides that the following provisions of Part 2 do not apply in respect of such a request:
- sections 71(4), 73(5), 84(7) and 86(7) – possibility of being designated with the effect of providing "information" in place of "evidence";
 - section 74(11)(b) – possibility of the 45-day period, within which a full extradition request is required following arrest under a provisional warrant, being extended.
555. In addition, any further modifications may be specified in the certificate issued by the Secretary of State. Such a certificate is to be treated as conclusive evidence of the fact that the appropriate conditions, set out in subsection (1), are met.

Section 195: Human rights: appropriate tribunal

556. Section 7(1)(a) of the Human Rights Act 1998 allows a person who claims that a public authority has acted in a way that is incompatible with the European Convention on Human Rights to bring proceedings against the authority. This section establishes that the only appropriate court or tribunal for hearing human rights claims arising out of the extradition process will be the appropriate judge dealing with the extradition proceedings under Parts 1 or 2 of this Act (*subsection (1)*). For a case under Part 1 of the Act the appropriate judge is as defined in section 67 and, for Part 2, is as defined in section 139 (*subsections (2) and (3)*).

Section 196: Genocide, crimes against humanity and war crimes

557. This section ensures that genocide, crimes against humanity, war crimes and related offences are included as extradition offences. Conduct that would be punishable in the United Kingdom under any of the provisions listed in *subsection (2)* amounts to an extradition offence even if it would not have been an offence at the time when and the place where it occurred.

Section 197: Custody

558. This section applies to any person being held in custody under a power given in this Act.
559. *Subsection (1)* provides that, where a judge remands a person in custody, the person must be taken into custody in the same way as if he had been charged with an offence and the judge had remanded him in custody. In addition, if a person escapes from custody following arrest under this Act, he can be retaken into custody lawfully in any part of the country, in the same way as if he had been in custody following arrest on a domestic warrant (*subsections (2) and (3)*).
560. Under *subsections (4) and (5)* where a person held in custody is required to be transferred to another part of the country (other than over land), after being remanded in custody under this Act, he must be treated as being in continuous legal custody until the transfer is complete.

561. *Subsection (6)* provides for an order for a person's extradition made under this Act to be sufficient authority for an appropriate person to receive him, hold him in custody pending extradition and then convey him to the relevant territory. This power is available to a constable or to the person to whom the order is directed (*subsection (7)*).

Section 198: Bail: England and Wales

562. This section amends the Bail Act 1976 so that extradition proceedings under this Act are governed by the bail provisions that apply in other criminal justice proceedings (*subsections (1) to (3)*).
563. The amendments to section 4 of the Bail Act contained in *subsections (4) and (5)* extend the presumption in favour of bail to proceedings in extradition cases where a person is accused of an offence. Currently the presumption in favour of bail does not apply to extradition cases and these amendments remove this anomaly, to bring extradition proceedings into line with other criminal proceedings. In conviction cases the presumption in favour of bail does not apply.
564. The amendments in *subsection (6)* relate to the situation where a person has been granted bail in the course of extradition proceedings. A court is given power to withhold bail or vary or impose conditions of bail, on the application by the person representing the requesting state in extradition proceedings.
565. *Subsections (7) to (11)* apply when a person has been granted bail in the course of extradition proceedings. Their effect is that the person is subject to the same liability to arrest as if he was granted bail and is under a duty to surrender into custody in the course of a criminal case. Therefore, where the person fails to surrender as required, a magistrates' court has the power to issue a warrant for his arrest. In addition, where there is reason to believe that the person is likely to break his bail conditions or fail to surrender, the person may be arrested without warrant by a constable. A constable also has this power if, where applicable, a person's surety gives notice in writing that the person is unlikely to surrender and so the surety requests to be relieved of his associated obligations. If a person is arrested in this manner without a warrant he must be brought before a justice of the peace within 24 hours (this is calculated to except Sundays and certain public holidays). The justice of the peace will decide whether the person is then to be granted bail again or committed to custody.
566. The amendments in *subsections (12) to (14)* are to Part 1 of Schedule 1 of the Bail Act. Their effect is that this Part of the Schedule, which governs the decision-making process for granting bail in criminal law cases involving imprisonable offences, also applies in extradition cases.

Section 199: Bail: Scotland

567. This section amends the Criminal Procedure (Scotland) Act 1995. A new section 24A is inserted into Part 3 of that Act, modifying the Act's provisions on bail in relation to extradition proceedings. The effect of the new provisions is that the existing Scots law of bail applies to persons facing extradition, in so far as this is consistent with the Act. This is to reflect the situation in England and Wales.
568. In Scotland, unlike in England and Wales, the police have no power to grant bail. However, the Lord Advocate has the power to grant bail to any person charged with any crime or offence. The new section 24A(1)(b) makes it clear that the Lord Advocate can exercise this power in relation to a person subject to extradition proceedings.
569. The new section 24A also includes an order-making power to enable the Scottish Ministers to amend the bail provisions in the Criminal Procedure (Scotland) Act 1995, in so far as is necessary or expedient, for the purposes of extradition.

Section 200: Appeal against grant of bail

570. This section amends the Bail (Amendment) Act 1993 in order to give the person acting on behalf of the requesting territory the right to appeal against a judge's decision to grant a person bail in the course of extradition proceedings. This would confer a right of appeal in the same way that the prosecution has a right of appeal against a decision to grant bail in the course of certain criminal proceedings in this country.
571. There are certain conditions attached to this right of appeal. For example, the effect of *subsection (3)* is that an appeal can only be brought if representations were made against bail before it was granted. Similarly, the consequence of *subsection (4)* is that, where such an appeal is to be brought, oral notice of this must be given at the end of the proceedings in which bail was given and before the person has been released from custody.
572. Written notice of the appeal must then be given within two hours of the conclusion of the relevant proceedings, or the appeal will be treated as having been disposed of. Any appeal brought under this section must start within two working days of the date on which oral notice was given.

Section 201: Remand to local authority accommodation

573. This section amends section 23 of the Children and Young Persons Act 1969 (and, consequently, section 98(1) of the Crime and Disorder Act 1998) in relation to the detention on remand of a child or young person in connection with extradition proceedings.
574. The effect of *subsection (3)* is that, where a child or young person who is the subject of extradition proceedings is not granted bail, remand is to be to local authority accommodation. That accommodation may be required to be secure accommodation only when all of the three conditions are met, as set out in *subsections (4) to (7)*.
575. The first condition is that the person is 12 years of age (or older) and of a description prescribed by reference to age or sex or both by an order of the Secretary of State. The second condition is that:
- the offence for which extradition is sought would, if committed in the United Kingdom by an adult, attract imprisonment for 14 years or more; and/or
 - the person has previously absconded from proceedings connected with the offence or from the extradition proceedings in question (whether in the United Kingdom or the requesting territory).
576. The third condition is that the court is of the opinion, after considering all the options, that only remanding the person to secure local authority accommodation would be adequate:
- to protect the public from serious harm from him; or
 - to prevent the commission by him of imprisonable offences.

Section 202: Receivable documents

577. This section provides that documentation may be received in evidence, under proceedings in Part 1 and Part 2 cases, when certain conditions are met.
578. A Part 1 warrant is receivable (*subsection (1)*). Any other documentation issued in a category 1 territory or a category 2 territory is receivable if it is duly authenticated (*subsections (2) and (3)*).
579. *Subsection (4)* provides that a document is duly authenticated only if:

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

- it purports to be signed by a judge, magistrate or other judicial authority of the relevant territory; or
- it purports to be authenticated by the oath or affirmation of a witness.

580. However, a document that is not duly authenticated is not prevented from being received in proceedings under this Act (*subsection (5)*).

Section 203: Documents sent by facsimile

581. This section provides for the transmission of any document connected to proceedings under this Act to be sent by facsimile. Where such a document is received by facsimile, the provisions of the Act have effect in relation to the document as if it were the original which was used to make the facsimile.

Section 204: Part 1 warrant: transmission by other electronic means

582. This section provides for the information contained in a Part 1 warrant to be transmitted to the United Kingdom electronically (other than by facsimile). Where the designated authority in this country receives this information by these means, in a form which is intelligible and capable of subsequent use, the information is to be treated as if it were the original Part 1 warrant (*subsections (1) and (2)*). A copy of the information may also be received in evidence in proceedings under this Act, as if it were the Part 1 warrant (*subsection (3)*).

Section 205: Written statements and admissions

583. This section provides for amendments to provisions of the Criminal Justice Act 1967 and the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968, concerning the use of written statements and formal admissions. The effect is that the relevant provisions apply in relation to extradition proceedings under this Act in the same way that they apply in criminal proceedings (*subsections (1) and (2)*). This allows for written statements to be adduced where there is no objection, and for formal admissions to be made.

584. *Subsection (3)* provides the appropriate modifications concerning the terminology used in criminal proceedings, so that the provisions are taken to make the appropriate references in extradition proceedings.

Section 206: Burden and standard of proof

585. This section provides that, where a question arises concerning the burden or standard of proof during extradition proceedings under this Act, it must be decided through the application of existing law in criminal procedures (*subsections (1) and (2)*). Where this situation arises, the law is to be applied as if the person were accused of a criminal offence and the requesting territory were the prosecution (*subsection (3)*).

586. However, *subsection (4)* provides that this rule is subject to any express provisions of this Act. (See, for example, section 7(3).)

Section 207: Extradition for more than one offence

587. This section allows the Secretary of State to apply this Act with modifications, by order, to take account of a particular case where a Part 1 warrant or a request for extradition to a category 2 territory is made in respect of more than one offence.

Section 208: National security

588. This section enables the Secretary of State to prevent a person's extradition where it would be against the interests of national security.

589. *Subsection (1)* provides for the section to apply if the Secretary of State believes that the conditions in *subsections (2) to (4)* apply. The condition in *subsection (2)* is that the person's extradition is sought, or likely to be sought, under either Part 1 or Part 2 of this Act. *Subsection (3)* gives two conditions, either of which must be met. The first is that the person was acting for the purpose of assisting in the exercise of a statutory power of this country in engaging in the conduct amounting to, or alleged to amount to the offence. The second is that the person is not liable under the criminal law of any part of the United Kingdom for the conduct amounting to, or alleged to amount to the offence as a result of an authorisation given by the Secretary of State. The third condition that must be met is that the person's extradition for the offence in question would be against the interests of national security (*subsection (4)*).
590. If satisfied that the necessary conditions are met the Secretary of State can issue a certificate to this effect (*subsection (5)*). *Subsection (6)* allows the Secretary of State, having issued such a certificate, to direct that the relevant Part 1 warrant or extradition request (Part 2) is not to be proceeded with for the offence in question. He may also, in addition to or in place of a direction to that effect, order the person's discharge (*subsection (7)*).
591. *Subsection (8)* sets out what is to happen in the event of the Secretary of State giving a direction under *subsection (6)(a)* (a Part 1 warrant):
- the designated authority must not issue a certificate if it has not already done so (see section 2);
 - the person is not required to appear before a judge and must be discharged if he has already been arrested (see sections 3 to 6);
 - the judge is not required to proceed with the case if the person has already been brought before him (see sections 7 and 8);
 - the judge is not required to continue proceedings if they have already begun (see sections 10 to 25);
 - if the person has consented to his extradition the judge is not required to order his extradition;
 - the court is not required to deal with an appeal if one has been brought to the High Court or the House of Lords;
 - the person is not required to be extradited if his extradition has been ordered.
592. *Subsection (9)* sets out what is to happen in the event of the Secretary of State giving a direction under *subsection (6)(b)* (a Part 2 request):
- the Secretary of State is not required to issue a certificate if he has not already done so (see section 70);
 - the person is not required to be brought before a judge and must be discharged if he has already been arrested (see section 71);
 - the judge is not required to proceed with the case if the person has already been brought before him (see sections 72, 74, 75 and 76);
 - the judge is not required to continue proceedings if they have already begun (see sections 78 to 91);
 - if the person has consented to his extradition the judge is not required to send his case to the Secretary of State;
 - the court is not required to deal with an appeal if one has been brought to the High Court or the House of Lords;

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

- the person is not required to be extradited if his extradition has been ordered.
593. *Subsection (10)* stipulates that the Secretary of State is required to sign in person any certificate, direction or order issued under this section.
594. *Subsections (11) and (12)* contain the appropriate modifications for this section to apply to Scotland.

Section 209: Reasonable force

595. Reasonable force can be used when necessary in the use of any power described in the Act.

Section 210: Rules of court

596. This section allows rules of court to be made to govern court practice and procedure regarding proceedings under this Act.

Section 211: Service of notices

597. This section provides for the manner in which specified notices are to be served on a person, in a Part 1 or a Part 2 case. The first type of notice is one informing the person that a request has been received for permission to deal with him for an offence other than the offence for which he was extradited (see sections 54 and 129). The second type of notice is one informing the person that a request has been received for permission to re-extradite the person on to another Part 1 or Part 2 territory (see sections 56, 58, 130 and 131).

Section 212: Article 95 alerts: transitional provisions

598. This section provides transitional provisions concerning the use of an article 95 alert, issued prior to 1 January 2004, as a Part 1 warrant. An article 95 alert, as defined in *subsection (4)*, is an alert issued pursuant to article 95 of the Convention implementing the Schengen agreement of 14 June 1985.
599. Where such an alert is issued by an authority of a category 1 territory, the provisions of this Act apply as if the alert were a Part 1 warrant and that the information sent in connection with the alert were contained in the warrant (*subsections (1) and (2)*).
600. *Subsection (3)* provides the modifications which are required, in these circumstances, for the provisions of Part 1 to be applied to an article 95 alert. References to the authority which issued a Part 1 warrant are to be read as references to the authority at the request of which the alert was issued. There is also no provision for a Part 1 provisional arrest in these circumstances.

Section 213: Disposal of Part 1 warrant and extradition request

601. This section defines what is meant by the disposal of a Part 1 warrant and an extradition request. *Subsection (1)* provides that a Part 1 warrant is disposed of when an order is made for the person's discharge or extradition and there is no further possibility of appeal (see below), or when the person is taken to be discharged under this Act. Similarly *subsection (2)* provides that an extradition request is also disposed of when such an order is made and there is no possible route of appeal open, or when the person is taken to be discharged.
602. *Subsection (3)* provides that there is no further possibility of an appeal:
- when no notice of appeal has been given and the period permitted for doing so has ended;

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

- when the decision of the High Court on the appeal becomes final (see below), if no appeal is made against that decision;
 - when the decision of the House of Lords is made, if an appeal is made against the decision of the High Court.
603. The decision of the High Court on the appeal is final (*subsection (4)*):
- when no application has been made to the High Court for leave to appeal to the House of Lords and the period permitted for doing so has ended;
 - when the High Court has refused leave to appeal to the House of Lords, no application has been made to the House of Lords for leave to appeal and the period permitted for doing so has ended;
 - when the House of Lords refuses leave to appeal;
 - if, after 28 days of leave being granted to appeal to the House of Lords, no such appeal has been brought.
604. *Subsection (5)* prevents a court's power to extend a permitted period or give leave to take a step out of time from being taken into account for the purposes of subsections (3) and (4).
605. *Subsection (6)* states that subsections (3) to (5) do not apply to Scotland (see section 32 above).

Section 214: Disposal of charge

606. This section defines what is meant by the disposal of a charge against a person. *Subsection (1)* provides that a charge is disposed of when the person is acquitted or when he is convicted and there is no further possibility of an appeal against the conviction.
607. *Subsection (2)* provides that there is no further possibility of an appeal:
- when the period permitted for applying for leave to appeal to the Court of Appeal ends, if leave is required and no notice of application for leave is given;
 - when leave to appeal to the Court of Appeal is refused, if leave is required and notice of application for leave is given in time;
 - when the period permitted for giving notice of appeal against conviction to the Court of Appeal ends, if no such notice is given;
 - when the decision of the Court of Appeal on such an appeal becomes final (see below), if there is no appeal against that decision;
 - when the decision of the House of Lords is made, if an appeal is made against the decision of the court of Appeal.
608. The decision of the Court of Appeal on an appeal is final (*subsection (3)*):
- when the period permitted for applying to the Court of Appeal for leave to appeal to the House of Lords ends, if no such application is made;
 - when the period permitted for applying to the House of Lords for leave to appeal to it ends, if the Court of Appeal has refused leave to appeal to the House of Lords and no application has been made to the House of Lords;
 - when the House of Lords refuses leave to appeal;
 - if, after 28 days of leave being granted to appeal to the House of Lords, no such appeal has been brought.

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

609. *Subsection (4)* prevents a court's power to extend a permitted period or give leave to take a step out of time from being taken into account for the purposes of subsections (2) and (3).
610. *Subsection (5)* states that subsections (2) to (4) do not apply to Scotland (see section 32 above).

Section 215: European framework list

611. The European framework list is the list of conduct set out in article 2.2 of the framework decision of the Council of the European Union made on 13 June 2002 on the European arrest warrant and surrender procedures between member states (2002/584/JHA). This list is reproduced in Schedule 2 to the Act.
612. *Subsection (2)* provides for Schedule 2 to be amended, by order made by the Secretary of State. This may be done for the purposes of ensuring that the list in the Schedule corresponds to any changes subsequently made to the European framework list. Such an order would be subject to the affirmative resolution procedure, by virtue of section 223.

Section 216: Other interpretative provisions

613. This section defines various terms used in the Act, as follows:
- category 1 territory must be read in accordance with section 1;
 - category 2 territory must be read in accordance with section 69;
 - designated authority must be read in accordance with section 2(9);
 - Part 1 warrant must be read in accordance with section 2;
 - Part 3 warrant must be read in accordance with section 142;
 - valid request for a person's extradition must be read in accordance with section 70;
 - asylum claim has the meaning given by section 113 of the Nationality, Immigration and Asylum Act 2002: a claim made by a person to the Secretary of State that to remove the person or require him to leave the United Kingdom would breach the United Kingdom's obligations under the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and its protocol;
 - a customs officer is a person commissioned by the Commissioners of Customs and Excise;
 - for Scotland "High Court" means the High Court of the Justiciary;
 - for Scotland references to an appeal being discontinued are to be taken as references to an appeal being abandoned;
 - for Northern Ireland "police officer" has the meaning given in the Police (Northern Ireland) Act 2000;
 - provisional warrant is one issued under the power in section 73(3);
 - a service policeman is a member of one of the four services' police forces, including, in the Royal Air Force Police, the Provost Marshal of the Royal Air Force and any officer appointed to exercise the functions of a provost officer.

Section 217: Form of documents

614. This section allows the Secretary of State to prescribe the form of any document required under this Act. This must be done by statutory instrument, subject to the negative resolution procedure in both Houses of Parliament.

Section 218: Existing legislation on extradition

615. This section has the effect of repealing the existing legislation on extradition, namely the Backing of Warrants (Republic of Ireland) Act 1965 and the Extradition Act 1989.

Section 219: Amendments

616. Miscellaneous and consequential amendments to existing legislation, as a result of this Act, are contained in Schedule 3 to the Act.
617. This section also provides a power for the Secretary of State to make any additional amendments by order which he considers necessary or expedient to give effect to, or in consequence of, this Act (*subsection (2)*). Any such order may amend, repeal or revoke any existing legislative provision, but not one that is passed in any subsequent session of Parliament (*subsection (3)*). Where an order does amend or repeal any legislative provision in this way, it is subject to the affirmative resolution order by virtue of section 223(6)(b).

Section 220: Repeals

618. Repeals can be found in Schedule 4 to the Act.

Section 221: Commencement

619. This section allows the preceding provisions of the Act to be brought into force by order made by the Secretary of State.

Section 222: Channel Islands and Isle of Man

620. This section enables the Act to be extended, with specified modifications where appropriate, to the Channel Islands and the Isle of Man, by Order in Council.

Section 223: Orders and regulations

621. This section describes the procedures to be used for making certain secondary legislation under this Act. This applies to any orders made by the Secretary of State (other than an order described in *subsection (2)*), any order of the Treasury and any regulations made under this Act (*subsection (1)*). Subsection (2) sets out the orders made under this Act that are not covered by this section. These are any order for a person's extradition or discharge and any order deferring proceedings or deferring a person's extradition.
622. The power to make this secondary legislation is exercisable by statutory instrument and the secondary legislation may make different provision for different purposes and may include supplementary, incidental, saving or transitional provisions (*subsections (3) and (4)*).
623. *Subsections (5) and (6)* provides that certain orders cannot be made unless a draft is laid before Parliament and approved by both Houses (the affirmative resolution procedure). These are:
- an order to designate category 1 or category 2 territories – under section 1(1) or 69(1);
 - an order designating a category 2 territory with the effect that it need provide "information" in place of "evidence" – under sections 71(4), 73 (5), 84(7) and 86(7);
 - an order designating a category 2 territory which permits a period longer than 45 days for the receipt of full documents after arrest under provisional warrant – under section 74(11)(b);

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

- an order designating an "appropriate person" who may apply for a Part 3 warrant – under section 142(9);
 - an order bringing a code of practice into operation, in connection with the powers conferred by Part 4 of the Act – under section 173(4);
 - an order amending the European framework list in Schedule 2 to the Act – under section 215(2);
 - an order amending or repealing any existing legislative provision, to give effect to or in consequence of this Act – under section 219(2).
624. All other orders are subject to the negative resolution procedure (annulment in pursuance of a resolution of either House of Parliament), with the exception of a commencement order made under section 221 (*subsection (7)*).
625. Where a territory is designated by any order for the purposes of this Act, the territory may be identified by name or may fall within the description given in the order (*subsection (8)*). *Subsection (9)* provides that any order to designate a category 1 or 2 territory may provide that for the Act to be applied in relation to that territory with specified modifications.

Section 224: Orders in Council

626. This section provides for an Order in Council made under section 17 or 178 (in relation to extradition to or from British overseas territories) to be subject to the negative resolution procedure. Orders in Council made under this Act may also include supplementary, incidental, saving or transitional provisions.

Section 225: Finance

627. This section provides for the following expenditure to be paid out of money provided by Parliament, if it arises as a result of the Act:
- any expenditure incurred by the Lord Chancellor;
 - any increase in the sums payable out of money provided by Parliament under another enactment.

Section 226: Extent

628. *Subsection (1)* states that sections 157 to 160, 166 to 168, 171 and 173 do not apply in Scotland. This is because PACE powers (on which these police powers sections are based) do not extend to Scotland. Comparable powers are to be found in Scottish common law and statute. Section 205 does not apply in Scotland as it includes provisions to amend legislative provisions relating only to England and Wales and Northern Ireland.
629. In connection with the remand and bail provisions, sections 154, 198, 200 and 201 apply only to England and Wales, as the Acts which they amend only have such extent (*subsection (2)*).
630. On legal aid, sections 183 and 199 apply only to Scotland and sections 184 and 185 apply only to Northern Ireland (*subsections (3) and (4)*).

Section 227: Short title

631. The Act may be cited as the Extradition Act 2003.