



# Criminal Justice Act 1988

## 1988 CHAPTER 33

### PART I

#### EXTRADITION

##### *Preliminary*

#### **1 Scope of Part I**

- (1) Where extradition procedures under this Part of this Act are available as between the United Kingdom and a foreign state, a person in the United Kingdom who—
  - (a) is accused in that state of the commission of an extradition crime; or
  - (b) is alleged to be unlawfully at large after conviction of an extradition crime by a court in that state,may be arrested and returned to that state in accordance with those procedures.
- (2) In this Part of this Act—
  - “extradition procedures” means the procedures set out in sections 3 to 10 and 12 to 17 below; and
  - “extradition arrangements” means arrangements made with a foreign state under which extradition procedures will be available as between the United Kingdom and that state.
- (3) Extradition arrangements may be—
  - (a) arrangements of a general nature made with one or more states and relating to the operation of this Part of this Act (in this Part of this Act referred to as “general extradition arrangements”); or
  - (b) arrangements relating to the operation of this Part of this Act in particular cases (in this Part of this Act referred to as “special extradition arrangements”) made with a state with which there are no general extradition arrangements.
- (4) In this Part of this Act “foreign state” means any state other than—
  - (a) the United Kingdom;

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- (b) a country mentioned in Schedule 3 to the British Nationality Act 1981 (countries whose citizens are Commonwealth citizens);
- (c) a colony of the United Kingdom; or
- (d) the Republic of Ireland,

but a state which is a party to the European Convention on Extradition done at Paris on 13th December 1957 may be treated as a foreign state for the purposes of this Part of this Act.

- (5) In this Part of this Act “extradition crime” means—
- (a) conduct in the territory of a foreign state which, if it occurred in the United Kingdom, would constitute an offence punishable with imprisonment for a term of 12 months, or any greater punishment, and which, however described in the law of the foreign state, is so punishable under that law; or
  - (b) any conduct which by virtue of subsection (8)(b) below is treated as conduct in the territory of a foreign state and which satisfies the conditions in paragraph (a) above; or
  - (c) an extra-territorial offence against the law of a foreign state which is punishable under that law with imprisonment for a term of 12 months, or any greater punishment, and which satisfies—
    - (i) the condition specified in subsection (6) below; or
    - (ii) all the conditions specified in subsection (7) below.
- (6) The condition mentioned in subsection (5)(c)(i) above is that in corresponding circumstances equivalent conduct would constitute an extra-territorial offence against the law of the United Kingdom punishable with imprisonment for a term of 12 months, or any greater punishment.
- (7) The conditions mentioned in subsection (5)(c)(ii) above are—
- (a) that the foreign state bases its jurisdiction on the nationality of the offender;
  - (b) that the conduct constituting the offence occurred outside the United Kingdom; and
  - (c) that, if it occurred in the United Kingdom, it would constitute an offence under the law of the United Kingdom punishable with imprisonment for a term of 12 months, or any greater punishment.
- (8) For the purposes of this Part of this Act—
- (a) the law of a foreign state includes the law of any part of that state and the law of the United Kingdom includes the law of any part of the United Kingdom; and
  - (b) conduct in a colony or dependency of a foreign state, or a vessel, aircraft or hovercraft of a foreign state, shall be treated as if it were conduct in the territory of that state.
- (9) The amendments of the Extradition Act 1870, the Backing of Warrants (Republic of Ireland) Act 1965 and the Fugitive Offenders Act 1967 contained respectively in Parts I, II and III of Schedule 1 to this Act (which introduce into those Acts provisions corresponding to certain provisions of this Part of this Act) shall have effect.

## **2 Orders in Council as to arrangements for extradition**

- (1) Where general extradition arrangements have been made, Her Majesty may, by Order in Council reciting or embodying their terms, direct that extradition procedures shall be available as between the United Kingdom and the foreign state, or any foreign state,

with whom they have been made, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the Order.

- (2) An Order in Council under this section shall not be made unless the general extradition arrangements to which it relates—
  - (a) provide for their determination after the expiration of a notice given by a party to them and not exceeding one year or for their denunciation by means of such a notice; and
  - (b) are in conformity with the provisions of this Part of this Act, and in particular with the restrictions on return contained in this Part of this Act.
- (3) An Order in Council under this section shall be conclusive evidence that the arrangements therein referred to comply with this Part of this Act and that this Part of this Act applies in the case of the foreign state, or any foreign state, mentioned in the Order.
- (4) An Order in Council under this section shall be laid before Parliament after being made.
- (5) An Order in Council under this section which does not provide that a person may only be returned to the foreign state requesting his return if the court before which he is brought under section 6 below is satisfied that the evidence would be sufficient to warrant his trial if the extradition crime had taken place within the jurisdiction of the court shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) On the commencement of this Part of this Act the power conferred by section 2 of the Extradition Act 1870 to direct that that Act shall apply in the case of a foreign state shall cease to be exercisable, but nothing in this Part of this Act affects any Order in Council made under that section or the operation of any enactment in relation to a foreign state in whose case an Order in Council under that section is in force.

### **3 General restrictions on return**

- (1) A person shall not be returned to a foreign state under this Part of this Act, or committed to or kept in custody for the purposes of such return, if it appears to an appropriate authority—
  - (a) that the offence of which that person is accused or was convicted is an offence of a political character;
  - (b) that it is an offence under military law which is not also an offence under the general criminal law;
  - (c) that the request for his return (though purporting to be made on account of an extradition crime) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or
  - (d) that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.
- (2) A person who is alleged to be unlawfully at large after conviction of an extradition crime by a court in a foreign state shall not be returned to that state, or committed to or kept in custody for the purposes of such return, if it appears to an appropriate authority—
  - (a) that the conviction was obtained in his absence; and

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- (b) that it would not be in the interests of justice to return him to the foreign state on the ground of that conviction.
- (3) A person accused of an offence shall not be returned to a foreign state, or committed to or kept in custody for the purposes of such return, if it appears to an appropriate authority that if charged with that offence in the United Kingdom he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction.
- (4) A person shall not be returned to a foreign state, or committed to or kept in custody for the purposes of such return, unless provision is made by the law of that state, or by an arrangement made with that state, for securing that he will not, unless he has first had an opportunity to leave that state, be dealt with in that state for or in respect of any offence committed before his return to it other than—
- (a) the offence in respect of which his return is ordered;
  - (b) an offence, other than an offence excluded by subsection (5) below, which is disclosed by the particulars furnished under section 4(2)(b) below; or
  - (c) subject to subsection (6) below, any other offence being an extradition crime in respect of which the Secretary of State may consent to his being dealt with.
- (5) The offences excluded from paragraph (b) of subsection (4) above are offences in relation to which an order for the return of the person concerned could not lawfully be made in accordance with the provisions of this Part of this Act.
- (6) The Secretary of State may not give consent under paragraph (c) of that subsection in respect of an offence in relation to which it appears to him that an order for the return of the person concerned could not lawfully be made, or would not in fact be made, in accordance with the provisions of this Part of this Act.
- (7) In this Part of this Act “appropriate authority” means—
- (a) the Secretary of State;
  - (b) the court of committal;
  - (c) the High Court or High Court of Justiciary on an application for habeas corpus or for review of the order of committal.