



# Criminal Justice Act 1988

## 1988 CHAPTER 33

### PART I

#### EXTRADITION

##### *Procedure*

#### **4 Extradition request and authority to proceed**

- (1) Subject to the provisions of this Part of this Act relating to provisional warrants, a person shall not be dealt with under this Part of this Act except in pursuance of an order of the Secretary of State (in this Part of this Act referred to as an “authority to proceed”) issued in pursuance of a request (in this Part of this Act referred to as an “extradition request”) for the surrender of a person under this Part of this Act made by some person recognised by the Secretary of State as a diplomatic representative of a foreign state.
- (2) There shall be furnished with any such request—
  - (a) particulars of the person whose return is requested;
  - (b) particulars of the offence of which he is accused or was convicted (including information sufficient to justify the issue of a warrant for his arrest under this Part of this Act);
  - (c) in the case of a person accused of an offence, a warrant for his arrest issued in the foreign state; and
  - (d) in the case of a person unlawfully at large after conviction of an offence, a certificate of the conviction and sentence,and copies of them shall be served on the person whose return is requested before he is brought before a court under section 6 below.
- (3) Rules under section 144 of the Magistrates' Courts Act 1980 may make provision as to the procedure for service under subsection (2) above in England and Wales.
- (4) The High Court of Justiciary may, by Act of Adjournal, make rules as to the procedure for service under subsection (2) above in Scotland.

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- (5) On receipt of any such request the Secretary of State may issue an authority to proceed unless 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.
- (6) An authority to proceed shall specify the offence or offences under the law of the United Kingdom which it appears to the Secretary of State would be constituted by equivalent conduct in the United Kingdom.
- (7) In this Part of this Act “warrant”, in the case of any foreign state, includes any judicial document authorising the arrest of a person accused or convicted of a crime.

## **5 Arrest for purposes of committal**

- (1) For the purposes of this Part of this Act a warrant for the arrest of a person accused in a foreign state of an extradition crime, or alleged to be unlawfully at large after conviction in a foreign state of an extradition crime, may be issued—
  - (a) on the receipt of an authority to proceed, by—
    - (i) the chief metropolitan stipendiary magistrate or metropolitan stipendiary magistrate designated for the purposes of this Part of this Act by the Lord Chancellor; or
    - (ii) the sheriff of Lothian and Borders;
  - (b) without such an authority—
    - (i) by a metropolitan stipendiary magistrate;
    - (ii) by a justice of the peace in any part of the United Kingdom; and
    - (iii) in Scotland, by a sheriff,
 upon information that the said person is or is believed to be in or on his way to the United Kingdom;
 and any warrant issued by virtue of paragraph (b) above is in this Part of this Act referred to as a “provisional warrant”.
- (2) A person empowered to issue warrants of arrest under this section may issue such a warrant if he is supplied with such information as would in his opinion authorise the issue of a warrant for the arrest of a person accused of conduct which would constitute an offence punishable under the law of the United Kingdom with imprisonment for a period of not less than 12 months or, as the case may be, of a person alleged to be unlawfully at large after conviction of such an offence within his jurisdiction.
- (3) Where a provisional warrant is issued under this section, the authority by whom it is issued shall forthwith give notice to the Secretary of State, and transmit to him the information, or certified copies of the information, upon which it was issued; and the Secretary of State may in any case, and shall, if he decides not to issue an authority to proceed in respect of the person to whom the warrant relates, by order cancel the warrant and, if that person has been arrested under it, discharge him from custody.
- (4) A warrant of arrest issued under this section may, without being backed, be executed in any part of the United Kingdom and may be so executed by any person to whom it is directed or by any constable.

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## 6 Proceedings for committal

- (1) A person arrested in pursuance of a warrant under section 5 above shall (unless previously discharged under subsection (3) of that section) be brought as soon as practicable before a court (in this Part of this Act referred to as “the court of committal”) consisting of the chief metropolitan stipendiary magistrate or a metropolitan stipendiary magistrate designated as mentioned in section 5(1)(a) above or the sheriff of Lothian and Borders, as may be directed by the warrant.
- (2) For the purposes of proceedings under this section the court of committal shall have the like jurisdiction and powers, as nearly as may be, including power to remand in custody or on bail, as a magistrates' court acting as examining justices.
- (3) For the purposes of proceedings under this section a court of committal in Scotland shall have the like powers, including power to adjourn the case and meanwhile to remand the person arrested under the warrant either in custody or on bail, and the proceedings shall be conducted as nearly as may be in the like manner, as if the proceedings were summary proceedings in respect of an offence alleged to have been committed by that person; and the provisions of the Legal Aid (Scotland) Act 1986 relating to such proceedings or any appellate proceedings following thereon shall apply accordingly to that person.
- (4) Where an Order in Council such as is mentioned in subsection (8) below is in force in relation to the foreign state, there is no need to furnish the court of committal with evidence sufficient to warrant the trial of the arrested person if the extradition crime had taken place within the jurisdiction of the court.
- (5) Where the person arrested is in custody by virtue of a provisional warrant and no authority to proceed has been received in respect of him, the court of committal may fix a period (of which the court shall give notice to the Secretary of State) after which he will be discharged from custody unless such an authority has been received.
- (6) In exercising the power conferred by subsection (5) above in a case when the extradition request is made under general extradition arrangements the court shall have regard to any period specified for the purpose in the Order in Council relating to the arrangements.
- (7) Where—
  - (a) the extradition request is made under general extradition arrangements but no period is so specified; or
  - (b) the application is made under special extradition arrangements,the court of committal may fix a reasonable period.
- (8) Where an authority to proceed has been issued in respect of the person arrested and the court of committal is satisfied, after hearing any representations made in support of the extradition request or on behalf of that person, that the offence or any of the offences to which the authority relates is an extradition crime, and is further satisfied—
  - (a) where that person is accused of the offence, unless an Order in Council giving effect to general extradition arrangements otherwise provides, that the evidence would be sufficient to warrant his trial if the extradition crime had taken place within the jurisdiction of the court;
  - (b) where that person is alleged to be unlawfully at large after conviction of the offence, that he has been so convicted and appears to be so at large,

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the court, unless his committal is prohibited by any other provision of this Part of this Act, shall commit him—

- (i) to await the Secretary of State's decision as to his return to the foreign state that made the extradition request; and
  - (ii) if the Secretary of State decides that he shall be returned to that state, to await his return.
- (9) If the court commits a person under subsection (8) above, it shall issue a certificate of the offence against the law of the United Kingdom which would be constituted by his conduct.
- (10) A person may be committed in the exercise of the power conferred by subsection (8) above either to custody or on bail.
- (11) If the court commits a person to custody in the exercise of that power, it may subsequently grant him bail if it considers it appropriate to do so.
- (12) If—
- (a) the court is not satisfied as mentioned in subsection (8) above in relation to the person arrested; or
  - (b) his committal is prohibited by a provision of this Part of this Act,
- it shall discharge him.

## **7 Statement of case by court**

- (1) If the court of committal refuses to make an order of committal in relation to a person under section 6 above in respect of the offence or, as the case may be, any of the offences, to which the authority to proceed relates, the state seeking the surrender of that person to it may question the proceeding on the ground that it is wrong in law by applying to the court to state a case for the opinion of the High Court or, in Scotland, the High Court of Justiciary on the question of law involved.
- (2) If the state seeking his surrender immediately informs the court of committal that it intends to make such an application, the court shall make an order providing for his detention, or directing that he shall not be released except on bail.
- (3) Rules of Court may specify—
  - (a) a period within which a state must make such an application unless the Court grants a longer period; and
  - (b) a period within which the court of committal must comply with such an application.
- (4) Where the court of committal fails to comply with an application under subsection (1) above within the period specified in Rules of Court, the High Court or, in Scotland, the High Court of Justiciary may, on the application of the state that applied for the case to be stated, make an order requiring the court to state a case.
- (5) The High Court or High Court of Justiciary shall have power—
  - (a) to remit the case to the court of committal to decide it according to the opinion of the High Court or High Court of Justiciary on the question of law; or
  - (b) to dismiss the appeal.
- (6) Where the court dismisses an appeal relating to an offence, it shall by order declare that that offence is not an offence in respect of which the Secretary of State has power

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to make an order under section 9 below in respect of the person whose return was requested.

- (7) An order made by a metropolitan magistrate under subsection (2) above shall cease to have effect if—
  - (a) the court dismisses the appeal in respect of the offence or all the offences to which it relates; and
  - (b) the state seeking surrender does not immediately—
    - (i) apply for leave to appeal to the House of Lords; or
    - (ii) inform the court that it intends to apply for leave.
- (8) An order made by the sheriff of Lothian and Borders under subsection (2) above shall cease to have effect if the court dismisses the appeal in respect of the offence or all the offences to which it relates.
- (9) In relation to a decision of a court on an appeal under this section, section 1 of the Administration of Justice Act 1960 (right of appeal to House of Lords) shall have effect as if so much of subsection (2) as restricts the grant of leave to appeal were omitted.
- (10) The House of Lords may exercise any powers of the High Court under subsection (5) above and subsection (6) above shall apply to them as it applies to that Court.
- (11) Subject to subsections (7) and (8) above, an order under subsection (2) above shall have effect so long as the case is pending.
- (12) For the purposes of this section a case is pending (unless proceedings are discontinued) until (disregarding any power of a court to grant leave to take any step out of time) there is no step that the foreign state can take.
- (13) In the application to Scotland of this section, subsections (9) and (10) shall be omitted and, in relation to an appeal under this section in Scotland, the court may make an order providing for the detention of the person to whom it relates or it may grant bail; and section 446(2) of the Criminal Procedure (Scotland) Act 1975 shall apply for the purpose of such an appeal as it applies for the purpose of an appeal such as is mentioned in section 444 of that Act.

## **8 Application for habeas corpus etc**

- (1) Where a person is committed under section 6 above, the court shall inform him in ordinary language of his right to make an application for habeas corpus, and shall forthwith give notice of the committal to the Secretary of State.
- (2) A person committed under section 6 above shall not be returned under this Part of this Act—
  - (a) in any case, until the expiration of the period of 15 days beginning with the day on which the order for his committal is made;
  - (b) if an application for habeas corpus is made in his case, so long as proceedings on that application are pending.
- (3) Without prejudice to any jurisdiction of the High Court apart from this section, the court shall order the applicant's discharge if it appears to the Court, in relation to the offence, or each of the offences, in respect of which the applicant's return is sought, that—

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- (a) by reason of the trivial nature of the offence of which he is accused or was convicted; or
  - (b) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or
  - (c) because the accusation against him is not made in good faith in the interests of justice,
- it would, having regard to all the circumstances, be unjust or oppressive to return him.
- (4) On any such application the court may receive additional evidence relevant to the exercise of their jurisdiction under section 3 above or subsection (3) above.
  - (5) Proceedings on an application for habeas corpus shall be treated for the purposes of this section as pending (unless they are discontinued) until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal.
  - (6) In the application of this section to Scotland—
    - (a) references to an application for habeas corpus shall be construed as references to an application for review of the order of committal; and
    - (b) the reference to the High Court shall be construed as a reference to the High Court of Justiciary.

## **9 Order for return to requesting state**

- (1) Where a person is committed under section 6 above and is not discharged by order of the High Court or the High Court of Justiciary, the Secretary of State may by warrant order him to be returned to the state by which the extradition request was made unless his return is prohibited, or prohibited for the time being, by this Part of this Act, or the Secretary of State decides under this section to make no such order in his case.
- (2) The Secretary of State shall give the person to whom an order under subsection (1) above would relate notice in writing that he is contemplating making such an order.
- (3) The person to whom such an order would relate shall have a right to make representations, at any time before the expiration of the period of 15 days commencing with the date on which the notice is given, as to why he should not be returned to the foreign state, and unless he waives that right, no such order shall be made in relation to him before the end of that period.
- (4) A notice under subsection (2) above shall explain in ordinary language the right conferred by subsection (3) above.
- (5) It shall be the duty of the Secretary of State to consider any representations made in the exercise of that right.
- (6) Unless the person to whom it relates waives the right conferred on him by subsection (7) below, he shall not be returned to the foreign state until the expiration of the period of 7 days commencing with the date on which the warrant is issued or such longer period as—
  - (a) in England and Wales, rules of court under section 84 of the Supreme Court Act 1981, or
  - (b) in Scotland, the High Court of Justiciary by Act of Adjournal may provide.

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- (7) At any time within that period he may apply for leave to seek judicial review of the Secretary of State's decision to make the order.
- (8) If he applies for judicial review, he may not be returned so long as the proceedings for judicial review are pending.
- (9) Proceedings for judicial review shall be treated for the purposes of this section as pending (unless they are discontinued) until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal.
- (10) A warrant under this section—
- (a) shall state in ordinary language that the Secretary of State has considered any representations made in the exercise of the right conferred by subsection (3) above; and
  - (b) shall explain in ordinary language the rights conferred by this section on a person whose return to a foreign state has been ordered under this section, and a copy shall be given to the person to whom it relates as soon as the order for his return is made.
- (11) Without prejudice to his general discretion as to the making of an order for the return of a person to a foreign state under this Part of this Act—
- (a) the Secretary of State shall not make an order in the case of any person if it appears to the Secretary of State that—
    - (i) by reason of the trivial nature of the offence of which he is accused or was convicted; or
    - (ii) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or
    - (iii) because the accusation against him is not made in good faith in the interests of justice,it would, having regard to all the circumstances, be unjust or oppressive to return him; and
  - (b) the Secretary of State may decide not to make an order for the return of a person accused or convicted of an extradition crime constituted by conduct not punishable with death in Great Britain if that person could be or has been sentenced to death for that offence in the state by which the request for his return is made.
- (12) An order for the return of a person to a foreign state under this Part of this Act shall not be made in the case of a person who is serving a sentence of imprisonment or detention, or is charged with an offence, in the United Kingdom—
- (a) in the case of a person serving such a sentence, until the sentence has been served;
  - (b) in the case of a person charged with an offence, until the charge is disposed of or withdrawn or unless an order is made for it to lie on the file and, if it results in his serving a term of imprisonment or detention, until the sentence has been served.
- (13) In the application of this section to Scotland, the reference in subsection (12) above to an order being made for the charge to lie on the file shall be construed as a reference to the diet being deserted pro loco et tempore.

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- (14) The Secretary of State may decide to make no order under this section for the return of a person committed in consequence of an extradition request if another extradition request has been made in respect of him and it appears to the Secretary of State, having regard to all the circumstances of the case and in particular—
- (a) the relative seriousness of the offences in question;
  - (b) the date on which each such request was made; and
  - (c) the nationality or citizenship of the person concerned and his ordinary residence,
- that preference should be given to that other request.

## 10 Simplified procedure

- (1) A person may give notice that he waives the rights conferred on him by section 8 above.
- (2) A notice under this section shall be given in England and Wales in the manner prescribed by rules under section 144 of the Magistrates' Courts Act 1980, and, without prejudice to the generality of subsection (1) of that section, the power to make such rules shall include power to make provision for a magistrate to order the committal for return of a person with his consent at any time after his arrest.
- (3) A notice under this section shall be given in Scotland in the manner prescribed by the High Court of Justiciary by Act of Adjournal and the sheriff may order the committal for return of a person with his consent at any time after his arrest.
- (4) Where an order is made under this section, this Part of this Act shall cease to apply to the person in respect of whom it is made, except that, if within one month after the order is made, he is not surrendered to the foreign state to which he is to be returned, the High Court or, in Scotland, the High Court of Justiciary, upon application by or on behalf of that person, may, unless reasonable cause is shown for the delay, order him to be discharged.

## 11 Special extradition arrangements

- (1) Where special extradition arrangements have been made in respect of a person, extradition procedures shall be available in the case of that person, as between the United Kingdom and the foreign state with whom the arrangements have been made, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the arrangements.
- (2) If the Secretary of State issues a certificate of special extradition arrangements, it shall be conclusive evidence of all matters stated in it.
- (3) In subsection (2) above “certificate of special extradition arrangements” means a certificate—
  - (a) that special extradition arrangements have been made in respect of a person as between the United Kingdom and a foreign state specified in the certificate; and
  - (b) that extradition procedures are available in the case of that person as between the United Kingdom and the foreign state to the extent specified in the certificate.



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## **12 Discharge in case of delay**

- (1) If a person committed under section 6 above is still in the United Kingdom after the expiration of the relevant period, he may apply to the High Court or the High Court of Justiciary for his discharge.
- (2) Unless he has instituted proceedings for judicial review of the Secretary of State's decision to order his return, the relevant period is—
  - (a) the period of two months beginning with the first day on which, having regard to section 8(2) above, he could have been returned;
  - (b) where a warrant for his return has been issued under section 9 above, the period of one month beginning with the day on which that warrant was issued.
- (3) If he has instituted such proceedings, the relevant period is the period expiring one month after they end.
- (4) Proceedings for judicial review end for the purposes of this section—
  - (a) if they are discontinued, on the date of discontinuance; and
  - (b) if they are determined, on the date on which (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal.
- (5) If upon an application under this section the court is satisfied that reasonable notice of the proposed application has been given to the Secretary of State, the court may, unless sufficient cause is shown to the contrary, by order direct the applicant to be discharged and if a warrant for his return has been issued under section 9 above, quash that warrant.

## **13 Authentication of foreign documents**

- (1) For the purposes of this Part of this Act foreign documents may be authenticated by the oath of a witness, but shall in any case be deemed duly authenticated—
  - (a) if they purport to be signed or certified by a judge, magistrate or officer of the foreign state where they were issued; and
  - (b) if they purport to be certified by the Minister of Justice, or some other Minister of State, of the foreign state.
- (2) Judicial notice shall be taken of such certification as is mentioned in subsection (1)(b) above, and documents authenticated by such certification shall be received in evidence without further proof.

## **14 Custody**

- (1) Any person remanded or committed to custody under this Part of this Act shall be committed to the like institution as a person charged with an offence before the court of committal.
- (2) If any person who is in custody by virtue of a warrant under this Part of this Act escapes out of custody, he may be retaken in any part of the United Kingdom in like manner as a person escaping from custody under a warrant for his arrest issued in that part in respect of an offence committed in that part.
- (3) Where a person, being in custody in any part of the United Kingdom whether under this Part of this Act or otherwise, is required to be removed in custody under this Part of this Act to another part of the United Kingdom and is so removed by sea or by air,

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he shall be deemed to continue in legal custody until he reaches the place to which he is required to be removed.

- (4) A warrant for the return of any person to a foreign state shall be sufficient authority for all persons to whom it is directed and all constables to receive that person, keep him in custody and convey him into the jurisdiction of that foreign state.

## **15 Form of warrants and orders**

- (1) Any warrant or order to be issued or made by the Secretary of State under this Part of this Act shall be given under the hand of the Secretary of State, a Minister of State or an Under-Secretary of State.
- (2) The Secretary of State may by regulations made by statutory instrument prescribe the form of any document (except a notice required under section 10(2) above) required for the purposes of this Part of this Act.