



# Extradition Act 2003

## 2003 CHAPTER 41

### PART 2

#### EXTRADITION TO CATEGORY 2 TERRITORIES

##### *The extradition hearing*

#### **75 Date of extradition hearing: arrest under section 71**

- (1) When a person arrested under a warrant issued under section 71 first appears or is brought before the appropriate judge, the judge must fix a date on which the extradition hearing is to begin.
- (2) The date fixed under subsection (1) must not be later than the end of the permitted period, which is 2 months starting with the date on which the person first appears or is brought before the judge.
- (3) If before the date fixed under subsection (1) (or this subsection) a party to the proceedings applies to the judge for a later date to be fixed and the judge believes it to be in the interests of justice to do so, he may fix a later date; and this subsection may apply more than once.
- (4) If the extradition hearing does not begin on or before the date fixed under this section and the person applies to the judge to be discharged, the judge must order his discharge.

#### **76 Date of extradition hearing: arrest under provisional warrant**

- (1) Subsection (2) applies if—
  - (a) a person is arrested under a provisional warrant, and
  - (b) the documents referred to in section 70(9) are received by the appropriate judge within the period required under section 74(10).
- (2) The judge must fix a date on which the extradition hearing is to begin.

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- (3) The date fixed under subsection (2) must not be later than the end of the permitted period, which is 2 months starting with the date on which the judge receives the documents.
- (4) If before the date fixed under subsection (2) (or this subsection) a party to the proceedings applies to the judge for a later date to be fixed and the judge believes it to be in the interests of justice to do so, he may fix a later date; and this subsection may apply more than once.
- (5) If the extradition hearing does not begin on or before the date fixed under this section and the person applies to the judge to be discharged, the judge must order his discharge.

## **77 Judge's powers at extradition hearing**

- (1) In England and Wales, at the extradition hearing the appropriate judge has the same powers (as nearly as may be) as a magistrates' court would have if the proceedings were the summary trial of an information against the person whose extradition is requested.
- (2) In Scotland—
  - (a) at the extradition hearing the appropriate judge has the same powers (as nearly as may be) as if the proceedings were summary proceedings in respect of an offence alleged to have been committed by the person whose extradition is requested; but
  - (b) in his making any decision under section 78(4)(a) evidence from a single source shall be sufficient.
- (3) In Northern Ireland, at the extradition hearing the appropriate judge has the same powers (as nearly as may be) as a magistrates' court would have if the proceedings were the hearing and determination of a complaint against the person whose extradition is requested.
- (4) If the judge adjourns the extradition hearing he must remand the person in custody or on bail.
- (5) If the judge remands the person in custody he may later grant bail.

## **78 Initial stages of extradition hearing**

- (1) This section applies if a person alleged to be the person whose extradition is requested appears or is brought before the appropriate judge for the extradition hearing.
- (2) The judge must decide whether the documents sent to him by the Secretary of State consist of (or include)—
  - (a) the documents referred to in section 70(9);
  - (b) particulars of the person whose extradition is requested;
  - (c) particulars of the offence specified in the request;
  - (d) in the case of a person accused of an offence, a warrant for his arrest issued in the category 2 territory;
  - (e) in the case of a person alleged to be unlawfully at large after conviction of an offence, a certificate issued in the category 2 territory of the conviction and (if he has been sentenced) of the sentence.

- (3) If the judge decides the question in subsection (2) in the negative he must order the person's discharge.
- (4) If the judge decides that question in the affirmative he must decide whether—
  - (a) the person appearing or brought before him is the person whose extradition is requested;
  - (b) the offence specified in the request is an extradition offence;
  - (c) copies of the documents sent to the judge by the Secretary of State have been served on the person.
- (5) The judge must decide the question in subsection (4)(a) on a balance of probabilities.
- (6) If the judge decides any of the questions in subsection (4) in the negative he must order the person's discharge.
- (7) If the judge decides those questions in the affirmative he must proceed under section 79.
- (8) The reference in subsection (2)(d) to a warrant for a person's arrest includes a reference to a judicial document authorising his arrest.

## **79 Bars to extradition**

- (1) If the judge is required to proceed under this section he must decide whether the person's extradition to the category 2 territory is barred by reason of—
  - (a) the rule against double jeopardy;
  - (b) extraneous considerations;
  - (c) the passage of time;
  - (d) hostage-taking considerations.
- (2) Sections 80 to 83 apply for the interpretation of subsection (1).
- (3) If the judge decides any of the questions in subsection (1) in the affirmative he must order the person's discharge.
- (4) If the judge decides those questions in the negative and the person is accused of the commission of the extradition offence but is not alleged to be unlawfully at large after conviction of it, the judge must proceed under section 84.
- (5) If the judge decides those questions in the negative and the person is alleged to be unlawfully at large after conviction of the extradition offence, the judge must proceed under section 85.

## **80 Rule against double jeopardy**

A person's extradition to a category 2 territory is barred by reason of the rule against double jeopardy if (and only if) it appears that he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction if he were charged with the extradition offence in the part of the United Kingdom where the judge exercises his jurisdiction.

### **81 Extraneous considerations**

A person's extradition to a category 2 territory is barred by reason of extraneous considerations if (and only if) it appears that—

- (a) the request for his extradition (though purporting to be made on account of the extradition offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality, gender, sexual orientation or political opinions, or
- (b) if extradited he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, gender, sexual orientation or political opinions.

### **82 Passage of time**

A person's extradition to a category 2 territory is barred by reason of the passage of time if (and only if) it appears that it would be unjust or oppressive to extradite him by reason of the passage of time since he is alleged to have committed the extradition offence or since he is alleged to have become unlawfully at large (as the case may be).

### **83 Hostage-taking considerations**

- (1) A person's extradition to a category 2 territory is barred by reason of hostage-taking considerations if (and only if) the territory is a party to the Hostage-taking Convention and it appears that—
  - (a) if extradited he might be prejudiced at his trial because communication between him and the appropriate authorities would not be possible, and
  - (b) the act or omission constituting the extradition offence also constitutes an offence under section 1 of the Taking of Hostages Act 1982 (c. 28) or an attempt to commit such an offence.
- (2) The appropriate authorities are the authorities of the territory which are entitled to exercise rights of protection in relation to him.
- (3) A certificate issued by the Secretary of State that a territory is a party to the Hostage-taking Convention is conclusive evidence of that fact for the purposes of subsection (1).
- (4) The Hostage-taking Convention is the International Convention against the Taking of Hostages opened for signature at New York on 18 December 1979.

### **84 Case where person has not been convicted**

- (1) If the judge is required to proceed under this section he must decide whether there is evidence which would be sufficient to make a case requiring an answer by the person if the proceedings were the summary trial of an information against him.
- (2) In deciding the question in subsection (1) the judge may treat a statement made by a person in a document as admissible evidence of a fact if—
  - (a) the statement is made by the person to a police officer or another person charged with the duty of investigating offences or charging offenders, and
  - (b) direct oral evidence by the person of the fact would be admissible.

- (3) In deciding whether to treat a statement made by a person in a document as admissible evidence of a fact, the judge must in particular have regard—
  - (a) to the nature and source of the document;
  - (b) to whether or not, having regard to the nature and source of the document and to any other circumstances that appear to the judge to be relevant, it is likely that the document is authentic;
  - (c) to the extent to which the statement appears to supply evidence which would not be readily available if the statement were not treated as being admissible evidence of the fact;
  - (d) to the relevance of the evidence that the statement appears to supply to any issue likely to have to be determined by the judge in deciding the question in subsection (1);
  - (e) to any risk that the admission or exclusion of the statement will result in unfairness to the person whose extradition is sought, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings.
- (4) A summary in a document of a statement made by a person must be treated as a statement made by the person in the document for the purposes of subsection (2).
- (5) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.
- (6) If the judge decides that question in the affirmative he must proceed under section 87.
- (7) If the judge is required to proceed under this section and the category 2 territory to which extradition is requested is designated for the purposes of this section by order made by the Secretary of State—
  - (a) the judge must not decide under subsection (1), and
  - (b) he must proceed under section 87.
- (8) Subsection (1) applies to Scotland with the substitution of “summary proceedings in respect of an offence alleged to have been committed by the person (except that for this purpose evidence from a single source shall be sufficient)” for “the summary trial of an information against him”.
- (9) Subsection (1) applies to Northern Ireland with the substitution of “the hearing and determination of a complaint” for “the summary trial of an information”.

## **85 Case where person has been convicted**

- (1) If the judge is required to proceed under this section he must decide whether the person was convicted in his presence.
- (2) If the judge decides the question in subsection (1) in the affirmative he must proceed under section 87.
- (3) If the judge decides that question in the negative he must decide whether the person deliberately absented himself from his trial.
- (4) If the judge decides the question in subsection (3) in the affirmative he must proceed under section 87.

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- (5) If the judge decides that question in the negative he must decide whether the person would be entitled to a retrial or (on appeal) to a review amounting to a retrial.
- (6) If the judge decides the question in subsection (5) in the affirmative he must proceed under section 86.
- (7) If the judge decides that question in the negative he must order the person's discharge.
- (8) The judge must not decide the question in subsection (5) in the affirmative unless, in any proceedings that it is alleged would constitute a retrial or a review amounting to a retrial, the person would have these rights—
  - (a) the right to defend himself in person or through legal assistance of his own choosing or, if he had not sufficient means to pay for legal assistance, to be given it free when the interests of justice so required;
  - (b) the right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

## **86 Conviction in person's absence**

- (1) If the judge is required to proceed under this section he must decide whether there is evidence which would be sufficient to make a case requiring an answer by the person if the proceedings were the summary trial of an information against him.
- (2) In deciding the question in subsection (1) the judge may treat a statement made by a person in a document as admissible evidence of a fact if—
  - (a) the statement is made by the person to a police officer or another person charged with the duty of investigating offences or charging offenders, and
  - (b) direct oral evidence by the person of the fact would be admissible.
- (3) In deciding whether to treat a statement made by a person in a document as admissible evidence of a fact, the judge must in particular have regard—
  - (a) to the nature and source of the document;
  - (b) to whether or not, having regard to the nature and source of the document and to any other circumstances that appear to the judge to be relevant, it is likely that the document is authentic;
  - (c) to the extent to which the statement appears to supply evidence which would not be readily available if the statement were not treated as being admissible evidence of the fact;
  - (d) to the relevance of the evidence that the statement appears to supply to any issue likely to have to be determined by the judge in deciding the question in subsection (1);
  - (e) to any risk that the admission or exclusion of the statement will result in unfairness to the person whose extradition is sought, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings.
- (4) A summary in a document of a statement made by a person must be treated as a statement made by the person in the document for the purposes of subsection (2).
- (5) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.

- (6) If the judge decides that question in the affirmative he must proceed under section 87.
- (7) If the judge is required to proceed under this section and the category 2 territory to which extradition is requested is designated for the purposes of this section by order made by the Secretary of State—
  - (a) the judge must not decide under subsection (1), and
  - (b) he must proceed under section 87.
- (8) Subsection (1) applies to Scotland with the substitution of “summary proceedings in respect of an offence alleged to have been committed by the person (except that for this purpose evidence from a single source shall be sufficient)” for “the summary trial of an information against him”.
- (9) Subsection (1) applies to Northern Ireland with the substitution of “the hearing and determination of a complaint” for “the summary trial of an information”.

## **87 Human rights**

- (1) If the judge is required to proceed under this section (by virtue of section 84, 85 or 86) he must decide whether the person’s extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998 (c. 42).
- (2) If the judge decides the question in subsection (1) in the negative he must order the person’s discharge.
- (3) If the judge decides that question in the affirmative he must send the case to the Secretary of State for his decision whether the person is to be extradited.

## **88 Person charged with offence in United Kingdom**

- (1) This section applies if at any time in the extradition hearing the judge is informed that the person is charged with an offence in the United Kingdom.
- (2) The judge must adjourn the extradition hearing until one of these occurs—
  - (a) the charge is disposed of;
  - (b) the charge is withdrawn;
  - (c) proceedings in respect of the charge are discontinued;
  - (d) an order is made for the charge to lie on the file, or in relation to Scotland, the diet is deserted *pro loco et tempore*.
- (3) If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the judge may adjourn the extradition hearing until the sentence has been served.
- (4) If before he adjourns the extradition hearing under subsection (2) the judge has decided under section 79 whether the person’s extradition is barred by reason of the rule against double jeopardy, the judge must decide that question again after the resumption of the hearing.

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### **89 Person serving sentence in United Kingdom**

- (1) This section applies if at any time in the extradition hearing the judge is informed that the person is serving a sentence of imprisonment or another form of detention in the United Kingdom.
- (2) The judge may adjourn the extradition hearing until the sentence has been served.

### **90 Competing extradition claim**

- (1) This section applies if at any time in the extradition hearing the judge is informed that the conditions in subsection (2) or (3) are met.
- (2) The conditions are that—
  - (a) the Secretary of State has received another valid request for the person's extradition to a category 2 territory;
  - (b) the other request has not been disposed of;
  - (c) the Secretary of State has made an order under section 126(2) for further proceedings on the request under consideration to be deferred until the other request has been disposed of.
- (3) The conditions are that—
  - (a) a certificate has been issued under section 2 in respect of a Part 1 warrant issued in respect of the person;
  - (b) the warrant has not been disposed of;
  - (c) the Secretary of State has made an order under section 179(2) for further proceedings on the request to be deferred until the warrant has been disposed of.
- (4) The judge must remand the person in custody or on bail.
- (5) If the judge remands the person in custody he may later grant bail.

### **91 Physical or mental condition**

- (1) This section applies if at any time in the extradition hearing it appears to the judge that the condition in subsection (2) is satisfied.
- (2) The condition is that the physical or mental condition of the person is such that it would be unjust or oppressive to extradite him.
- (3) The judge must—
  - (a) order the person's discharge, or
  - (b) adjourn the extradition hearing until it appears to him that the condition in subsection (2) is no longer satisfied.

### **92 Case sent to Secretary of State**

- (1) This section applies if the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited.
- (2) The judge must inform the person in ordinary language that—
  - (a) he has a right to appeal to the High Court;



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- (b) if he exercises the right the appeal will not be heard until the Secretary of State has made his decision.
- (3) But subsection (2) does not apply if the person has consented to his extradition under section 127.
- (4) The judge must remand the person in custody or on bail—
  - (a) to wait for the Secretary of State’s decision, and
  - (b) to wait for his extradition to the territory to which extradition is requested (if the Secretary of State orders him to be extradited).
- (5) If the judge remands the person in custody he may later grant bail.