



# Extradition Act 2003

## 2003 CHAPTER 41

### PART 5

#### MISCELLANEOUS AND GENERAL

##### *Custody and bail*

#### 197 Custody

- (1) If a judge remands a person in custody under this Act, the person must be committed to the institution to which he would have been committed if charged with an offence before the judge.
- (2) If a person in custody following his arrest under Part 1 or Part 2 escapes from custody, he may be retaken in any part of the United Kingdom in the same way as he could have been if he had been in custody following his arrest or apprehension under a relevant domestic warrant.
- (3) A relevant domestic warrant is a warrant for his arrest or apprehension issued in the part of the United Kingdom in question in respect of an offence committed there.
- (4) Subsection (5) applies if—
  - (a) a person is in custody in one part of the United Kingdom (whether under this Act or otherwise);
  - (b) he is required to be removed to another part of the United Kingdom after being remanded in custody under this Act;
  - (c) he is so removed by sea or air.
- (5) The person must be treated as continuing in legal custody until he reaches the place to which he is required to be removed.
- (6) An order for a person's extradition under this Act is sufficient authority for an appropriate person—
  - (a) to receive him;

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- (b) to keep him in custody until he is extradited under this Act;
  - (c) to convey him to the territory to which he is to be extradited under this Act.
- (7) An appropriate person is—
- (a) a person to whom the order is directed;
  - (b) a constable.

## **198 Bail: England and Wales**

- (1) The Bail Act 1976 (c. 63) is amended as follows.
- (2) In section 1(1) (meaning of “bail in criminal proceedings”) after paragraph (b) insert—
- “, or
- (c) bail grantable in connection with extradition proceedings in respect of an offence.”
- (3) In section 2(2) (other definitions) omit the definition of “proceedings against a fugitive offender” and in the appropriate places insert—
- ““extradition proceedings” means proceedings under the Extradition Act 2003;”;
- ““prosecutor”, in relation to extradition proceedings, means the person acting on behalf of the territory to which extradition is sought;”.
- (4) In section 4 (general right to bail) in subsection (2) omit the words “or proceedings against a fugitive offender for the offence”.
- (5) In section 4 after subsection (2) insert—
- “(2A) This section also applies to a person whose extradition is sought in respect of an offence, when—
- (a) he appears or is brought before a court in the course of or in connection with extradition proceedings in respect of the offence, or
  - (b) he applies to a court for bail or for a variation of the conditions of bail in connection with the proceedings.
- (2B) But subsection (2A) above does not apply if the person is alleged to be unlawfully at large after conviction of the offence.”
- (6) In section 5B (reconsideration of decisions granting bail) for subsection (1) substitute—
- “(A1) This section applies in any of these cases—
- (a) a magistrates' court has granted bail in criminal proceedings in connection with an offence to which this section applies or proceedings for such an offence;
  - (b) a constable has granted bail in criminal proceedings in connection with proceedings for such an offence;
  - (c) a magistrates' court or a constable has granted bail in connection with extradition proceedings.
- (1) The court or the appropriate court in relation to the constable may, on application by the prosecutor for the decision to be reconsidered—

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- (a) vary the conditions of bail,
  - (b) impose conditions in respect of bail which has been granted unconditionally, or
  - (c) withhold bail.”
- (7) In section 7 (liability to arrest for absconding or breaking conditions of bail) after subsection (1) insert—
  - “(1A) Subsection (1B) applies if—
    - (a) a person has been released on bail in connection with extradition proceedings,
    - (b) the person is under a duty to surrender into the custody of a constable, and
    - (c) the person fails to surrender to custody at the time appointed for him to do so.
  - (1B) A magistrates' court may issue a warrant for the person's arrest.”
- (8) In section 7(4) omit the words from “In reckoning” to “Sunday”.
- (9) In section 7 after subsection (4) insert—
  - “(4A) A person who has been released on bail in connection with extradition proceedings and is under a duty to surrender into the custody of a constable may be arrested without warrant by a constable on any of the grounds set out in paragraphs (a) to (c) of subsection (3).
  - (4B) A person arrested in pursuance of subsection (4A) above shall be brought as soon as practicable and in any event within 24 hours after his arrest before a justice of the peace for the petty sessions area in which he was arrested.”
- (10) In section 7(5) after “subsection (4)” insert “or (4B)”.
- (11) In section 7 after subsection (6) insert—
  - “(7) In reckoning for the purposes of this section any period of 24 hours, no account shall be taken of Christmas Day, Good Friday or any Sunday.”
- (12) In Part 1 of Schedule 1 (defendants accused or convicted of imprisonable offences) for paragraph 1 substitute—
  - “1 The following provisions of this Part of this Schedule apply to the defendant if—
    - (a) the offence or one of the offences of which he is accused or convicted in the proceedings is punishable with imprisonment, or
    - (b) his extradition is sought in respect of an offence.”
- (13) In Part 1 of Schedule 1 after paragraph 2A insert—
  - “2B The defendant need not be granted bail in connection with extradition proceedings if—
    - (a) the conduct constituting the offence would, if carried out by the defendant in England and Wales, constitute an indictable offence or an offence triable either way; and
    - (b) it appears to the court that the defendant was on bail on the date of the offence.”

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- (14) In Part 1 of Schedule 1 in paragraph 6 after “the offence” insert “or the extradition proceedings”.

## **199 Bail: Scotland**

After section 24 of the Criminal Procedure (Scotland) Act 1995 (c. 46) (bail and bail conditions) insert—

### **“24A Bail: extradition proceedings**

- (1) In the application of the provisions of this Part by virtue of section 9(2) or 77(2) of the Extradition Act 2003 (judge’s powers at extradition hearing), those provisions apply with the modifications that—
- (a) references to the prosecutor are to be read as references to a person acting on behalf of the territory to which extradition is sought;
  - (b) the right of the Lord Advocate mentioned in section 24(2) of this Act applies to a person subject to extradition proceedings as it applies to a person charged with any crime or offence;
  - (c) the following do not apply—
    - (i) paragraph (b) of section 24(3); and
    - (ii) subsection (3) of section 30; and
  - (d) sections 28(1) and 33 apply to a person subject to extradition proceedings as they apply to an accused.
- (2) Section 32 of this Act applies in relation to a refusal of bail, the amount of bail or a decision to allow bail or ordain appearance in proceedings under this Part as the Part applies by virtue of the sections of that Act of 2003 mentioned in subsection (1) above.
- (3) The Scottish Ministers may, by order, for the purposes of section 9(2) or 77(2) of the Extradition Act 2003 make such amendments to this Part as they consider necessary or expedient.
- (4) The order making power in subsection (3) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.”

## **200 Appeal against grant of bail**

- (1) Section 1 of the Bail (Amendment) Act 1993 (c. 26) (prosecution right of appeal against grant of bail) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) Where a magistrates’ court grants bail to a person in connection with extradition proceedings, the prosecution may appeal to a judge of the Crown Court against the granting of bail.”
- (3) In subsection (3) for “Such an appeal” substitute “An appeal under subsection (1) or (1A)”.
- (4) In subsection (4)—
- (a) after subsection (1) insert “or (1A)”;

- (b) for “magistrates' court” substitute “court which has granted bail”;
  - (c) omit “such”.
- (5) In subsection (5) for “magistrates' court” substitute “court which has granted bail”.
- (6) In subsection (6) for “magistrates' court” substitute “court which has granted bail”.
- (7) In subsection (8)—
- (a) after “subsection (1)” insert “or (1A)”;
  - (b) omit “magistrates”.
- (8) In subsection (10)(b) for “reference in subsection (5) above to remand in custody is” substitute “references in subsections (6) and (9) above to remand in custody are”.
- (9) After subsection (11) insert—
- “(12) In this section—
- “extradition proceedings” means proceedings under the Extradition Act 2003;
  - “magistrates' court” and “court” in relation to extradition proceedings means a District Judge (Magistrates' Courts) designated for the purposes of Part 1 or Part 2 of the Extradition Act 2003 by the Lord Chancellor;
  - “prosecution” in relation to extradition proceedings means the person acting on behalf of the territory to which extradition is sought.”

## **201 Remand to local authority accommodation**

- (1) Section 23 of the Children and Young Persons Act 1969 (c. 54) (remand to local authority accommodation) is amended as set out in subsections (2) to (11).
- (2) In subsection (1) after “following provisions of this section” insert “(except subsection (1A))”.
- (3) After subsection (1) insert—
- “(1A) Where a court remands a child or young person in connection with extradition proceedings and he is not released on bail the remand shall be to local authority accommodation.”
- (4) In subsection (4) after “subsections (5)” insert “, (5ZA)”.
- (5) In subsection (5) after “security requirement” insert “in relation to a person remanded in accordance with subsection (1) above”.
- (6) After subsection (5) insert—
- “(5ZA) A court shall not impose a security requirement in relation to a person remanded in accordance with subsection (1A) above unless—
- (a) he has attained the age of twelve and is of a prescribed description;
  - (b) one or both of the conditions set out in subsection (5ZB) below is satisfied; and
  - (c) the condition set out in subsection (5AA) below is satisfied.
- (5ZB) The conditions mentioned in subsection (5ZA)(b) above are—

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- (a) that the conduct constituting the offence to which the extradition proceedings relate would if committed in the United Kingdom constitute an offence punishable in the case of an adult with imprisonment for a term of fourteen years or more;
- (b) that the person has previously absconded from the extradition proceedings or from proceedings in the United Kingdom or the requesting territory which relate to the conduct constituting the offence to which the extradition proceedings relate.

(5ZC) For the purposes of subsection (5ZB) above a person has absconded from proceedings if in relation to those proceedings—

- (a) he has been released subject to a requirement to surrender to custody at a particular time and he has failed to surrender to custody at that time, or
- (b) he has surrendered into the custody of a court and he has at any time absented himself from the court without its leave.”

(7) In subsection (5AA) for “subsection (5)” substitute “subsections (5) and (5ZA)”.

(8) In subsection (12) for the definition of “relevant court” substitute—

““relevant court”—

- (a) in relation to a person remanded to local authority accommodation under subsection (1) above, means the court by which he was so remanded, or any magistrates' court having jurisdiction in the place where he is for the time being;
- (b) in relation to a person remanded to local authority accommodation under subsection (1A) above, means the court by which he was so remanded.”

(9) In subsection (12) in the appropriate places insert—

““extradition proceedings” means proceedings under the Extradition Act 2003;”;

““requesting territory” means the territory to which a person’s extradition is sought in extradition proceedings;”.

(10) In section 98(1) of the Crime and Disorder Act 1998 (c. 37) (modifications of section 23 of the Children and Young Persons Act 1969 (c. 54) in relation to 15 and 16 year old boys) after paragraph (b) insert “; and

- (c) is not remanded in connection with proceedings under the Extradition Act 2003.”