



Extradition Act 2003

2003 CHAPTER 41

PART 2

EXTRADITION TO CATEGORY 2 TERRITORIES

Interpretation

138 Extradition offences: person sentenced for offence

- [^{F1}(1) This section sets out whether a person's conduct constitutes an “extradition offence” for the purposes of this Part in a case where the person—
- (a) has been convicted, in the category 2 territory to which extradition is requested, of an offence constituted by the conduct, and
 - (b) has been sentenced for the offence.
- (2) The conduct constitutes an extradition offence in relation to the category 2 territory if the conditions in subsection (3), (4) or (5) are satisfied.
- (3) The conditions in this subsection are that—
- (a) the conduct occurs in the category 2 territory;
 - (b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom;
 - (c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 2 territory in respect of the conduct.
- (4) The conditions in this subsection are that—
- (a) the conduct occurs outside the category 2 territory;
 - (b) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the relevant part of the United Kingdom punishable as mentioned in subsection (3)(b);

Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Section 138. (See end of Document for details)

- (c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 2 territory in respect of the conduct.
- (5) The conditions in this subsection are that—
 - (a) the conduct occurs outside the category 2 territory;
 - (b) no part of the conduct occurs in the United Kingdom;
 - (c) the conduct constitutes, or if committed in the United Kingdom would constitute, an offence mentioned in subsection (6);
 - (d) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 2 territory in respect of the conduct.]
- (6) The offences are—
 - (a) an offence under section 51 or 58 of the International Criminal Court Act 2001 (c. 17) (genocide, crimes against humanity and war crimes);
 - (b) an offence under section 52 or 59 of that Act (conduct ancillary to genocide etc. committed outside the jurisdiction);
 - (c) an ancillary offence, as defined in section 55 or 62 of that Act, in relation to an offence falling within paragraph (a) or (b);
 - (d) an offence under section 1 of the International Criminal Court (Scotland) Act 2001 (asp 13) (genocide, crimes against humanity and war crimes);
 - (e) an offence under section 2 of that Act (conduct ancillary to genocide etc. committed outside the jurisdiction);
 - (f) an ancillary offence, as defined in section 7 of that Act, in relation to an offence falling within paragraph (d) or (e).
- (7) If the conduct constitutes an offence under the military law of the category 2 territory but does not constitute an offence under the general criminal law of the relevant part of the United Kingdom it does not constitute an extradition offence; and subsections (1) to (6) have effect subject to this.
- [^{F2}(7A) References in this section to “conduct” (except in the expression “equivalent conduct”) are to the conduct specified in the request for the person's extradition]
- (8) The relevant part of the United Kingdom is the part of the United Kingdom in which—
 - (a) the extradition hearing took place, if the question of whether conduct constitutes an extradition offence is to be decided by the Secretary of State;
 - (b) proceedings in which it is necessary to decide that question are taking place, in any other case.

^{F3}(9)

Textual Amendments

F1 S. 138(1)-(5) substituted (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), [ss. 164\(5\), 185\(1\)](#) (with [ss. 21, 33, 42, 58, 75, 93](#)); S.I. 2014/1916, art. 2(j) (with art. 6)

F2 S. 138(7A) inserted (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), [ss. 164\(6\), 185\(1\)](#) (with [ss. 21, 33, 42, 58, 75, 93](#)); S.I. 2014/1916, art. 2(j) (with art. 6)

F3 S. 138(9) repealed (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 11 para. 118](#) (with [ss. 21, 33, 42, 58, 75, 93](#)); S.I. 2014/1916, art. 2(t)

Changes to legislation: There are currently no known outstanding effects
for the Extradition Act 2003, Section 138. (See end of Document for details)

Commencement Information

- II** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103](#), **art. 2** (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258](#) art. 2(2) and [S.I. 2003/3312](#) art. 2(2))

Changes to legislation:

There are currently no known outstanding effects for the Extradition Act 2003, Section 138.