

POLICING AND CRIME ACT 2009

EXPLANATORY NOTES

TERRITORIAL EXTENT AND APPLICATION

Part 6 – Extradition

Alerts

Section 67 Article 26 alerts

339. These provisions are designed to ensure that the UK is in a position to deal with alerts transmitted via the second generation Schengen Information System (“SIS II”) which request the arrest of a person for extradition purposes.
340. SIS II is a computer database containing information relating to individuals, vehicles and lost and stolen objects. The current expectation is that the UK will begin sending and receiving data via SIS II from April 2011. This data will include the details of persons wanted for arrest for extradition purposes (“article 26 alerts”) which will have been entered on SIS II following the issue of a European Arrest Warrant (“an EAW”) in the relevant member state.
341. Section 204 of the Extradition Act 2003 (the “2003 Act”) previously allowed Part 1 warrants transmitted to the UK by electronic means to be dealt with as if they were Part 1 warrants transmitted in hard copy. Section 67 amends section 204 of the 2003 Act so as to ensure that where an article 26 alert, together with an arrest warrant issued by a territory designated by order under Part 1 of the 2003 Act (a “category 1 territory”), is transmitted to a designated authority in an intelligible electronic form, that information (together with any other information accompanying it) falls to be considered by the designated authority in determining whether it amounts to a Part 1 warrant which may be certified under section 2 of the 2003 Act.
342. *Section 67* also makes similar provision in relation to arrest warrants transmitted in an intelligible electronic form in cases where no article 26 alert has been issued. This is to ensure that any warrants sent outside of SIS II which are transmitted by electronic means will also fall to be considered for certification under section 2 of the 2003 Act.

Section 68 – Article 95 Alerts

343. Section 212 of the Extradition Act 2003 previously allowed article 95 alerts issued before 1 January 2004 to be dealt with as if they were Part 1 warrants. Section 68 amends these provisions so that *all* article 95 alerts issued at the request of an authority of a category 1 territory fall to be regarded as arrest warrants issued by that authority. This will ensure that information contained in an article 95 alert (together with any information transmitted with it) will fall to be considered by the designated authority in determining whether it amounts to a Part 1 warrant which may be certified under section 2 of the Extradition Act 2003. This will allow the UK to meet its obligation to validate existing article 95 alerts prior to the UK beginning to send and receive data via SIS II.

Deferral of extradition

Section 69 Extradition to category 1 territory and Section 70 Extradition to category 2 territory

344. Sections 22 and 88 of the Extradition Act 2003 provide that where the appropriate judge is informed that a person whose extradition has been sought has been charged with an offence in the UK the judge must adjourn the extradition hearing until the domestic proceedings have been resolved. These powers only apply, however, after a person has been brought before the appropriate judge, but *before* the extradition hearing has begun. Section 22 covers proceedings under Part 1 of the Extradition Act 2003 and section 88 covers proceedings under Part 2 of the Extradition Act 2003.
345. **Section 69** inserts section 8A into the Extradition Act 2003 and section 70 inserts section 76A into the Extradition Act 2003. These provisions require the appropriate judge to adjourn extradition proceedings on the basis of a domestic prosecution where the judge is informed of this fact after a person has been brought before him or her, but *before* the extradition hearing has begun. Section 8A covers proceedings under Part 1 of the Extradition Act 2003 and section 76A covers proceedings under Part 2 of the Extradition Act 2003.
346. Sections 23 and 89 of the Extradition Act 2003 provide that where the appropriate judge is informed that the person in question is serving a sentence of imprisonment or another form of detention in the UK the judge may adjourn the extradition hearing until that sentence has been served. These powers only apply, however, once the extradition hearing has begun. Section 23 covers proceedings under Part 1 of the Extradition Act 2003 and section 89 covers proceedings under Part 2 of the Extradition Act 2003.
347. **Section 69** inserts section 8B into the Extradition Act 2003 and section 70 inserts section 76B into the Extradition Act 2003. These provisions allow the appropriate judge to adjourn extradition proceedings on the basis of a domestic sentence after a person has been brought before him or her, *before* the extradition hearing has begun. Section 8B covers proceedings under Part 1 of the Extradition Act 2003 and section 76B covers proceedings under Part 2 of the Extradition Act 2003.

Section 71 Person charged with offence or serving sentence of imprisonment

348. There are occasions where a person's extradition is sought from the UK while that person is facing criminal proceedings or serving a custodial sentence in the UK. This section amends various provisions of the Extradition Act 2003 so as to make it clear that where consideration of an extradition request is deferred in order to allow domestic proceedings to be concluded or a UK prison sentence to be served, consideration of the extradition request should recommence once the person is released from detention pursuant to any sentence imposed.
349. Subsections (2) and (4) amend sections 22(3) and 88(3) of the Extradition Act 2003 respectively. These amendments mean that where the appropriate judge adjourns an extradition hearing on the grounds that the subject of the extradition request has been charged with an offence in the UK, the extradition hearing will not resume until the person is released from detention pursuant to the sentence (whether on licence or otherwise). This is to avoid any suggestion that the provisions should be interpreted so that the extradition hearing will stand adjourned until any licence period has been completed.
350. Subsections (3) and (5) amend section 23 and 89 of the Extradition Act 2003 respectively so as to make it clear that where a judge adjourns an extradition hearing on the basis that the subject of the extradition request is serving a sentence of imprisonment in the UK, the extradition hearing will not be resumed until the person is released from detention pursuant to the sentence (whether on licence or otherwise).

351. Subsection (6) amends section 97(3) of the Extradition Act 2003 to make it clear that the Secretary of State should not make a decision on an extradition request under Part 2 of that Act until a person charged with an offence in the UK and subsequently sentenced to a term of imprisonment or another form of detention is released from detention pursuant to the sentence (whether on licence or otherwise).
352. Subsection (7) amends section 98 of the Extradition Act 2003 to make it clear that where the Secretary of State has decided to defer making a decision on extradition in a Part 2 case on the grounds that the person in question is in custody, this decision will stand deferred until the person in question is released from detention pursuant to a sentence (whether on licence or otherwise).
353. Subsection (8) amends section 102(3) of the Extradition Act 2003 so as to make it clear that where the Secretary of State has deferred making a decision on extradition under section 97(3) or 98(2) the “appropriate day” from which the time for making a decision on extradition is calculated is the day upon which the subject of the extradition request is released from detention pursuant to a sentence (whether on licence or otherwise).
354. Subsection (9) makes a minor amendment to section 197A of the Extradition Act 2003 to ensure that the language used there is consistent with the language used in the sections of the 2003 Act as amended by the other provisions of this section.
355. Subsection (10) inserts a subsection (6A) into section 216 of the Extradition Act 2003 to make it clear that reference in the Extradition Act 2003 to releasing a person from detention pursuant to a sentence does not include releasing a person temporarily on licence pursuant to an intermittent custody order.

Return to overseas territory

Section 72 Return from category 1 territory

356. **Section 72** inserts a new section 59 into the Extradition Act 2003. This section applies to cases where a person is serving a sentence of imprisonment in the UK, is then extradited to a category 1 territory under a European Arrest Warrant and then returns to the UK. The section sets out what happens when this person returns to the UK to serve the remainder of the UK sentence or otherwise returns to the UK. Subsection (2) provides that time spent outside the UK as a result of the extradition is not deducted from the UK sentence when the person returns. Subsections (3) and (4), however, make it clear that time spent in custody abroad should be deducted from a UK sentence where the person was held in custody in connection with the extradition offence or any other offence in respect of which they could be dealt with as a result of the extradition request and that person was not convicted of the offence in question.
357. Subsection (5) provides that if the person extradited to a category 1 territory then returns to the UK and is not entitled to be released from detention pursuant to their UK sentence, then they are liable to be detained and should be treated as unlawfully at large if at large. Subsection (6) deals with cases where a person returning to the UK is entitled to be released from detention on licence. Subsection (6)(a) states that if a licence was in force at the time of extradition then the licence will be suspended during their absence from the UK but will have effect on return. Subsection (7) also provides that if no licence was imposed when the person was extradited, then the person in question may be detained in any place in which they could have been detained prior to extradition. Subsection (8) then provides that a constable or immigration officer may take this person into custody for the purpose of conveying them to the place of detention referred to in subsection (7). Subsection (9) provides that where a person has been taken into custody and detained under these powers they must be released on license within five days of being taken into custody under this section. Subsection (10) provides that in calculating the period of five days, no account should be taken of weekends and public holidays. Subsection (11) defines when a person is to be regarded as entitled to be released from detention.

Subsection (12) makes it clear that the powers set out in subsection (8) are exercisable throughout the UK.

Section 73 Return from category 2 country

358. **Section 73** inserts a new section 132 into the Extradition Act 2003. This section applies to cases where a person serving a sentence of imprisonment in the UK, is then extradited to a territory designated by order under Part 2 of the 2003 Act (a category 2 territory) and subsequently returns to the UK. The section sets out what happens when this person returns to the UK to serve the remainder of the UK sentence or otherwise returns to the UK. Subsection (2) provides that time spent outside the UK as a result of the extradition is not deducted from the UK sentence when the person returns. Subsections (3) and (4), however, make it clear that time spent in custody abroad should be deducted from a UK sentence where the person was held in custody in connection with the extradition offence or any other offence in respect of which they could be dealt with as a result of the extradition request and that person was not convicted of the offence in question.
359. Subsection (5) provides that if the person extradited to a category 2 territory then returns to the UK and is not entitled to be released from detention pursuant to their UK sentence, then they are liable to be detained and should be treated as unlawfully at large if at large. Subsection (6) deals with cases where a person returning to the UK is entitled to be released from detention on licence. Subsection (6)(a) provides that if a licence was in force at the time of extradition then the licence will be suspended during their absence from the UK but will have effect on return. Subsection (7) also provides that if no licence was imposed when the person was extradited, then the person in question may be detained in any place in which they could have been detained prior to extradition. Subsection (8) then provides that a constable or immigration officer may take this person into custody for the purpose of conveying them to the place of detention referred to in subsection (7). Subsection (9) provides that where a person has been taken into custody and detained under these powers they must be released on licence within five days of being taken into custody under this section. Subsection (10) provides that in calculating the period of five days, no account should be taken of weekends and public holidays. Subsection (11) defines when a person is to be regarded as entitled to be released from detention. Subsection (12) makes it clear that the powers set out in subsection (8) are exercisable throughout the UK.

Extradition to UK

Section 74 Return to extraditing territory etc

360. Where a person whose extradition has been requested is being prosecuted or serving a sentence of imprisonment in a member state, article 24(2) of the European Arrest Warrant Framework Decision 2002/584/JHA allows the requested member state to agree terms subject to which the person in question may be temporarily surrendered. Similarly, article 5(3) of the European Arrest Warrant Framework Decision allows member states in accusation cases to make surrender of a national or a resident conditional on the requested person being returned to their jurisdiction to serve any sentence imposed in the requesting state. Sections 143 and 144 of the Extradition Act 2003 provide a legislative basis on which the UK can comply with requests from other member states to make extradition subject to such conditions.
361. **Section 74** repeals sections 143 and 144 of the Extradition Act 2003 and inserts new sections 153A, 153B and 153C. These provisions provide a regime within which the UK will be able to provide undertakings as to a person's treatment in the UK and eventual return to a requested territory. Unlike sections 143 and 144, the new provisions will facilitate the provisions of undertakings in relation to persons who have been extradited to the UK from any territory.

362. Section 153A(2) provides that where a person is serving a sentence of imprisonment or another form of detention in a territory, the Secretary of State may give an undertaking as to his or her treatment in the UK and his or her return to the requested territory.
363. Section 153A(3) provides that where a person is wanted in the UK for the purpose of prosecution, the Secretary of State may give an undertaking that the person will be kept in custody until the conclusion of the UK proceedings and that they will thereafter be returned to the requesting territory to serve the remainder of the foreign sentence. In contrast, where a person is wanted in the UK so that a sentence previously imposed may be enforced, section 153A(4) allows the Secretary of State to give an undertaking that the person in question will be returned to the requested territory once the person is entitled to be released from detention pursuant to the sentence imposed in the United Kingdom.
364. Where a person falls to be returned to a requested territory pursuant to an undertaking given under section 153A(2) section 153A(5) provides the authority for that person to be removed from prison and kept in custody while conveyed to the requested territory.
365. Section 153B governs the situation where a person is returned to a requested territory in compliance with an undertaking given under section 153A(2) but subsequently returns to the UK. By virtue of section 153B(2), any time spent outside the United Kingdom as a result of an undertaking given under section 153A(2) does not count as time served by the person as part of the sentence. In consequence section 153B(3) provides that where a person is not entitled to be released from detention pursuant to their sentence they may be detained and will be treated as unlawfully at large where at large. Section 153B(4) (a) provides that where someone is entitled to be released from detention on licence pursuant to their sentence any licence which was imposed prior to return to the requested territory will be suspended on their return to the requested territory, but will take effect once they come back to the UK. Section 153B(5) provides that where someone who is entitled to be released from detention on licence was not released on licence prior to their return to the requested territory, they can be detained in any place in which they could have been detained before the time of their return to the requested territory. Section 153B(6) provides that a constable or immigration officer may take the person in to custody for the purpose of conveying them to the place of detention referred to in section 153B(5). Section 153B(7) provides that the person must be released on licence within a five day period, starting from when the offender was taken in to custody under this section. Section 153B(8) makes it clear that in calculating the period of five days, no account should be taken of weekends and public holidays as set out in section 59(10). Section 153B(9) makes it clear that the powers set out at section 153B(6) are exercisable in any part of the UK.
366. Section 153C allows the Secretary of State to give an undertaking that someone who has been extradited to the UK will be returned to the requested territory to serve any sentence of imprisonment imposed in the UK. Section 153C(4) establishes that where such an undertaking has been given the person must be returned to the requested territory as soon as is reasonably practicable after the sentence has been imposed and once any other proceedings in respect of the offence have been concluded. Where a person is returned to serve a UK sentence overseas, section 153C(5) provides that the sentence for the offence is to be regarded as having been served. This is to ensure that someone does not remain liable to imprisonment pursuant to their UK sentence despite having served it overseas.
367. Section 153D(1) makes it clear that nothing in section 153A or 153C require the return of a person where the Secretary of State is not satisfied that their return would be compatible with the Refugee Convention or the Human Rights Act 1998. Section 153D(2) provides that all references in sections 153A and 153C to the Secretary of State should be read as references to Scottish Ministers where a Part 3 warrant has been issued by a sheriff.

Section 75 Cases in which sentence treated as served

368. **Section 75** amends two provisions of the Extradition Act 2003 to ensure consistency with sentencing legislation and to ensure that the protection afforded by section 152 of the Extradition Act 2003 applies where someone is extradited to the UK from a territory which is neither a category 1 or a category 2 territory.
369. Subsection (2) amends section 145(2) of the Extradition Act 2003 to make it clear that where, rather than extraditing someone to the UK to serve a sentence imposed, a Member State undertakes to require the person to serve the sentence in their territory, the UK custodial sentence falls to be treated as served. This ensures that a person does not remain liable to imprisonment in the UK where they have already served the sentence in question overseas.
370. Subsection (3) amends section 152 of the Extradition Act 2003. Subsection (3)(a) ensures that the protection afforded by section 152 applies where someone is extradited to the UK from a territory which is neither a category 1 nor a category 2 territory and subsection (3)(b) ensures that where a person is extradited back to the UK for one offence the sentence imposed in the UK for any other offence is to be treated as served.

Section 76 Dealing with person for other offences

371. **Section 76** replaces section 151 of the Extradition Act 2003 with a new section 151A. This section deals with situations where the UK would want to deal with an offence committed by a person previously extradited to the UK for the purposes of prosecution for a different offence. Subsection (1) of the new section 151A makes it clear that this protection applies to any territory which is not a category 1 territory or a country listed under section 150(1)(b) of the Extradition Act 2003. Subsections (2), (3) and (4) make it clear that the person may only be dealt with in the UK for an offence committed before their extradition if it is an offence falling within subsection (3) and meets either of the conditions set out in subsection (4). Subsection (5) defines what is meant by a person being dealt with for an offence in the UK.

Ancillary matters

Section 77 Provisional arrest

372. **Section 77** amends section 6 of the Extradition Act 2003 so as to exclude weekends and certain specified holidays from the calculation of the 48 hour period during which a person provisionally arrested under section 5 of the Extradition Act 2003 must be brought before, and relevant documents provided to, the appropriate judge. Section 77 also provides a mechanism by which the time limit for providing the relevant documents to the appropriate judge may be extended by up to 48 hours.
373. A power of provisional arrest is available under section 5 of the Extradition Act 2003 where a Part 1 warrant has not been received by a designated UK authority but a constable, a customs officer or a service policeman has reasonable grounds for believing that the warrant has been or will be issued by an authority in a category 1 territory.
374. Section 6(2) of the Extradition Act 2003 requires that someone who has been provisionally arrested must be brought before the appropriate judge within 48 hours of arrest. Section 6(2A) (as inserted by section 77) requires a copy of the Part 1 warrant and the certificate issued under section 2 of the Extradition Act 2003 to be provided to the appropriate judge within 48 hours of arrest. Section 77, however, amends section 6 of the Extradition Act 2003 so as to exclude the days listed in subsections (8A) and (8B) from the calculation of this 48 hour period. Section 77 also amends section 6 of the Extradition Act 2003 so as to enable the authority of the category 1 territory to apply to the appropriate judge for a further 48 hours within which to satisfy the requirements of section 6(2A). By virtue of subsections (3B) and (3C) the appropriate judge may grant such an extension where satisfied on the balance of probabilities that the requirements of

section 6(2A) of the Extradition Act 2003 could not reasonably be complied with within the initial 48 hour period. Where the person who has been provisionally arrested has been brought before the appropriate judge in pursuance of section 6(2), but the relevant documents have not been provided in accordance with section 6(2A) subsection (5B) requires the appropriate judge to remand the person who has been provisionally arrested in custody or on bail.

Section 78 Use of live link in extradition proceedings

375. This section amends the Extradition Act 2003 by inserting new sections 206A , 206B and 206C. These sections make it possible for a judge to give a live link direction in hearings before the judge other than the extradition hearing itself and other than any extradition proceedings which post date surrender. Section 206A(1) applies this section to all extradition related hearings in Parts 1 and 2 of the Extradition Act apart from the substantive extradition hearing and any hearings post dating surrender. A live link direction can be given in any case in which the appropriate judge is satisfied that the person in question is likely to be in custody at the time of the hearing and a live link direction can be made following an application by a party to the proceedings or on the appropriate judge's own motion. By virtue of subsection (4) a live link direction can be given for all future hearings to which the section applies. Subsections (5) and (6) make it clear that the judge may not give a live link direction if it is contrary to the interests of justice and that the person whose extradition is sought must be considered as present in the court if they attend via live link.
376. Section 206B(1) allows the judge to rescind a live link direction at any time before or during a hearing. Section 206B(2) prevents the judge giving or rescinding a live link direction if both parties have not been afforded the opportunity of making representations. Section 206B(3) provides that representations on the giving or rescinding of the live link direction can be made via live link. If the appropriate judge does not give a live link direction he must state in open court the reasons for not doing so and enter those reasons in the register of proceedings as set out in section 206B(4). Sections 206B(5), (6) and (7) state that when an application for a live link hearing is refused or rescinded by a judge, the person whose extradition is sought must be brought before an appropriate judge as soon as practicable after the refusal of that application or rescinding of the direction.
377. Section 206C defines terms used in section 206A. Subsections (2) and (3) make sections 67 and 139 apply in determining the appropriate judge under Parts 1 and 2 of the Extradition Act 2003. Subsection (4) sets out the definition of what is meant by "affected by an extradition claim" for the purposes of this section. Subsection (5) sets out how references should be interpreted in England and Wales, Scotland and Northern Ireland. Subsection (6) sets out what is meant by "live link" for the purposes of this section.