

SCHEDULE 5

Article 9

Persons arrested in connection with extradition proceedings

Modification of the Criminal Procedure (Scotland) Act 1995

1.—(1) Section 18 of the Criminal Procedure (Scotland) Act 1995 is modified as follows.

(2) In subsection (2), after “suspected offence” insert “or the relevant offence (within the meaning of section 164(3) of the Extradition Act 2003(1))”.

(3) In subsection (3), for “subsection (4)” substitute “subsections (3A) and (4)”.

(4) After subsection (3), insert—

“(3A) Subsection (3) does not apply to—

- (a) relevant physical data taken under subsection (2) from, or provided under that subsection by, a person arrested under an extradition arrest power (within the meaning of section 174(2) of the Extradition Act 2003), and
- (b) any sample, or any information derived from a sample, taken under subsection (6) or (6A) from a person arrested under such a power (but see section 18H).”.

(5) After section 18G(2), insert—

“18H Retention of samples etc.: extradition

(1) This section applies to—

- (a) relevant physical data taken under section 18(2) from, or provided under that subsection by, a person arrested under an extradition arrest power (within the meaning of section 174(2) of the Extradition Act 2003), and
- (b) any sample, or any information derived from a sample, taken under section 18(6) or (6A) from a person arrested under an extradition arrest power (within the meaning of section 174(2) of the Extradition Act 2003).

(2) All record of any relevant physical data, all samples and all information derived from such samples must be destroyed as soon as possible following the final determination of the extradition proceedings.

(3) The duty under subsection (2) to destroy samples taken under section 18(6) or (6A) and information derived from such samples does not apply where the circumstances in paragraph (a) or (b) of section 18(4) apply to the sample or information (and where such circumstances apply, the restrictions in section 18(5) apply to the sample or information retained).

(4) For the purposes of this section, extradition proceedings are finally determined—

- (a) if the person is extradited, on the day of the extradition,
- (b) if the person is discharged and there is no right of appeal under the Extradition Act 2003 against the decision which resulted in the order for the person’s discharge, when the person is discharged, on the day of the discharge,
- (c) where the person is discharged at an extradition hearing or by the Scottish Ministers under section 93 of the Extradition Act 2003—

(1) 2003 c.41.

(2) Section 18G was inserted by the Protection of Freedoms Act 2012 (c.9), Schedule 1, paragraph 6(3).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (i) if no application is made to the High Court for leave to appeal against the decision within the period during which such an application may be made, at the end of that period,
- (ii) if such an application is made and is refused, on the day of the refusal,
- (d) where the High Court orders the person’s discharge or dismisses an appeal against a decision to discharge the person—
 - (i) if no application is made to the High Court for permission to appeal to the Supreme Court within the 28 day period starting with the day of the High Court’s decision, at the end of that period,
 - (ii) if such an application is made to the High Court and is refused, and no application is made to the Supreme Court for permission to appeal to the Supreme Court within the period of 28 days starting with the day of the refusal, at the end of that period,
 - (iii) if such an application is made to the Supreme Court and is refused, on the day of the refusal,
 - (iv) if permission to appeal to the Supreme Court is granted, but no appeal is made within the period of 28 days starting with the day on which permission is granted, at the end of that period,
 - (v) if there is an appeal to the Supreme Court against the High Court’s decision, on the day on which the appeal is refused, is abandoned or is upheld with the effect that the person is discharged,
- (e) if an appeal to the Supreme Court is upheld with the effect that the person is discharged, on the day of the decision to uphold the appeal.
- (5) In subsection (4)—
 - “extradition hearing” has the meaning given by section 68 or as the case may be section 140 of the Extradition Act 2003,
 - “extradition proceedings” means proceedings under the Extradition Act 2003.”.

Modification of the 2016 Act

2. After section 57C of the 2016 Act(3), insert—

“57D Arrest under an extradition arrest power

- (1) In a case where a person is arrested under an extradition arrest power (within the meaning of section 174(2) of the Extradition Act 2003), this Part applies subject to the following further modifications.
- (2) The following do not apply—
 - (a) sections 3 and 4,
 - (b) sections 25 to 30,
 - (c) section 50.
- (3) In section 5—
 - (a) subsection (1)(b) is to be read as if the words “in accordance with section 4” were omitted,

(3) Section 57A to C are inserted into the Criminal Justice (Scotland) Act 2016 by the Criminal Justice (Scotland) Act 2016 (Modification of Part 1 and Ancillary Provision) Regulations 2017 ([S.S.I. 2017453](#)).

- (b) subsection (2)(a) is to be read as if the words “other than to give the information specified in section 34(4)” were omitted, and
 - (c) subsection (3) is to be read as if the words “of Articles 3 and 4” were omitted.
- (4) Section 6 is to be read as if—
- (a) in subsection (1)(c) the words “in accordance with section 4” were omitted,
 - (b) subsection (1)(d) were omitted,
 - (c) subsection (2)(a) were omitted,
 - (d) subsection (2)(c) were omitted, and
 - (e) subsections (3) to (8) were omitted.
- (6) Section 23 is to be read as if—
- (a) subsection (1)(b) were omitted,
 - (b) subsection (2)(d) were omitted.
- (7) Section 24 is to be read as if subsection (1)(b) were omitted.
- (8) Section 48 is to be read as if—
- (a) for subsection (2) there were substituted—
 - “(2) This subsection applies to a person who is in police custody having been arrested under an extradition arrest power (within the meaning of section 174(2) of the Extradition Act 2003).”, and
 - (b) for subsection (3) there were substituted—
 - “(3) In subsection (1), “the relevant offence” means the offence that would have been committed were the act constituting the relevant offence (within the meaning of section 164(3) of the Extradition Act 2003) done in Scotland.””