

2024 No. 172 (S. 1)

EXTRADITION, SCOTLAND

The Extradition Appeals (Scotland) Order 2024

<i>Made</i> - - - -	<i>20th February 2024</i>
<i>Laid before Parliament</i>	<i>21st February 2024</i>
<i>Coming into force</i> - -	<i>13th March 2024</i>

The Secretary of State makes this Order in exercise of the powers conferred by sections 58(12)(c) and 59(1) and (2) of the Crime and Courts Act 2013(a).

Citation, commencement and extent

- 1.—(1) This Order may be cited as the Extradition Appeals (Scotland) Order 2024.
- (2) This Order comes into force on 13th March 2024.
- (3) This Order extends to Scotland only.

Interpretation

2. In this Order, “section 108 human rights appeal” means—
 - (a) an appeal brought—
 - (i) in accordance with section 108(4) of the Extradition Act 2003(b) if, or to the extent that, it is an appeal against an order by the Scottish Ministers(c) for a person’s extradition on the grounds that the extradition would not be compatible with the Convention rights within the meaning of the Human Rights Act 1998(d); and
 - (ii) in circumstances where the Scottish Ministers were precluded from considering that question by section 70(11) of the Extradition Act 2003(e); or
 - (b) an appeal brought in accordance with section 108(5) and (6) of the Extradition Act 2003(f).

(a) 2013 c. 22.
(b) 2003 c. 41; subsection (4) of section 108 of the Extradition Act 2003 was amended by paragraph 113 of Schedule 11 to the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).
(c) Subject to exceptions which are not relevant to this Order, any function which falls under Part 2 of the Extradition Act 2003 to be exercised in relation to Scotland only is exercisable by the Scottish Ministers (see section 141 of that Act).
(d) 1998 c. 42.
(e) Subsection (11) of section 70 of the Extradition Act 2003 was inserted by paragraph 11 of Schedule 20 to the Crime and Courts Act 2013 with effect from 17th September 2021 for Scotland.
(f) Subsections (5) and (6) of section 108 of the Extradition Act 2003 were inserted by paragraph 12 of Schedule 20 to the Crime and Courts Act 2013 with effect from 17th September 2021 for Scotland. Subsections (5) and (6) were amended by paragraph 113 of Schedule 11 to the Anti-social Behaviour, Crime and Policing Act 2014 with effect from 17th September 2021 for Scotland.

Modification of the Extradition Act 2003

3.—(1) The Extradition Act 2003 is modified as follows.

(2) Subsections (2) to (4) of section 109 of the Extradition Act 2003 do not apply to a section 108 human rights appeal.

Transitional provision

4. In a case where notice of application for leave to bring a section 108 human rights appeal has been given before the day on which this Order comes into force but that appeal has not yet been allowed or dismissed by the High Court of Justiciary^(a), the modification made by this Order applies to that appeal as it applies to a section 108 human rights appeal brought on or after that day.

20th February 2024

Tom Tugendhat
Minister of State
Home Office

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes consequential provision to modify the application of subsections (2) to (4) of section 109 of the Extradition Act 2003 (c. 41) (“the 2003 Act”). Those subsections (when read with sections 141 and 216(9) of the 2003 Act) provide that, in Scotland, on an appeal under section 108 of the 2003 Act against a decision of the Scottish Ministers to order a person’s extradition, the High Court of Justiciary is to consider the questions which were, or should have been, before the Scottish Ministers.

Section 70(11) of the 2003 Act (as inserted by Part 2 of Schedule 20 to the Crime and Courts Act 2013 (c. 22)) (when read with section 141 of the 2003 Act) provides that, in Scotland, the Scottish Ministers are not to consider whether the extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998 (c. 42).

This Order clarifies that the High Court of Justiciary is able to allow or dismiss an appeal brought on human rights grounds where human rights questions were not considered by the Scottish Ministers because of the effect of section 70(11).

This Order makes provision in relation to Scotland equivalent to that made in relation to England and Wales and Northern Ireland in the Extradition Appeals (England and Wales and Northern Ireland) Order 2013 (S.I. 2013/2384).

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector or community bodies is foreseen.

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(a) An appeal against an order made under Part 2 of the Extradition Act 2003 in relation to Scotland is heard by the High Court of Justiciary (see section 216(9) of that Act).

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