



Extradition Act 2003

2003 CHAPTER 41

PART 2

EXTRADITION TO CATEGORY 2 TERRITORIES

Interpretation

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\(2\)](#))

137 Extradition offences: person not 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) is accused in a category 2 territory of an offence constituted by the conduct, or
 - (b) has been convicted in that territory of an offence constituted by the conduct but not sentenced for it.
- (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) the conduct is so punishable under the law of the category 2 territory.
- (4) The conditions in this subsection are that—
- (a) the conduct occurs outside the category 2 territory;

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- (b) in corresponding circumstances equivalent conduct would constitute an extra-territorial 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;
 - (c) the conduct is so punishable under the law of the category 2 territory.
- (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) the conduct is punishable under the law of the category 2 territory with imprisonment or another form of detention for a term of 12 months or a greater punishment.]
- (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. 137(1)-(5) substituted (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), [ss. 164\(3\), 185\(1\)](#) (with [ss. 21, 33, 42, 58, 75, 93](#)); S.I. 2014/1916, art. 2(j) (with art. 6)

F2 S. 137(7A) inserted (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), [ss. 164\(4\), 185\(1\)](#) (with [ss. 21, 33, 42, 58, 75, 93](#)); S.I. 2014/1916, art. 2(j) (with art. 6)

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F3 S. 137(9) repealed (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 11 para. 117](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 2(t)

Commencement Information

I2 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))

138 Extradition offences: person sentenced for offence

- [^{F4}(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);
 - (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);

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- (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.
- [^{F5}(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.

^{F6}(9)

Textual Amendments

- F4** 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)
- F5** 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)
- F6** 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)

Commencement Information

- I3** 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))

139 The appropriate judge

- (1) The appropriate judge is—
- (a) in England and Wales, a District Judge (Magistrates' Courts) designated for the purposes of this Part [^{F7}by the Lord Chief Justice of England and Wales after consulting the Lord Chancellor]^{F7};
 - (b) in Scotland, the sheriff of Lothian and Borders;
 - (c) in Northern Ireland, such county court judge or resident magistrate as is designated for the purposes of this Part by the [^{F8}Lord Chief Justice of Northern Ireland after consulting the [^{F9}Department of Justice in Northern Ireland]]^{F9F8}.
- (2) A designation under subsection (1) may be made for all cases or for such cases (or cases of such description) as the designation stipulates.

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(3) More than one designation may be made under subsection (1).

[^{F10}(3A) The use of the expression “the judge” in a section containing a previous reference to “the appropriate judge” or “the judge” does not in itself require both references to be read as referring to the same individual.]

^{F10}(4) This section applies for the purposes of this Part.

[^{F11}(5) The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under subsection (1)(a).

(6) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under subsection (1)(c)—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]^{F11}

Textual Amendments

- F7** Words in s. 139(1)(a) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), ss. 15, 148, Sch. 4 para. 354\(2\); S.I. 2006/1014, art. 2\(a\)](#) Sch. 1 paras. 10, 11(cc)
- F8** Words in s. 139(1)(c) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), ss. 15, 148, Sch. 4 para. 354\(3\); S.I. 2006/1014, art. 2\(a\)](#) Sch. 1 paras. 10, 11(cc)
- F9** Words in s. 139(1)(c) substituted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\), arts. 1\(2\), 15\(5\), Sch. 18 para. 70\(3\)](#) (with arts. 28-31); [S.I. 2010/977, art. 1\(2\)](#)
- F10** S. 139(3A) inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\), ss. 42, 53, Sch. 13 para. 15\(1\); S.I. 2006/3364, art. 2\(d\)\(e\)](#)
- F11** S. 139(5)(6) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), ss. 15, 148, Sch. 4 para. 354\(4\); S.I. 2006/1014, art. 2\(a\)](#) Sch. 1 paras. 10, 11(cc)

Commencement Information

- I4** 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\(2\)](#))

140 The extradition hearing

(1) The extradition hearing is the hearing at which the appropriate judge is to deal with a request for extradition to a category 2 territory.

(2) This section applies for the purposes of this Part.

Commencement Information

- I5** 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\(2\)](#))

[^{F12}140A Unlawfully at large

(1) A person is alleged to be unlawfully at large after conviction of an offence if—

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- (a) he is alleged to have been convicted of it, and
- (b) his extradition is sought for the purpose of his being sentenced for the offence or of his serving a sentence of imprisonment or another form of detention imposed in respect of the offence.

(2) This section applies for the purposes of this Part, other than sections 82 and 136.]

Textual Amendments

F12 S. 140A inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 2\(4\)](#); S.I. 2006/3364, [art. 2\(d\)\(e\)](#)

141 Scotland: references to Secretary of State

- (1) This Part applies in relation to any function which falls under this Part to be exercised in relation to Scotland only as if references in this Part to the Secretary of State were to the Scottish Ministers.
- (2) Subsection (1) does not apply to the references to the Secretary of State [^{F13}in paragraph (b) of section 70(2), in paragraph (c) of section 93(4) and]^{F13} in sections 83(3), 101(5) and 121.

Textual Amendments

F13 Words in [s. 141\(2\)](#) inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 20](#); S.I. 2006/3364, [art. 2\(d\)\(e\)](#)

Commencement Information

I6 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, Cross Heading: Interpretation.