



# Extradition Act 2003

## 2003 CHAPTER 41

### PART 2

#### EXTRADITION TO CATEGORY 2 TERRITORIES

##### Commencement Information

- 11** 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))

##### *Introduction*

##### Commencement Information

- 12** 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))

## **69 Extradition to category 2 territories**

- (1) This Part deals with extradition from the United Kingdom to the territories designated for the purposes of this Part by order made by the Secretary of State.
- (2) In this Act references to category 2 territories are to the territories designated for the purposes of this Part.

##### Commencement Information

- 13** 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))

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**70 Extradition request and certificate**

(1) The Secretary of State must [<sup>F1</sup>(subject to subsection (2))] issue a certificate under this section if he receives a valid request for the extradition [<sup>F2</sup>of a person to a category 2 territory].

- [<sup>F3</sup>(2) The Secretary of State may refuse to issue a certificate under this section if—
  - (a) he has power under section 126 to order that proceedings on the request be deferred,
  - (b) the person whose extradition is requested has been recorded by the Secretary of State as a refugee within the meaning of the Refugee Convention, or
  - (c) the person whose extradition is requested has been granted leave to enter or remain in the United Kingdom on the ground that it would be a breach of Article 2 or 3 of the Human Rights Convention to remove him to the territory to which extradition is requested.

[<sup>F4</sup>( 2A ) . . . . .]

- (3) A request for a person’s extradition is valid if—
  - (a) it contains the statement referred to in subsection (4) [<sup>F5</sup>or the statement referred to in subsection (4A)], and
  - (b) it is made in the approved way.

- [<sup>F6</sup>(4) The statement is one that—
  - (a) the person is accused in the category 2 territory of the commission of an offence specified in the request, and
  - (b) the request is made with a view to his arrest and extradition to the category 2 territory for the purpose of being prosecuted for the offence.

- (4A) The statement is one that—
  - (a) the person has been convicted of an offence specified in the request by a court in the category 2 territory, and
  - (b) the request is made with a view to his arrest and extradition to the category 2 territory for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence.]

- (5) A request for extradition to a category 2 territory which is a British overseas territory is made in the approved way if it is made by or on behalf of the person administering the territory.
- (6) A request for extradition to a category 2 territory which is the Hong Kong Special Administrative Region of the People’s Republic of China is made in the approved way if it is made by or on behalf of the government of the Region.
- (7) A request for extradition to any other category 2 territory is made in the approved way if it is made—
  - (a) by an authority of the territory which the Secretary of State believes has the function of making requests for extradition in that territory, or
  - (b) by a person recognised by the Secretary of State as a diplomatic or consular representative of the territory.

(8) A certificate under this section must [<sup>F7</sup>(a)] certify that the request is made in the approved way [<sup>F8</sup>, and

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- (b) identify the order by which the territory in question is designated as a category 2 territory.]
- (9) If a certificate is issued under this section the Secretary of State must send [<sup>F9</sup>the request and the certificate to the appropriate judge]
- [<sup>F10</sup>(10) Subsection (11) applies at all times after the Secretary of State issues a certificate under this section.
- (11) The Secretary of State is not to consider whether the extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998.]

#### Textual Amendments

- F1** Words in s. 70(1) inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 17\(2\)\(a\)](#); S.I. 2006/3364, [art. 2\(d\)\(e\)](#)
- F2** Words in s. 70(1) substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 17\(2\)\(b\)](#); S.I. 2006/3364, [art. 2\(d\)\(e\)](#)
- F3** S. 70(2)(2A) substituted (15.1.2007) for s. 70(2) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 17\(3\)](#); S.I. 2006/3364, [art. 2\(d\)\(e\)](#)
- F4** S. 70(2A) repealed (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 11 para. 121\(4\)\(b\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 2(t)
- F5** Words in s. 70(3) inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 17\(2\)\(a\)](#); S.I. 2006/3364, [art. 2\(d\)\(e\)](#)
- F6** S. 70(4)(4A) substituted (15.1.2007) for s. 70(4) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 17\(2\)\(b\)](#); S.I. 2006/3364, [art. 2\(d\)\(e\)](#)
- F7** Words in s. 70(8) renumbered as s. 70(8)(a) (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 17\(4\)\(a\)](#); S.I. 2006/3364, [art. 2\(d\)\(e\)](#)
- F8** S. 70(8)(b) and word inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 17\(4\)\(b\)](#); S.I. 2006/3364, [art. 2\(d\)\(e\)](#)
- F9** Words in s. 70(9) substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 17\(5\)](#); S.I. 2006/3364, [art. 2\(d\)\(e\)](#)
- F10** S. 70(10)(11) inserted (29.7.2013 for E.W., 14.10.2013 for N.I.) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 11](#) (with [Sch. 20 para. 1415](#)); S.I. 2013/1682, art. 2(2)(b); S.I. 2013/2349, art. 2(4)

#### Modifications etc. (not altering text)

- C1** [S. 70\(2\)\(c\)](#) modified (10.11.2016) by [The Extradition Act 2003 \(Overseas Territories\) Order 2016 \(S.I. 2016/990\)](#), arts. 1(1), 6(1), [Sch. 3](#)

#### 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))

### Arrest

#### 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))

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## 71 Arrest warrant following extradition request

- (1) This section applies if the Secretary of State sends documents to the appropriate judge under section 70.
- (2) The judge may issue a warrant for the arrest of the person whose extradition is requested if the judge has reasonable grounds for believing that—
  - (a) the offence in respect of which extradition is requested is an extradition offence, and
  - (b) there is evidence falling within subsection (3).
- (3) The evidence is—
  - (a) evidence that would justify the issue of a warrant for the arrest of a person accused of the offence within the judge’s jurisdiction, if the person whose extradition is requested is accused of the commission of the offence;
  - (b) evidence that would justify the issue of a warrant for the arrest of a person unlawfully at large after conviction of the offence within the judge’s jurisdiction, if the person whose extradition is requested is alleged to be unlawfully at large after conviction of the offence.
- (4) But if the category 2 territory to which extradition is requested is designated for the purposes of this section by order made by the Secretary of State, subsections (2) and (3) have effect as if “evidence” read “information”.
- (5) A warrant issued under this section may—
  - (a) be executed by any person to whom it is directed or by any constable or customs officer;
  - (b) be executed even if neither the warrant nor a copy of it is in the possession of the person executing it at the time of the arrest.
- [<sup>F11</sup>(6) If a warrant issued under this section—
  - (a) is directed to a service policeman, and
  - (b) is in respect of a person subject to service law or a civilian subject to service discipline,
it may be executed anywhere.]
- <sup>F11</sup>(7) In any other case, a warrant issued under this section may be executed in any part of the United Kingdom.
- (8) <sup>F12</sup> .....

### Textual Amendments

- F11** S. 71(6) substituted (28.3.2009 for certain purposes, otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378, 383, [Sch. 16 para. 202\(a\)](#); S.I. 2009/812, [art. 3](#) (with transitional provisions (24.4.2009 for certain purposes otherwise 31.10.2009) in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#)
- F12** S. 71(8) repealed (28.3.2009 for certain purposes, otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378, 383, [Sch. 16 para. 202\(b\)](#), [Sch. 17](#); S.I. 2009/812, [art. 3](#) (with transitional provisions (24.4.2009 for certain purposes otherwise 31.10.2009) in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#)

### 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))

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## 72 Person arrested under section 71

- (1) This section applies if a person is arrested under a warrant issued under section 71.
- (2) A copy of the warrant must be given to the person as soon as practicable after his arrest.
- (3) The person must be brought as soon as practicable before the appropriate judge.
- (4) But subsection (3) does not apply if—
  - (a) the person is granted bail by a constable following his arrest, or
  - (b) the Secretary of State decides under section 126 that the request for the person's extradition is not to be proceeded with.
- (5) If subsection (2) is not complied with and the person applies to the judge to be discharged, the judge may order his discharge.
- (6) If subsection (3) is not complied with and the person applies to the judge to be discharged, the judge must order his discharge.
- (7) When the person first appears or is brought before the appropriate judge, the judge must—
  - (a) inform him of the contents of the request for his extradition;
  - (b) give him the required information about consent;
  - (c) remand him in custody or on bail.
- (8) The required information about consent is—
  - (a) that the person may consent to his extradition to the category 2 territory to which his extradition is requested;
  - (b) an explanation of the effect of consent and the procedure that will apply if he gives consent;
  - (c) that consent must be given in writing and is irrevocable.
- (9) <sup>F13</sup>If the person is remanded in custody, the appropriate judge may<sup>F13</sup> later grant bail.
- (10) Subsection (4)(a) applies to Scotland with the omission of the words “by a constable”.

### Textual Amendments

**F13** Words in s. 72(9) substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 16](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)

### Commencement Information

**I7** 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))

## 73 Provisional warrant

- (1) This section applies if a justice of the peace is satisfied on information in writing and on oath that a person within subsection (2)—
  - (a) is or is believed to be in the United Kingdom, or
  - (b) is or is believed to be on his way to the United Kingdom.
- (2) A person is within this subsection if—
  - (a) he is accused in a category 2 territory of the commission of an offence, or

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- (b) he is alleged to be unlawfully at large after conviction of an offence by a court in a category 2 territory.
- (3) The justice may issue a warrant for the arrest of the person (a provisional warrant) if he has reasonable grounds for believing that—
- (a) the offence of which the person is accused or has been convicted is an extradition offence, and
  - (b) there is written evidence falling within subsection (4).
- (4) The evidence is—
- (a) evidence that would justify the issue of a warrant for the arrest of a person accused of the offence within the justice’s jurisdiction, if the person in respect of whom the warrant is sought is accused of the commission of the offence;
  - (b) evidence that would justify the issue of a warrant for the arrest of a person unlawfully at large after conviction of the offence within the justice’s jurisdiction, if the person in respect of whom the warrant is sought is alleged to be unlawfully at large after conviction of the offence.
- (5) But if the category 2 territory is designated for the purposes of this section by order made by the Secretary of State, subsections (3) and (4) have effect as if “evidence” read “information”.
- (6) A provisional warrant may—
- (a) be executed by any person to whom it is directed or by any constable or customs officer;
  - (b) be executed even if neither the warrant nor a copy of it is in the possession of the person executing it at the time of the arrest.
- [<sup>F14</sup>(7) If a warrant issued under this section—
- (a) is directed to a service policeman, and
  - (b) is in respect of a person subject to service law or a civilian subject to service discipline,
- it may be executed anywhere.]
- <sup>F14</sup>(8) In any other case, a warrant issued under this section may be executed in any part of the United Kingdom.
- (9) <sup>F15</sup> .....
- (10) The preceding provisions of this section apply to Scotland with these modifications—
- (a) in subsection (1) for “justice of the peace is satisfied on information in writing and on oath” substitute “sheriff is satisfied, on an application by a procurator fiscal,”;
  - (b) in subsection (3) for “justice” substitute “sheriff”;
  - (c) in subsection (4) for “justice’s”, in paragraphs (a) and (b), substitute “sheriff’s”.
- (11) Subsection (1) applies to Northern Ireland with the substitution of “a complaint” for “information”.

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#### Textual Amendments

- F14** S. 73(7) substituted (28.3.2009 for certain purposes, otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\), ss. 378, 383, Sch. 16 para. 203\(a\)](#); S.I. 2009/812, [art. 3](#) (with transitional provisions (24.4.2009 for certain purposes otherwise 31.10.2009) in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#)
- F15** S. 73(9) repealed (28.3.2009 for certain purposes, otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\), ss. 378, 383, Sch. 16 para. 203\(b\), Sch. 17](#); S.I. 2009/812, [art. 3](#) (with transitional provisions (24.4.2009 for certain purposes otherwise 31.10.2009) in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#)

#### Commencement Information

- I8** 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))

## 74 Person arrested under provisional warrant

- (1) This section applies if a person is arrested under a provisional warrant.
- (2) A copy of the warrant must be given to the person as soon as practicable after his arrest.
- (3) The person must be brought as soon as practicable before the appropriate judge.
- (4) But subsection (3) does not apply if—
  - (a) the person is granted bail by a constable following his arrest, or
  - (b) in a case where the Secretary of State has received a valid request for the person's extradition, the Secretary of State decides under section 126 that the request is not to be proceeded with.
- (5) If subsection (2) is not complied with and the person applies to the judge to be discharged, the judge may order his discharge.
- (6) If subsection (3) is not complied with and the person applies to the judge to be discharged, the judge must order his discharge.
- (7) When the person first appears or is brought before the appropriate judge, the judge must—
  - (a) inform him that he is accused of the commission of an offence in a category 2 territory or that he is alleged to be unlawfully at large after conviction of an offence by a court in a category 2 territory;
  - (b) give him the required information about consent;
  - (c) remand him in custody or on bail.
- (8) The required information about consent is—
  - (a) that the person may consent to his extradition to the category 2 territory in which he is accused of the commission of an offence or is alleged to have been convicted of an offence;
  - (b) an explanation of the effect of consent and the procedure that will apply if he gives consent;
  - (c) that consent must be given in writing and is irrevocable.
- (9) <sup>F16</sup>If the person is remanded in custody, the appropriate judge may<sup>F16</sup> later grant bail.
- (10) The judge must order the person's discharge if the documents referred to in section 70(9) are not received by the judge within the required period.

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- (11) The required period is—
- (a) 45 days starting with the day on which the person was arrested, or
  - (b) if the category 2 territory is designated by order made by the Secretary of State for the purposes of this section, any longer period permitted by the order.
- (12) Subsection (4)(a) applies to Scotland with the omission of the words “by a constable”.

**Textual Amendments**

**F16** Words in s. 74(9) substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 16](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)

**Commencement Information**

**I9** 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))

*<sup>F17</sup>Provisional arrest without warrant*

**Textual Amendments**

**F17** Ss. 74A-74E and cross-heading inserted (31.12.2020) by [Extradition \(Provisional Arrest\) Act 2020 \(c. 18\)](#), s. 2(4), [Sch. para. 2](#) (with [Sch. para. 6](#)); [S.I. 2020/1652](#), [reg. 2\(1\)\(b\)](#)

**74A Provisional arrest where certificate issued under section 74B**

- (1) A constable, a customs officer or a service policeman may arrest a person without a warrant if a certificate has been issued under section 74B in respect of the person.
- (2) A copy of the certificate must be given to the person as soon as practicable after the arrest.
- (3) The person must be brought as soon as practicable before the appropriate judge (see further, section 74D).
- (4) A constable or a customs officer may arrest a person under subsection (1) in any part of the United Kingdom.
- (5) A service policeman may arrest a person under subsection (1) only if the person is subject to service law or is a civilian subject to service discipline.
- (6) A service policeman who has power to arrest a person under subsection (1) may exercise the power anywhere.
- (7) A person arrested under subsection (1) may not be arrested again in reliance on the same certificate.

**74B Certificates enabling provisional arrest under section 74A**

- (1) The designated authority may issue a certificate under this section in respect of a person if—



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- (a) it receives a valid request, made by an authority of a specified category 2 territory, for the person's arrest (for more about requests, see section 74C),
  - (b) it is satisfied that the request is made under arrangements which allow such a request to be made only if—
    - (i) a warrant for the person's arrest has been issued in the category 2 territory in respect of an offence, or
    - (ii) the person is alleged to be unlawfully at large after conviction of an offence by a court in the category 2 territory,
  - (c) it has reasonable grounds for believing that the offence specified in the request is a serious extradition offence, and
  - (d) it is satisfied that the seriousness of the conduct constituting the offence makes it appropriate to issue the certificate.
- (2) A certificate issued by the designated authority under this section must—
  - (a) state the category 2 territory in respect of which the request is made, the form of the request and the date on which the request was made,
  - (b) certify that the category 2 territory is a specified category 2 territory,
  - (c) certify that the request is a valid request,
  - (d) certify the matters in subsection (1)(c) and (d), and
  - (e) set out the statement and information mentioned in section 74C(1)(a) or (b) (as the case may be).
- (3) A certificate (or purported certificate) may be withdrawn and a new one issued on the basis of the same request at any time before the person has been arrested in reliance on it.
- (4) The “designated authority” is the National Crime Agency.
- (5) The Secretary of State may by regulations amend this section so as to change the meaning of “designated authority”.
- (6) Regulations made under subsection (5) may—
  - (a) designate more than one authority;
  - (b) designate different authorities for different parts of the United Kingdom.
- (7) A “specified category 2 territory” is a category 2 territory that is specified in Schedule A1.
- (8) The Secretary of State may by regulations—
  - (a) amend Schedule A1 so as to add, vary or remove a reference to a territory, and
  - (b) in consequence, amend section 74C so as to change what it means to make a request in the approved way for the purposes of that section.
- (9) The reference in subsection (1)(b) to a warrant for a person's arrest includes a reference to a judicial document authorising the person's arrest.
- (10) For the purposes of determining whether an offence is a “serious extradition offence”, sections 137 and 138 apply as if—
  - (a) a reference to an “extradition offence” were to a “serious extradition offence”,
  - (b) a reference to the relevant part of the United Kingdom were to any part of the United Kingdom (and, accordingly, each of sections 137 and 138 have effect as if subsection (8) were omitted),

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- (c) a reference to the request for the person's extradition were a reference to the request for the person's arrest,
- (d) the references in sections 137(3)(b) and (4)(b) and 138(3)(b) to "12 months" were to "3 years", and
- (e) the references in section 137(3)(c) and (4)(c) to conduct that is "so punishable" were to conduct that is punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment.

#### **74C Section 74B supplementary: valid requests for arrest**

- (1) For the purposes of section 74B a request for a person's arrest is valid if it is made in the approved way and it contains—
  - (a) the statement referred to in subsection (2) and the information referred to in subsection (3), or
  - (b) the statement referred to in subsection (4) and the information referred to in subsection (5).
- (2) The statement is one that—
  - (a) the person is accused in the category 2 territory of the commission of an offence specified in the request, and
  - (b) the request is made with a view to the arrest and extradition of the person to the category 2 territory for the purpose of being prosecuted for the offence.
- (3) The information is—
  - (a) particulars of the person's identity;
  - (b) particulars of the circumstances in which the person is alleged to have committed the offence, including the conduct alleged to constitute the offence, the time and place at which the person is alleged to have committed the offence and any provision of the law of the category 2 territory under which the conduct is alleged to constitute an offence;
  - (c) particulars of the sentence which may be imposed under the law of the category 2 territory in respect of the offence if the person is convicted of it.
- (4) The statement is one that—
  - (a) the person has been convicted of an offence specified in the request by a court in the category 2 territory, and
  - (b) the request is made with a view to the arrest and extradition of the person to the category 2 territory for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence.
- (5) The information is—
  - (a) particulars of the person's identity;
  - (b) particulars of the conviction;
  - (c) particulars of the sentence which may be imposed under the law of the category 2 territory in respect of the offence, if the person has not been sentenced for the offence;
  - (d) particulars of the sentence which has been imposed under the law of the category 2 territory in respect of the offence, if the person has been sentenced for the offence.

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- (6) A request is made in the approved way for the purposes of this section if it is made by an authority of the category 2 territory which the designated authority believes has the function of making such requests in that territory.

#### **74D Person provisionally arrested under section 74A**

- (1) The judge before whom a person is brought following arrest under section 74A must decide, on the basis of any evidence or information produced to the judge, whether a warrant would be issued under section 73 if the person were not already under arrest.
- (2) If the judge decides the question in subsection (1) in the negative, the judge must order the person's discharge.
- (3) If the judge decides that question in the affirmative, the judge must proceed under section 74E.
- (4) The judge may adjourn the proceedings to allow more evidence or information to be produced if—
- (a) an application for the adjournment is made in accordance with rules of court, and
  - (b) the judge is satisfied, on the balance of probabilities, that evidence or information could not reasonably have been produced in time to avoid the need for the adjournment.
- (5) If the judge grants an adjournment under subsection (4), the judge must remand the person in custody or on bail.
- (6) If the person is remanded in custody, the judge may later grant bail.
- (7) More than one adjournment may be granted under subsection (4) but the total period of any adjournments must not exceed 72 hours.
- (8) In calculating that 72-hour period, no account is to be taken of any day falling within section 6(8A)(a) to (d) (weekends, bank holidays etc).
- (9) If the judge has granted an adjournment or further adjournment, the question in subsection (1) must be decided by the appropriate judge on the next occasion when the person is brought or appears before the appropriate judge (unless a further adjournment is granted on that occasion).
- (10) If the person applies to the judge to be discharged—
- (a) the judge may order the person's discharge if—
    - (i) section 74A(2) (copy of certificate to be given to arrested person) was not complied with, or
    - (ii) the certificate did not comply with section 74B(2);
  - (b) the judge must order the person's discharge if—
    - (i) the judge is satisfied that there were no reasonable grounds on which the designated authority could have issued the certificate under section 74B(1), or
    - (ii) section 74A(3) (person to be brought before judge as soon as practicable after arrest) was not complied with.

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*Changes to legislation: There are currently no known outstanding effects  
for the Extradition Act 2003, Part 2. (See end of Document for details)*

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#### **74E Person provisionally arrested under section 74A: next steps**

- (1) If the appropriate judge is required by section 74D(3) to proceed under this section, the judge must—
  - (a) inform the person that they are accused of the commission of an offence in a category 2 territory or are alleged to be unlawfully at large after conviction of an offence by a court in a category 2 territory,
  - (b) give the person the required information about consent, and
  - (c) remand the person in custody or on bail.
- (2) The required information about consent is—
  - (a) that the person may consent to extradition to the category 2 territory in which the person is accused of the commission of an offence or is alleged to have been convicted of an offence;
  - (b) an explanation of the effect of consent and the procedure that will apply if the person gives consent;
  - (c) that consent must be given in writing and is irrevocable.
- (3) If the person is remanded in custody, the appropriate judge may later grant bail.
- (4) The judge must order the person's discharge if the documents referred to in section 70(9) are not received by the judge within the required period as defined by section 74(11).]

#### *The extradition hearing*

##### **Commencement Information**

**I10** 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\(2\)](#))

#### **75 Date of extradition hearing: arrest under section 71**

- (1) When a person arrested under a warrant issued under section 71 first appears or is brought before the appropriate judge, the judge must fix a date on which the extradition hearing is to begin.
- (2) The date fixed under subsection (1) must not be later than the end of the permitted period, which is 2 months starting with the date on which the person first appears or is brought before the judge.
- (3) If before the date fixed under subsection (1) (or this subsection) a party to the proceedings applies to the judge for a later date to be fixed and the judge believes it to be in the interests of justice to do so, he may fix a later date; and this subsection may apply more than once.
- (4) If the extradition hearing does not begin on or before the date fixed under this section and the person applies to the judge to be discharged, the judge must order his discharge.

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

#### Commencement Information

**II1** 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))

#### **76 Date of extradition hearing: arrest under provisional warrant [F18 or under section 74A]**

- (1) Subsection (2) applies if—
  - (a) a person is arrested under a provisional warrant [F19 or under section 74A], and
  - (b) the documents referred to in section 70(9) are received by the appropriate judge within the period required under section 74(10) [F20 or 74E(4)].
- (2) The judge must fix a date on which the extradition hearing is to begin.
- (3) The date fixed under subsection (2) must not be later than the end of the permitted period, which is 2 months starting with the date on which the judge receives the documents.
- (4) If before the date fixed under subsection (2) (or this subsection) a party to the proceedings applies to the judge for a later date to be fixed and the judge believes it to be in the interests of justice to do so, he may fix a later date; and this subsection may apply more than once.
- (5) If the extradition hearing does not begin on or before the date fixed under this section and the person applies to the judge to be discharged, the judge must order his discharge.

#### Textual Amendments

**F18** Words in s. 76 heading inserted (31.12.2020) by Extradition (Provisional Arrest) Act 2020 (c. 18), s. 2(4), **Sch. para. 11(2)**; S.I. 2020/1652, reg. 2(1)(b)

**F19** Words in s. 76(1)(a) inserted (31.12.2020) by Extradition (Provisional Arrest) Act 2020 (c. 18), s. 2(4), **Sch. para. 11(3)(a)**; S.I. 2020/1652, reg. 2(1)(b)

**F20** Words in s. 76(1)(b) inserted (31.12.2020) by Extradition (Provisional Arrest) Act 2020 (c. 18), s. 2(4), **Sch. para. 11(3)(b)**; S.I. 2020/1652, reg. 2(1)(b)

#### Commencement Information

**II2** 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))

#### **[F21] 76A Person charged with offence in United Kingdom before extradition hearing**

- (1) This section applies if—
  - (a) a person has been brought before the appropriate judge under section 72(3) [F22, 74(3) or 74A(3)] but the extradition hearing has not begun; and
  - (b) the judge is informed that the person is charged with an offence in the United Kingdom.
- (2) The judge must order further proceedings in respect of the extradition to be adjourned until one of these occurs—
  - (a) the charge is disposed of;

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- (b) the charge is withdrawn;
  - (c) proceedings in respect of the charge are discontinued;
  - (d) an order is made for the charge to lie on the file, or in relation to Scotland, the diet is deserted *pro loco et tempore* .
- (3) If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the judge may order further proceedings in respect of the extradition to be adjourned until the person is released from detention pursuant to the sentence (whether on licence or otherwise).

#### Textual Amendments

- F21** Ss. 76A, 76B inserted (25.1.2010) by [Policing and Crime Act 2009 \(c. 26\)](#), **ss. 70**, 116; S.I. 2009/3096, **art. 3(m)** (with **art. 4**)
- F22** Words in s. 76A(1)(a) substituted (31.12.2020) by [Extradition \(Provisional Arrest\) Act 2020 \(c. 18\)](#), s. 2(4), **Sch. para. 12**; S.I. 2020/1652, reg. 2(1)(b)

#### Modifications etc. (not altering text)

- C2** [S. 76A\(2\)](#) modified (10.11.2016) by [The Extradition Act 2003 \(Overseas Territories\) Order 2016 \(S.I. 2016/990\)](#), arts. 1(1), 6(3), **Sch. 3**

### **76B Person serving sentence in United Kingdom before extradition hearing**

- (1) This section applies if—
- (a) a person has been brought before the appropriate judge under section 72(3) [<sup>F23</sup> 74(3) or 74A(3)] but the extradition hearing has not begun; and
  - (b) the judge is informed that the person is in custody serving a sentence of imprisonment or another form of detention in the United Kingdom.
- (2) The judge may order further proceedings in respect of the extradition to be adjourned until the person is released from detention pursuant to the sentence (whether on licence or otherwise).
- (3) In a case where further proceedings in respect of the extradition are adjourned under subsection (2)—
- (a) section 131 of the Magistrates' Courts Act 1980 (remand of accused already in custody) has effect as if a reference to 28 clear days in subsection (1) or (2) of that section were a reference to six months;
  - (b) Article 47(2) of the Magistrates' Courts (Northern Ireland) Order 1981 (period of remand in custody) has effect as if a reference to 28 days in—
    - (i) sub-paragraph (a)(iii), or
    - (ii) the words after sub-paragraph (b),
 were a reference to six months.]

#### Textual Amendments

- F21** Ss. 76A, 76B inserted (25.1.2010) by [Policing and Crime Act 2009 \(c. 26\)](#), **ss. 70**, 116; S.I. 2009/3096, **art. 3(m)** (with **art. 4**)
- F23** Words in s. 76B(1)(a) substituted (31.12.2020) by [Extradition \(Provisional Arrest\) Act 2020 \(c. 18\)](#), s. 2(4), **Sch. para. 13**; S.I. 2020/1652, reg. 2(1)(b)

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

## 77 Judge's powers at extradition hearing

- (1) In England and Wales, at the extradition hearing the appropriate judge has the same powers (as nearly as may be) as a magistrates' court would have if the proceedings were the summary trial of an information against the person whose extradition is requested.
- (2) In Scotland—
  - (a) at the extradition hearing the appropriate judge has the same powers (as nearly as may be) as if the proceedings were summary proceedings in respect of an offence alleged to have been committed by the person whose extradition is requested; but
  - (b) in his making any decision under section 78(4)(a) evidence from a single source shall be sufficient.
- (3) In Northern Ireland, at the extradition hearing the appropriate judge has the same powers (as nearly as may be) as a magistrates' court would have if the proceedings were the hearing and determination of a complaint against the person whose extradition is requested.
- (4) If the judge adjourns the extradition hearing he must remand the person in custody or on bail.
- (5) [<sup>F24</sup>If the person is remanded in custody, the appropriate judge may]<sup>F24</sup> later grant bail.

### Textual Amendments

**F24** Words in s. 77(5) substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 16](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)

### Modifications etc. (not altering text)

**C3** [S. 77\(1\)](#) modified (10.11.2016) by [The Extradition Act 2003 \(Overseas Territories\) Order 2016 \(S.I. 2016/990\)](#), arts. 1(1), 6(2), [Sch. 3](#)

### Commencement Information

**I13** 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))

## 78 Initial stages of extradition hearing

- (1) This section applies if a person alleged to be the person whose extradition is requested appears or is brought before the appropriate judge for the extradition hearing.
- (2) The judge must decide whether the documents sent to him by the Secretary of State consist of (or include)—
  - (a) the documents referred to in section 70(9);
  - (b) particulars of the person whose extradition is requested;
  - (c) particulars of the offence specified in the request;
  - (d) in the case of a person accused of an offence, a warrant for his arrest issued in the category 2 territory;
  - (e) in the case of a person alleged to be unlawfully at large after conviction of an offence, a certificate issued in the category 2 territory of the conviction and (if he has been sentenced) of the sentence.

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*Changes to legislation: There are currently no known outstanding effects  
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- (3) If the judge decides the question in subsection (2) in the negative he must order the person's discharge.
- (4) If the judge decides that question in the affirmative he must decide whether—
  - (a) the person appearing or brought before him is the person whose extradition is requested;
  - (b) the offence specified in the request is an extradition offence;
  - (c) copies of the documents sent to the judge by the Secretary of State have been served on the person.
- (5) The judge must decide the question in subsection (4)(a) on a balance of probabilities.
- (6) If the judge decides any of the questions in subsection (4) in the negative he must order the person's discharge.
- (7) If the judge decides those questions in the affirmative he must proceed under section 79.
- (8) The reference in subsection (2)(d) to a warrant for a person's arrest includes a reference to a judicial document authorising his arrest.

#### **Commencement Information**

**I14** 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))

## **79 Bars to extradition**

- (1) If the judge is required to proceed under this section he must decide whether the person's extradition to the category 2 territory is barred by reason of—
  - (a) the rule against double jeopardy;
  - (b) extraneous considerations;
  - (c) the passage of time;
  - (d) hostage-taking considerations.
  - [<sup>F25</sup>(e) forum.]
- [<sup>F26</sup>(1A) But the judge is to decide whether the person's extradition is barred by reason of forum only in a case where the request for extradition contains the statement referred to in section 70(4) (warrant issued for purposes of prosecution for offence in category 2 territory).]
- (2) [<sup>F27</sup>Sections 80 to 83E] apply for the interpretation of subsection (1).
- (3) If the judge decides any of the questions in subsection (1) in the affirmative he must order the person's discharge.
- (4) If the judge decides those questions in the negative and the person is accused of the commission of the extradition offence but is not alleged to be unlawfully at large after conviction of it, the judge must proceed under section 84.
- (5) If the judge decides those questions in the negative and the person is alleged to be unlawfully at large after conviction of the extradition offence, the judge must proceed under section 85.



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#### Textual Amendments

- F25** S. 79(1)(e) inserted (14.10.2013 for E.W.N.I.) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 5\(a\)](#) (with [Sch. 20 para. 78](#)); [S.I. 2013/2349](#), art. 2(3)
- F26** S. 79(1A) inserted (14.10.2013 for E.W.N.I.) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 5\(b\)](#) (with [Sch. 20 para. 78](#)); [S.I. 2013/2349](#), art. 2(3)
- F27** Words in s. 79(2) substituted (14.10.2013 for E.W.N.I.) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 5\(c\)](#) (with [Sch. 20 para. 78](#)); [S.I. 2013/2349](#), art. 2(3)

#### Commencement Information

- I15** 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))

### 80 Rule against double jeopardy

A person's extradition to a category 2 territory is barred by reason of the rule against double jeopardy if (and only if) it appears that he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction if he were charged with the extradition offence in the part of the United Kingdom where the judge exercises his jurisdiction.

#### Commencement Information

- I16** 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))

### 81 Extraneous considerations

A person's extradition to a category 2 territory is barred by reason of extraneous considerations if (and only if) it appears that—

- (a) the request for his extradition (though purporting to be made on account of the extradition offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality, gender, sexual orientation or political opinions, or
- (b) if extradited he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, gender, sexual orientation or political opinions.

#### Commencement Information

- I17** 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))

### 82 Passage of time

A person's extradition to a category 2 territory is barred by reason of the passage of time if (and only if) it appears that it would be unjust or oppressive to extradite him by reason of the passage of time [<sup>F28</sup> since he is alleged to have—

- (a) committed the extradition offence (where he is accused of its commission), or

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(b) become unlawfully at large (where he is alleged to have been convicted of it)]

F28

#### Textual Amendments

**F28** Words in s. 82 substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\), ss. 42, 53, Sch. 13 para. 2\(3\)](#); [S.I. 2006/3364, art. 2\(d\)\(e\)](#)

#### Commencement Information

**I18** 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\(2\)](#))

### 83 Hostage-taking considerations

- (1) A person's extradition to a category 2 territory is barred by reason of hostage-taking considerations if (and only if) the territory is a party to the Hostage-taking Convention and it appears that—
  - (a) if extradited he might be prejudiced at his trial because communication between him and the appropriate authorities would not be possible, and
  - (b) the act or omission constituting the extradition offence also constitutes an offence under section 1 of the Taking of Hostages Act 1982 (c. 28) or an attempt to commit such an offence.
- (2) The appropriate authorities are the authorities of the territory which are entitled to exercise rights of protection in relation to him.
- (3) A certificate issued by the Secretary of State that a territory is a party to the Hostage-taking Convention is conclusive evidence of that fact for the purposes of subsection (1).
- (4) The Hostage-taking Convention is the International Convention against the Taking of Hostages opened for signature at New York on 18 December 1979.

#### Commencement Information

**I19** 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\(2\)](#))

### [<sup>F29</sup>83A Forum

- (1) The extradition of a person ("D") to a category 2 territory is barred by reason of forum if the extradition would not be in the interests of justice.
- (2) For the purposes of this section, the extradition would not be in the interests of justice if the judge—
  - (a) decides that a substantial measure of D's relevant activity was performed in the United Kingdom; and
  - (b) decides, having regard to the specified matters relating to the interests of justice (and only those matters), that the extradition should not take place.
- (3) These are the specified matters relating to the interests of justice—

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- (a) the place where most of the loss or harm resulting from the extradition offence occurred or was intended to occur;
  - (b) the interests of any victims of the extradition offence;
  - (c) any belief of a prosecutor that the United Kingdom, or a particular part of the United Kingdom, is not the most appropriate jurisdiction in which to prosecute D in respect of the conduct constituting the extradition offence;
  - (d) were D to be prosecuted in a part of the United Kingdom for an offence that corresponds to the extradition offence, whether evidence necessary to prove the offence is or could be made available in the United Kingdom;
  - (e) any delay that might result from proceeding in one jurisdiction rather than another;
  - (f) the desirability and practicability of all prosecutions relating to the extradition offence taking place in one jurisdiction, having regard (in particular) to—
    - (i) the jurisdictions in which witnesses, co-defendants and other suspects are located, and
    - (ii) the practicability of the evidence of such persons being given in the United Kingdom or in jurisdictions outside the United Kingdom;
  - (g) D's connections with the United Kingdom.
- (4) In deciding whether the extradition would not be in the interests of justice, the judge must have regard to the desirability of not requiring the disclosure of material which is subject to restrictions on disclosure in the category 2 territory concerned.
- (5) If, on an application by a prosecutor, it appears to the judge that the prosecutor has considered the offences for which D could be prosecuted in the United Kingdom, or a part of the United Kingdom, in respect of the conduct constituting the extradition offence, the judge must make that prosecutor a party to the proceedings on the question of whether D's extradition is barred by reason of forum.
- (6) In this section “D's relevant activity” means activity which is material to the commission of the extradition offence and is alleged to have been performed by D.

#### **Textual Amendments**

**F29** Ss. 83A-83E inserted (18.9.2013 for specified purposes, 14.10.2013 for E.W.N.I. in so far as not already in force) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 6](#) (with [Sch. 20 para. 78](#)); [S.I. 2013/2349](#), art. 2(2)(3)

### **83B Effect of prosecutor's certificates on forum proceedings**

- (1) The judge hearing proceedings under section 83A (the “forum proceedings”) must decide that the extradition is not barred by reason of forum if (at a time when the judge has not yet decided the proceedings) the judge receives a prosecutor's certificate relating to the extradition.
- (2) That duty to decide the forum proceedings in that way is subject to the determination of any question relating to the prosecutor's certificate raised in accordance with section 83D.
- (3) A designated prosecutor may apply for the forum proceedings to be adjourned for the purpose of assisting that or any other designated prosecutor—

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- (a) in considering whether to give a prosecutor's certificate relating to the extradition,
  - (b) in giving such a certificate, or
  - (c) in sending such a certificate to the judge.
- (4) If such an application is made, the judge must—
- (a) adjourn the forum proceedings until the application is decided; and
  - (b) continue the adjournment, for such period as appears to the judge to be reasonable, if the application is granted.
- (5) But the judge must end the adjournment if the application is not granted.

#### **Textual Amendments**

**F29** Ss. 83A-83E inserted (18.9.2013 for specified purposes, 14.10.2013 for E.W.N.I. in so far as not already in force) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 6](#) (with [Sch. 20 para. 78](#)); [S.I. 2013/2349](#), art. 2(2)(3)

### **83C Prosecutor's certificates**

- (1) A “prosecutor's certificate” is a certificate given by a designated prosecutor which—
- (a) certifies both matter A and matter B, and
  - (b) certifies either matter C or matter D.
- (2) Matter A is that a responsible prosecutor has considered the offences for which D could be prosecuted in the United Kingdom, or a part of the United Kingdom, in respect of the conduct constituting the extradition offence.
- (3) Matter B is that the responsible prosecutor has decided that there are one or more such offences that correspond to the extradition offence (the “corresponding offences”).
- (4) Matter C is that—
- (a) the responsible prosecutor has made a formal decision as to the prosecution of D for the corresponding offences,
  - (b) that decision is that D should not be prosecuted for the corresponding offences, and
  - (c) the reason for that decision is a belief that—
    - (i) there would be insufficient admissible evidence for the prosecution; or
    - (ii) the prosecution would not be in the public interest.
- (5) Matter D is that the responsible prosecutor believes that D should not be prosecuted for the corresponding offences because there are concerns about the disclosure of sensitive material in—
- (a) the prosecution of D for the corresponding offences, or
  - (b) any other proceedings.
- (6) In relation to the extradition of any person to a category 2 territory, neither this section nor any other rule of law (whether or not contained in an enactment) may require a designated prosecutor—
- (a) to consider any matter relevant to giving a prosecutor's certificate; or

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- (b) to consider whether to give a prosecutor's certificate.
- (7) In this section “sensitive material” means material which appears to the responsible prosecutor to be sensitive, including material appearing to be sensitive on grounds relating to—
- (a) national security,
  - (b) international relations, or
  - (c) the prevention or detection of crime (including grounds relating to the identification or activities of witnesses, informants or any other persons supplying information to the police or any other law enforcement agency who may be in danger if their identities are revealed).

#### Textual Amendments

**F29** Ss. 83A-83E inserted (18.9.2013 for specified purposes, 14.10.2013 for E.W.N.I. in so far as not already in force) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 6](#) (with [Sch. 20 para. 78](#)); [S.I. 2013/2349](#), art. 2(2)(3)

### 83D Questioning of prosecutor's certificate

- (1) No decision of a designated prosecutor relating to a prosecutor's certificate in respect of D's extradition (a “relevant certification decision”) may be questioned except on an appeal under section 103 or 108 against an order for that extradition.
- (2) In England and Wales, and Northern Ireland, for the purpose of—
  - (a) determining whether to give permission for a relevant certification decision to be questioned, and
  - (b) determining any such question (if that permission is given),the High Court must apply the procedures and principles which would be applied by it on an application for judicial review.
- (3) In Scotland, for the purpose of determining any questioning of a relevant certification decision, the High Court must apply the procedures and principles that would be applied by it on an application for judicial review.
- (4) In a case where the High Court quashes a prosecutor's certificate, the High Court is to decide the question of whether or not the extradition is barred by reason of forum.
- (5) Where the High Court is required to decide that question by virtue of subsection (4)—
  - (a) sections 83A to 83C and this section apply in relation to that decision (with the appropriate modifications) as they apply to a decision by a judge; and
  - (b) in particular—
    - (i) a reference in this section to an appeal under section 103 or 108 has effect as a reference to an appeal under section 114 to the Supreme Court;
    - (ii) a reference in this section to the High Court has effect as a reference to the Supreme Court.

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### Textual Amendments

**F29** Ss. 83A-83E inserted (18.9.2013 for specified purposes, 14.10.2013 for E.W.N.I. in so far as not already in force) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 6](#) (with [Sch. 20 para. 78](#)); S.I. 2013/2349, art. 2(2)(3)

## 83E Interpretation of sections 83A to 83D

- (1) This section applies for the purposes of sections 83A to 83D (and this section).
- (2) These expressions have the meanings given—
  - “D” has the meaning given in section 83A(1);
  - “designated prosecutor” means—
    - (a) a member of the Crown Prosecution Service, or
    - (b) any other person who—
      - (i) is a prosecutor designated for the purposes of this section by order made by the Secretary of State, or
      - (ii) is within a description of prosecutors so designated;
  - “extradition offence” means the offence specified in the request for extradition (including the conduct that constitutes the extradition offence);
  - “forum proceedings” has the meaning given in section 83B(1);
  - “part of the United Kingdom” means—
    - (a) England and Wales;
    - (b) Scotland;
    - (c) Northern Ireland;
  - “prosecutor” means a person who has responsibility for prosecuting offences in any part of the United Kingdom (whether or not the person also has other responsibilities);
  - “prosecutor’s certificate” has the meaning given in section 83C(1);
  - “responsible prosecutor”, in relation to a prosecutor’s certificate, means—
    - (a) the designated prosecutor giving the certificate, or
    - (b) another designated prosecutor.
- (3) In determining for any purpose whether an offence corresponds to the extradition offence, regard must be had, in particular, to the nature and seriousness of the two offences.
- (4) A reference to a formal decision as to the prosecution of D for an offence is a reference to a decision (made after complying with, in particular, any applicable requirement concerning a code of practice) that D should, or should not, be prosecuted for the offence.]

### Textual Amendments

**F29** Ss. 83A-83E inserted (18.9.2013 for specified purposes, 14.10.2013 for E.W.N.I. in so far as not already in force) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 6](#) (with [Sch. 20 para. 78](#)); S.I. 2013/2349, art. 2(2)(3)

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*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

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## **84 Case where person has not been convicted**

- (1) If the judge is required to proceed under this section he must decide whether there is evidence which would be sufficient to make a case requiring an answer by the person if the proceedings were the summary trial of an information against him.
- (2) In deciding the question in subsection (1) the judge may treat a statement made by a person in a document as admissible evidence of a fact if—
  - (a) the statement is made by the person to a police officer or another person charged with the duty of investigating offences or charging offenders, and
  - (b) direct oral evidence by the person of the fact would be admissible.
- (3) In deciding whether to treat a statement made by a person in a document as admissible evidence of a fact, the judge must in particular have regard—
  - (a) to the nature and source of the document;
  - (b) to whether or not, having regard to the nature and source of the document and to any other circumstances that appear to the judge to be relevant, it is likely that the document is authentic;
  - (c) to the extent to which the statement appears to supply evidence which would not be readily available if the statement were not treated as being admissible evidence of the fact;
  - (d) to the relevance of the evidence that the statement appears to supply to any issue likely to have to be determined by the judge in deciding the question in subsection (1);
  - (e) to any risk that the admission or exclusion of the statement will result in unfairness to the person whose extradition is sought, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings.
- (4) A summary in a document of a statement made by a person must be treated as a statement made by the person in the document for the purposes of subsection (2).
- (5) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.
- (6) If the judge decides that question in the affirmative he must proceed under section 87.
- (7) If the judge is required to proceed under this section and the category 2 territory to which extradition is requested is designated for the purposes of this section by order made by the Secretary of State—
  - (a) the judge must not decide under subsection (1), and
  - (b) he must proceed under section 87.
- (8) Subsection (1) applies to Scotland with the substitution of “ summary proceedings in respect of an offence alleged to have been committed by the person (except that for this purpose evidence from a single source shall be sufficient) ” for “ the summary trial of an information against him ”.
- (9) Subsection (1) applies to Northern Ireland with the substitution of “ the hearing and determination of a complaint ” for “ the summary trial of an information ”.

*Changes to legislation: There are currently no known outstanding effects  
for the Extradition Act 2003, Part 2. (See end of Document for details)*

**Modifications etc. (not altering text)**

- C4** S. 84(1) modified (10.11.2016) by [The Extradition Act 2003 \(Overseas Territories\) Order 2016 \(S.I. 2016/990\)](#), arts. 1(1), 6(2), [Sch. 3](#)

**Commencement Information**

- I20** 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))

**85 Case where person has been convicted**

- (1) If the judge is required to proceed under this section he must decide whether the person was convicted in his presence.
- (2) If the judge decides the question in subsection (1) in the affirmative he must proceed under section 87.
- (3) If the judge decides that question in the negative he must decide whether the person deliberately absented himself from his trial.
- (4) If the judge decides the question in subsection (3) in the affirmative he must proceed under section 87.
- (5) If the judge decides that question in the negative he must decide whether the person would be entitled to a retrial or (on appeal) to a review amounting to a retrial.
- (6) If the judge decides the question in subsection (5) in the affirmative he must proceed under section 86.
- (7) If the judge decides that question in the negative he must order the person's discharge.
- (8) The judge must not decide the question in subsection (5) in the affirmative unless, in any proceedings that it is alleged would constitute a retrial or a review amounting to a retrial, the person would have these rights—
  - (a) the right to defend himself in person or through legal assistance of his own choosing or, if he had not sufficient means to pay for legal assistance, to be given it free when the interests of justice so required;
  - (b) the right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

**Commencement Information**

- I21** 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))

**86 Conviction in person's absence**

- (1) If the judge is required to proceed under this section he must decide whether there is evidence which would be sufficient to make a case requiring an answer by the person if the proceedings were the summary trial of an information against him.



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*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

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- (2) In deciding the question in subsection (1) the judge may treat a statement made by a person in a document as admissible evidence of a fact if—
  - (a) the statement is made by the person to a police officer or another person charged with the duty of investigating offences or charging offenders, and
  - (b) direct oral evidence by the person of the fact would be admissible.
- (3) In deciding whether to treat a statement made by a person in a document as admissible evidence of a fact, the judge must in particular have regard—
  - (a) to the nature and source of the document;
  - (b) to whether or not, having regard to the nature and source of the document and to any other circumstances that appear to the judge to be relevant, it is likely that the document is authentic;
  - (c) to the extent to which the statement appears to supply evidence which would not be readily available if the statement were not treated as being admissible evidence of the fact;
  - (d) to the relevance of the evidence that the statement appears to supply to any issue likely to have to be determined by the judge in deciding the question in subsection (1);
  - (e) to any risk that the admission or exclusion of the statement will result in unfairness to the person whose extradition is sought, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings.
- (4) A summary in a document of a statement made by a person must be treated as a statement made by the person in the document for the purposes of subsection (2).
- (5) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.
- (6) If the judge decides that question in the affirmative he must proceed under section 87.
- (7) If the judge is required to proceed under this section and the category 2 territory to which extradition is requested is designated for the purposes of this section by order made by the Secretary of State—
  - (a) the judge must not decide under subsection (1), and
  - (b) he must proceed under section 87.
- (8) Subsection (1) applies to Scotland with the substitution of “ summary proceedings in respect of an offence alleged to have been committed by the person (except that for this purpose evidence from a single source shall be sufficient) ” for “the summary trial of an information against him”.
- (9) Subsection (1) applies to Northern Ireland with the substitution of “ the hearing and determination of a complaint ” for “the summary trial of an information”.

**Modifications etc. (not altering text)**

- C5** S. 86(1) modified (10.11.2016) by [The Extradition Act 2003 \(Overseas Territories\) Order 2016 \(S.I. 2016/990\)](#), arts. 1(1), 6(2), [Sch. 3](#)

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*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

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#### Commencement Information

**I22** 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))

### 87 Human rights

- (1) If the judge is required to proceed under this section (by virtue of section 84, 85 or 86) he must decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998 (c. 42).
- (2) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.
- (3) If the judge decides that question in the affirmative he must send the case to the Secretary of State for his decision whether the person is to be extradited.

#### Commencement Information

**I23** 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))

### 88 Person charged with offence in United Kingdom

- (1) This section applies if at any time in the extradition hearing the judge is informed that the person is charged with an offence in the United Kingdom.
- (2) The judge must adjourn the extradition hearing until one of these occurs—
  - (a) the charge is disposed of;
  - (b) the charge is withdrawn;
  - (c) proceedings in respect of the charge are discontinued;
  - (d) an order is made for the charge to lie on the file, or in relation to Scotland, the diet is deserted *pro loco et tempore*.
- (3) If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the judge may adjourn the extradition hearing until [F30 the person is released from detention pursuant to the sentence (whether on licence or otherwise)]<sup>F30</sup>.
- (4) If before he adjourns the extradition hearing under subsection (2) the judge has decided under section 79 whether the person's extradition is barred by reason of the rule against double jeopardy, the judge must decide that question again after the resumption of the hearing.

#### Textual Amendments

**F30** Words in s. 88(3) substituted (25.1.2010) by Policing and Crime Act 2009 (c. 26), **ss. 71(4), 116**; S.I. 2009/3096, **art. 3(n)** (with art. 4)

#### Modifications etc. (not altering text)

**C6** S. 88(2) modified (10.11.2016) by The Extradition Act 2003 (Overseas Territories) Order 2016 (S.I. 2016/990), **arts. 1(1), 6(3), Sch. 3**

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

#### Commencement Information

**I24** 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))

### 89 Person serving sentence in United Kingdom

- (1) This section applies if at any time in the extradition hearing the judge is informed that the person is [<sup>F31</sup>in custody]<sup>F31</sup> serving a sentence of imprisonment or another form of detention in the United Kingdom.
- (2) The judge may adjourn the extradition hearing until [<sup>F32</sup>the person is released from detention pursuant to the sentence (whether on licence or otherwise)]<sup>F32</sup>.
- [<sup>F33</sup>(3) In a case where an extradition hearing is adjourned under subsection (2)—
  - (a) section 131 of the Magistrates' Courts Act 1980 (remand of accused already in custody) has effect as if a reference to 28 clear days in subsection (1) or (2) of that section were a reference to six months;
  - (b) Article 47(2) of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (period of remand in custody) has effect as if a reference to 28 days in—
    - (i) paragraph (a)(iii), or
    - (ii) the words after paragraph (b),were a reference to six months.]<sup>F33</sup>

#### Textual Amendments

- F31** Words in s. 89(1) inserted (25.1.2010) by Policing and Crime Act 2009 (c. 26), **ss. 71(5)(a)**, 116; S.I. 2009/3096, **art. 3(n)** (with art. 4)
- F32** Words in s. 89(2) substituted (25.1.2010) by Policing and Crime Act 2009 (c. 26), **ss. 71(5)(b)**, 116; S.I. 2009/3096, **art. 3(n)** (with art. 4)
- F33** S. 89(3) inserted (15.1.2007) by Police and Justice Act 2006 (c. 48), **ss. 42, 53, Sch. 13 para. 7**; S.I. 2006/3364, **art. 2(d)(e)**

#### Commencement Information

**I25** 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))

### 90 Competing extradition claim

- (1) This section applies if at any time in the extradition hearing the judge is informed that the conditions in subsection (2) or (3) are met.
- (2) The conditions are that—
  - (a) the Secretary of State has received another valid request for the person's extradition to a category 2 territory;
  - (b) the other request has not been disposed of;
  - (c) the Secretary of State has made an order under section 126(2) for further proceedings on the request under consideration to be deferred until the other request has been disposed of.

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

- (3) The conditions are that—
- (a) a certificate has been issued under section 2 in respect of a Part 1 warrant issued in respect of the person;
  - (b) the warrant has not been disposed of;
  - (c) the Secretary of State has made an order under section 179(2) for further proceedings on the request to be deferred until the warrant has been disposed of.
- (4) The judge must remand the person in custody or on bail.
- (5) [<sup>F34</sup>If the person is remanded in custody, the appropriate judge may]<sup>F34</sup> later grant bail.

#### Textual Amendments

**F34** Words in s. 90(5) substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 16](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)

#### Commencement Information

**I26** 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))

## 91 Physical or mental condition

- (1) This section applies if at any time in the extradition hearing it appears to the judge that the condition in subsection (2) is satisfied.
- (2) The condition is that the physical or mental condition of the person is such that it would be unjust or oppressive to extradite him.
- (3) The judge must—
  - (a) order the person’s discharge, or
  - (b) adjourn the extradition hearing until it appears to him that the condition in subsection (2) is no longer satisfied.

#### Commencement Information

**I27** 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))

## 92 Case sent to Secretary of State

- (1) This section applies if the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited.
- (2) The judge must inform the person in ordinary language that—
  - (a) he has a right to appeal to the High Court;
  - (b) if he exercises the right the appeal will not be heard until the Secretary of State has made his decision.
- (3) But subsection (2) does not apply if the person has consented to his extradition under section 127.

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

- (4) The judge must remand the person in custody or on bail—
  - (a) to wait for the Secretary of State’s decision, and
  - (b) to wait for his extradition to the territory to which extradition is requested (if the Secretary of State orders him to be extradited).
- (5) [<sup>F35</sup>If the person is remanded in custody, the appropriate judge may]<sup>F35</sup> later grant bail.

#### Textual Amendments

**F35** Words in s. 92(5) substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 16](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)

#### Commencement Information

**I28** 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))

### *Secretary of State’s functions*

#### Commencement Information

**I29** 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))

## 93 Secretary of State’s consideration of case

- (1) This section applies if the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited.
- (2) The Secretary of State must decide whether he is prohibited from ordering the person’s extradition under any of these sections—
  - (a) section 94 (death penalty);
  - (b) section 95 (speciality);
  - (c) section 96 (earlier extradition to United Kingdom from other territory).

[<sup>F36</sup>(d) section 96A (earlier transfer to United Kingdom by International Criminal Court).]
- (3) If the Secretary of State decides any of the questions in subsection (2) in the affirmative he must order the person’s discharge.
- (4) If the Secretary of State decides those questions in the negative he must order the person to be extradited to the territory to which his extradition is requested unless—
  - (a) he is informed that the request has been withdrawn,
  - (b) he makes an order under section 126(2) or 179(2) for further proceedings on the request to be deferred and the person is discharged under section 180, or
  - (c) he orders the person’s discharge [<sup>F37</sup>under subsection (6A) or] under section 208.
- (5) In deciding the questions in subsection (2), the Secretary of State is not required to consider any representations received by him after the end of the permitted period.

*Changes to legislation: There are currently no known outstanding effects  
 for the Extradition Act 2003, Part 2. (See end of Document for details)*

- (6) The permitted period is the period of [<sup>F38</sup>4 weeks] starting with the appropriate day.
- [<sup>F39</sup>(6A) The Secretary of State may order the person's discharge if the person—
- (a) has been recorded by the Secretary of State as a refugee within the meaning of the Refugee Convention, or
  - (b) has been granted leave to enter or remain in the United Kingdom on the ground that it would be a breach of Article 2 or 3 of the Human Rights Convention to remove the person to the territory to which extradition is requested.]
- [<sup>F40</sup>(7) In the case of a person who has consented under section 127 to his extradition, the Secretary of State is not required—
- (a) to wait until the end of the permitted period before ordering the person's extradition, or
  - (b) to consider any representations received after the order is made. ]

#### Textual Amendments

- F36** S. 93(2)(d) inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 3\(3\)](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)
- F37** Words in s. 93(4)(c) inserted (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), [ss. 162\(3\)\(a\)](#), 185(1) (with ss. 21, 33, 42, 58, 75, 93); [S.I. 2014/1916](#), art. 2(h)
- F38** Words in s. 93(6) substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 18\(2\)](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)
- F39** S. 93(6A) inserted (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), [ss. 162\(3\)\(b\)](#), 185(1) (with ss. 21, 33, 42, 58, 75, 93); [S.I. 2014/1916](#), art. 2(h)
- F40** S. 93(7) inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 18\(3\)](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)

#### Modifications etc. (not altering text)

- C7** S. 93(6A)(b) modified (10.11.2016) by [The Extradition Act 2003 \(Overseas Territories\) Order 2016 \(S.I. 2016/990\)](#), arts. 1(1), 6(1), [Sch. 3](#)

#### Commencement Information

- I30** 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))

## 94 Death penalty

- (1) The Secretary of State must not order a person's extradition to a category 2 territory if he could be, will be or has been sentenced to death for the offence concerned in the category 2 territory.
- (2) Subsection (1) does not apply if the Secretary of State receives a written assurance which he considers adequate that a sentence of death—
  - (a) will not be imposed, or
  - (b) will not be carried out (if imposed).

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

#### Commencement Information

**I31** 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))

### 95 Speciality

- (1) The Secretary of State must not order a person's extradition to a category 2 territory if there are no speciality arrangements with the category 2 territory.
- (2) But subsection (1) does not apply if the person consented to his extradition under section 127 before his case was sent to the Secretary of State.
- (3) There are speciality arrangements with a category 2 territory if (and only if) under the law of that territory or arrangements made between it and the United Kingdom a person who is extradited to the territory from the United Kingdom may be dealt with in the territory for an offence committed before his extradition only if—
  - (a) the offence is one falling within subsection (4), or
  - (b) he is first given an opportunity to leave the territory.
- (4) The offences are—
  - (a) the offence in respect of which the person is extradited;
  - (b) an extradition offence disclosed by the same facts as that offence, other than one in respect of which a sentence of death could be imposed;
  - (c) an extradition offence in respect of which the Secretary of State consents to the person being dealt with;
  - (d) an offence in respect of which the person waives the right that he would have (but for this paragraph) not to be dealt with for the offence.
- (5) Arrangements made with a category 2 territory which is a Commonwealth country or a British overseas territory may be made for a particular case or more generally.
- (6) A certificate issued by or under the authority of the Secretary of State confirming the existence of arrangements with a category 2 territory which is a Commonwealth country or a British overseas territory and stating the terms of the arrangements is conclusive evidence of those matters.

#### Commencement Information

**I32** 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))

### 96 Earlier extradition to United Kingdom from other territory

The Secretary of State must not order a person's extradition to a category 2 territory if—

- (a) the person was extradited to the United Kingdom from another territory (the extraditing territory);
- (b) under arrangements between the United Kingdom and the extraditing territory, that territory's consent is required to the person's extradition from the United

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

Kingdom to the category 2 territory in respect of the extradition offence under consideration;

- (c) that consent has not been given on behalf of the extraditing territory.

#### Commencement Information

**I33** 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))

#### [<sup>F41</sup>96A Earlier transfer to United Kingdom by International Criminal Court

- (1) The Secretary of State must not order a person's extradition to a category 2 territory if—
- (a) the person was transferred to the United Kingdom to serve a sentence imposed by the International Criminal Court;
  - (b) under arrangements between the United Kingdom and the Court, the consent of the Presidency of the Court is required to the person's extradition from the United Kingdom to the category 2 territory in respect of the extradition offence under consideration;
  - (c) that consent has not been given.
- (2) Subsection (1) does not apply if the person has served the sentence imposed by the Court and has subsequently—
- (a) remained voluntarily in the United Kingdom for more than 30 days, or
  - (b) left the United Kingdom and returned to it.]

#### Textual Amendments

**F41** S. 96A inserted (15.1.2007) by Police and Justice Act 2006 (c. 48), ss. 42, 53, Sch. 13 para. 3(4); S.I. 2006/3364, art. 2(d)(e)

#### 97 Deferral: person charged with offence in United Kingdom

- (1) This section applies if—
- (a) the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited;
  - (b) the person is charged with an offence in the United Kingdom.
- (2) The Secretary of State must not make a decision with regard to the person's extradition until one of these occurs—
- (a) the charge is disposed of;
  - (b) the charge is withdrawn;
  - (c) proceedings in respect of the charge are discontinued;
  - (d) an order is made for the charge to lie on the file or, in relation to Scotland, the diet is deserted *pro loco et tempore*.
- (3) If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the Secretary of State may defer making a decision with regard to the person's extradition until [<sup>F42</sup>the person is released from detention pursuant to the sentence (whether on licence or otherwise)]<sup>F42</sup>.



*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

#### Textual Amendments

**F42** Words in s. 97(3) substituted (25.1.2010) by [Policing and Crime Act 2009 \(c. 26\)](#), [ss. 71\(6\)](#), 116; [S.I. 2009/3096](#), [art. 3\(n\)](#) (with [art. 4](#))

#### Modifications etc. (not altering text)

**C8** [S. 97\(2\)](#) modified (10.11.2016) by [The Extradition Act 2003 \(Overseas Territories\) Order 2016 \(S.I. 2016/990\)](#), [arts. 1\(1\)](#), 6(3), [Sch. 3](#)

#### Commencement Information

**I34** 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\(2\)](#))

### 98 Deferral: person serving sentence in United Kingdom

- (1) This section applies if—
- the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited;
  - the person is [<sup>F43</sup>in custody]<sup>F43</sup> serving a sentence of imprisonment or another form of detention in the United Kingdom.
- (2) The Secretary of State may defer making a decision with regard to the person's extradition until [<sup>F44</sup>the person is released from detention pursuant to the sentence (whether on licence or otherwise)]<sup>F44</sup>.

#### Textual Amendments

**F43** Words in s. 98(1)(b) inserted (25.1.2010) by [Policing and Crime Act 2009 \(c. 26\)](#), [ss. 71\(7\)\(a\)](#), 116; [S.I. 2009/3096](#), [art. 3\(n\)](#) (with [art. 4](#))

**F44** Words in s. 98(2) substituted (25.1.2010) by [Policing and Crime Act 2009 \(c. 26\)](#), [ss. 71\(7\)\(b\)](#), 116; [S.I. 2009/3096](#), [art. 3\(n\)](#) (with [art. 4](#))

#### Commencement Information

**I35** 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\(2\)](#))

### 99 Time limit for order for extradition or discharge

- (1) This section applies if—
- the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited;
  - within the required period the Secretary of State does not make an order for the person's extradition or discharge.
- (2) If the person applies to [<sup>F45</sup>the appropriate judge]<sup>F45</sup> to be discharged, [<sup>F46</sup>the judge]<sup>F46</sup> must order his discharge.
- (3) The required period is the period of 2 months starting with the appropriate day.

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

- (4) If before the required period ends the Secretary of State [<sup>F47</sup>applies to the appropriate judge]<sup>F47</sup> for it to be extended [<sup>F48</sup>the judge may]<sup>F48</sup> make an order accordingly; and this subsection may apply more than once.

#### Textual Amendments

- F45** Words in s. 99(2) substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 19\(2\)\(a\)](#); S.I. 2006/3364, [art. 2\(d\)\(e\)](#)
- F46** Words in s. 99(2) substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 19\(2\)\(b\)](#); S.I. 2006/3364, [art. 2\(d\)\(e\)](#)
- F47** Words in s. 99(4) substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 19\(3\)\(a\)](#); S.I. 2006/3364, [art. 2\(d\)\(e\)](#)
- F48** Words in s. 99(4) substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 19\(3\)\(b\)](#); S.I. 2006/3364, [art. 2\(d\)\(e\)](#)

#### Commencement Information

- I36** 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))

## 100 Information

- (1) If the Secretary of State orders a person's extradition under this Part he must—
- (a) inform the person of the order;
  - (b) inform him in ordinary language that he has a right of appeal to the High Court;
  - (c) inform a person acting on behalf of the category 2 territory of the order.
- (2) But subsection (1)(b) does not apply if the person has consented to his extradition under section 127.
- (3) If the Secretary of State orders a person's extradition under this Part and he has received an assurance such as is mentioned in section 94(2), he must give the person a copy of the assurance when he informs him under subsection (1) of the order.
- (4) If the Secretary of State orders a person's discharge under this Part he must—
- (a) inform him of the order;
  - (b) inform a person acting on behalf of the category 2 territory of the order.

#### Commencement Information

- I37** 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))

## 101 Making of order for extradition or discharge

- (1) An order to which this section applies must be made under the hand of one of these—
- (a) the Secretary of State;
  - (b) a Minister of State;
  - (c) a Parliamentary Under-Secretary of State;
  - (d) a senior official.

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

- (2) But, in relation to Scotland, an order to which this section applies must be made under the hand of one of these—
- (a) a member of the Scottish Executive or a junior Scottish Minister;
  - (b) a senior official who is a member of the staff of the Scottish Administration.
- (3) This section applies to—
- (a) an order under section 93 for a person’s extradition;
  - (b) an order under section 93 or 123 for a person’s discharge.
- (4) A senior official is—
- (a) a member of the Senior Civil Service;
  - (b) a member of the Senior Management Structure of Her Majesty’s Diplomatic Service.
- (5) If it appears to the Secretary of State that it is necessary to do so in consequence of any changes to the structure or grading of the [F49]statutory civil service (or any part of it)[F49], he may by order make such amendments to subsection (4) as appear to him appropriate to preserve (so far as practicable) the effect of that subsection.
- [F50](6) In subsection (5) “the statutory civil service” means the civil service within the meaning of Chapter 1 of Part 1 of the Constitutional Reform and Governance Act 2010 (see section 1(4) of that Act).[F50]

#### Textual Amendments

**F49** Words in s. 101(5) substituted (11.11.2010) by Constitutional Reform and Governance Act 2010 (c. 25), ss. 19, 52, Sch. 2 para. 14(2); S.I. 2010/2703, art. 2(a)

**F50** S. 101(6) inserted (11.11.2010) by Constitutional Reform and Governance Act 2010 (c. 25), ss. 19, 52, Sch. 2 para. 14(3); S.I. 2010/2703, art. 2(a)

#### Commencement Information

**I38** 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))

## 102 The appropriate day

- (1) This section applies for the purposes of sections 93 and 99 if the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited.
- (2) If the person is charged with an offence in the United Kingdom, the appropriate day is the day on which one of these occurs—
- (a) the charge is disposed of;
  - (b) the charge is withdrawn;
  - (c) proceedings in respect of the charge are discontinued;
  - (d) an order is made for the charge to lie on the file, or in relation to Scotland, the diet is deserted *pro loco et tempore*.
- (3) If under section 97(3) or 98(2) the Secretary of State defers making a decision [F51], the appropriate day is the day on which the person is released from detention pursuant to the sentence (whether on licence or otherwise).[F51]

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*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

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- (4) If section 126 applies in relation to the request for the person's extradition (the request concerned) the appropriate day is—
- (a) the day on which the Secretary of State makes an order under that section, if the order is for proceedings on the other request to be deferred;
  - (b) the day on which an order under section 180 is made, if the order under section 126 is for proceedings on the request concerned to be deferred and the order under section 180 is for the proceedings to be resumed.
- (5) If section 179 applies in relation to the request for the person's extradition, the appropriate day is—
- (a) the day on which the Secretary of State makes an order under that section, if the order is for proceedings on the warrant to be deferred;
  - (b) the day on which an order under section 180 is made, if the order under section 179 is for proceedings on the request to be deferred and the order under section 180 is for the proceedings to be resumed.
- (6) If more than one of subsections (2) to (5) applies, the appropriate day is the latest of the days found under the subsections which apply.
- (7) In any other case, the appropriate day is the day on which the judge sends the case to the Secretary of State for his decision whether the person is to be extradited.

#### **Textual Amendments**

**F51** Words in s. 102(3) substituted (25.1.2010) by [Policing and Crime Act 2009 \(c. 26\)](#), ss. 71(8), 116; S.I. 2009/3096, art. 3(n) (with art. 4)

#### **Modifications etc. (not altering text)**

**C9** S. 102(2) modified (10.11.2016) by [The Extradition Act 2003 \(Overseas Territories\) Order 2016 \(S.I. 2016/990\)](#), arts. 1(1), 6(3), [Sch. 3](#)

#### **Commencement Information**

**I39** 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))

### *Appeals*

#### **Commencement Information**

**I40** 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))

### **103 Appeal where case sent to Secretary of State**

- (1) If the judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited, the person may appeal to the High Court against the relevant decision.
- (2) But subsection (1) does not apply if the person consented to his extradition under section 127 before his case was sent to the Secretary of State.

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

- (3) The relevant decision is the decision that resulted in the case being sent to the Secretary of State.
- (4) An appeal under this [F52]section—
  - (a) may] be brought on a question of law or fact[F53], but
  - (b) lies only with the leave of the High Court.]
- (5) If an appeal is brought under this section before the Secretary of State has decided whether the person is to be extradited the appeal must not be heard until after the Secretary of State has made his decision.
- (6) If the Secretary of State orders the person’s discharge the appeal must not be proceeded with.
- (7) No appeal may be brought under this section if the Secretary of State has ordered the person’s discharge.
- (8) If notice of an appeal under section 110 against the decision which resulted in the order for the person’s discharge is given in accordance with subsection (5) of that section—
  - (a) subsections (6) and (7) do not apply;
  - (b) no appeal may be brought under this section if the High Court has made its decision on the appeal.
- (9) [F54]Notice of application for leave to appeal] under this section must be given in accordance with rules of court before the end of the permitted period, which is 14 days starting with the day on which the Secretary of State informs the person under section 100(1) or (4) of the order he has made in respect of the person.
- [F55](10) But where a person gives notice of application for leave to appeal after the end of the permitted period, the High Court must not for that reason refuse to entertain the application if the person did everything reasonably possible to ensure that the notice was given as soon as it could be given.]

#### Textual Amendments

- F52** Words in s. 103(4) substituted (15.4.2015) by *Anti-social Behaviour, Crime and Policing Act 2014* (c. 12), **ss. 160(3)(a)**, 185(1) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/987, art. 2(a) (with art. 4)
- F53** S. 103(4)(b) and preceding word inserted (15.4.2015) by *Anti-social Behaviour, Crime and Policing Act 2014* (c. 12), **ss. 160(3)(b)**, 185(1) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/987, art. 2(a) (with art. 4)
- F54** Words in s. 103(9) substituted (15.4.2015) by *Anti-social Behaviour, Crime and Policing Act 2014* (c. 12), s. 185(1), **Sch. 11 para. 111** (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/987, art. 2(c)(ii) (with art. 4)
- F55** S. 103(10) inserted (15.4.2015) by *Anti-social Behaviour, Crime and Policing Act 2014* (c. 12), **ss. 160(3)(c)**, 185(1) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/987, art. 2(a) (with art. 4)

#### Commencement Information

- I41** 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))

## 104 Court’s powers on appeal under section 103

- (1) On an appeal under section 103 the High Court may—

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*Changes to legislation: There are currently no known outstanding effects  
for the Extradition Act 2003, Part 2. (See end of Document for details)*

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- (a) allow the appeal;
  - (b) direct the judge to decide again a question (or questions) which he decided at the extradition hearing;
  - (c) dismiss the appeal.
- (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.
- (3) The conditions are that—
- (a) the judge ought to have decided a question before him at the extradition hearing differently;
  - (b) if he had decided the question in the way he ought to have done, he would have been required to order the person’s discharge.
- (4) The conditions are that—
- (a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;
  - (b) the issue or evidence would have resulted in the judge deciding a question before him at the extradition hearing differently;
  - (c) if he had decided the question in that way, he would have been required to order the person’s discharge.
- (5) If the court allows the appeal it must—
- (a) order the person’s discharge;
  - (b) quash the order for his extradition.
- (6) If the judge comes to a different decision on any question that is the subject of a direction under subsection (1)(b) he must order the person’s discharge.
- (7) If the judge comes to the same decision as he did at the extradition hearing on the question that is (or all the questions that are) the subject of a direction under subsection (1)(b) the appeal must be taken to have been dismissed by a decision of the High Court.
- [<sup>F56</sup>(8) If the court makes a direction under subsection (1)(b) it must remand the person in custody or on bail.
- (9) If the court remands the person in custody it may later grant bail.]<sup>F56</sup>

#### **Textual Amendments**

**F56** S. 104(8)(9) inserted (15.1.2007) by *Police and Justice Act 2006 (c. 48)*, ss. 42, 53, **Sch. 13 para. 8(6)**; *S.I. 2006/3364*, **art. 2(d)(e)**

#### **Commencement Information**

**I42** 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))

## **105 Appeal against discharge at extradition hearing**

- (1) If at the extradition hearing the judge orders a person’s discharge, an appeal to the High Court may be brought on behalf of the category 2 territory against the relevant decision.

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

- (2) But subsection (1) does not apply if the order for the person's discharge was under section 122.
- (3) The relevant decision is the decision which resulted in the order for the person's discharge.
- (4) An appeal under this <sup>F57</sup>section—
  - (a) may] be brought on a question of law or fact<sup>F58</sup>, but
  - (b) lies only with the leave of the High Court.]
- (5) <sup>F59</sup>[Notice of application for leave to appeal] under this section must be given in accordance with rules of court before the end of the permitted period, which is 14 days starting with the day on which the order for the person's discharge is made.

#### Textual Amendments

- F57** Words in s. 105(4) substituted (15.4.2015) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), ss. 160\(4\)\(a\)](#), 185(1) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/987, art. 2(a) (with art. 4)
- F58** S. 105(4)(b) and preceding word inserted (15.4.2015) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), ss. 160\(4\)\(b\)](#), 185(1) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/987, art. 2(a) (with art. 4)
- F59** Words in s. 105(5) substituted (15.4.2015) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), s. 185\(1\), Sch. 11 para. 112](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/987, art. 2(c)(ii) (with art. 4)

#### Commencement Information

- I43** 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\(2\)](#))

## 106 Court's powers on appeal under section 105

- (1) On an appeal under section 105 the High Court may—
  - (a) allow the appeal;
  - (b) direct the judge to decide the relevant question again;
  - (c) dismiss the appeal.
- (2) A question is the relevant question if the judge's decision on it resulted in the order for the person's discharge.
- (3) The court may allow the appeal only if the conditions in subsection (4) or the conditions in subsection (5) are satisfied.
- (4) The conditions are that—
  - (a) the judge ought to have decided the relevant question differently;
  - (b) if he had decided the question in the way he ought to have done, he would not have been required to order the person's discharge.
- (5) The conditions are that—
  - (a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;
  - (b) the issue or evidence would have resulted in the judge deciding the relevant question differently;

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*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

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- (c) if he had decided the question in that way, he would not have been required to order the person's discharge.
- (6) If the court allows the appeal it must—
  - (a) quash the order discharging the person;
  - (b) remit the case to the judge;
  - (c) direct him to proceed as he would have been required to do if he had decided the relevant question differently at the extradition hearing.
- (7) If the court makes a direction under subsection (1)(b) and the judge decides the relevant question differently he must proceed as he would have been required to do if he had decided that question differently at the extradition hearing.
- (8) If the court makes a direction under subsection (1)(b) and the judge does not decide the relevant question differently the appeal must be taken to have been dismissed by a decision of the High Court.
- [<sup>F60</sup>(9) If the court—
  - (a) allows the appeal, or
  - (b) makes a direction under subsection (1)(b),
 it must remand the person in custody or on bail.
- (10) If the court remands the person in custody it may later grant bail.]<sup>F60</sup>

#### Textual Amendments

**F60** S. 106(9)(10) inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 8\(7\)](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)

#### Commencement Information

**I44** 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))

## 107 Detention pending conclusion of appeal under section 105

- (1) This section applies if immediately after the judge orders the person's discharge the judge is informed on behalf of the category 2 territory of an intention to appeal under section 105.
- (2) The judge must remand the person in custody or on bail while the appeal is pending.
- (3) [<sup>F61</sup>If the person is remanded in custody, the appropriate judge may] later grant bail.
- (4) An appeal under section 105 ceases to be pending at the earliest of these times—
  - (a) when the proceedings on the appeal are discontinued;
  - [<sup>F62</sup>(b) when the High Court—
    - (i) allows the appeal,
    - (ii) makes a direction under section 106(1)(b), or
    - (iii) dismisses the appeal,
 unless, where the appeal is dismissed, the court is immediately informed on behalf of the category 2 territory of an intention to apply for leave to appeal to the [<sup>F63</sup>Supreme Court ]; ]



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- (c) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the <sup>F63</sup>Supreme Court] against the decision of the High Court on the appeal is granted <sup>F64</sup>, if no appeal to the <sup>F63</sup>Supreme Court] is brought before the end of that period];
- (d) when there is no further step that can be taken on behalf of the category 2 territory in relation to the appeal (ignoring any power of a court to grant leave to take a step out of time).

<sup>F65</sup>(5) The preceding provisions of this section do not apply to Scotland.]

#### Textual Amendments

- F61** Words in s. 107(3) substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 16](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)
- F62** S. 107(4)(b) substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 8\(8\)\(a\)](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)
- F63** Words in s. 107 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 148, [Sch. 9 para. 81\(4\)\(g\)](#); [S.I. 2009/1604](#), [art. 2\(d\)](#)
- F64** Words in s. 107(4)(c) inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 8\(8\)\(b\)](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)
- F65** S. 107(5) substituted (29.7.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 23\(1\)](#) (with [Sch. 20 para. 29](#)); [S.I. 2013/1682](#), [art. 2\(1\)\(b\)](#) (with [art. 4\(5\)](#))

#### Commencement Information

- I45** 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\(2\)](#))

### <sup>F66</sup>107A Detention pending conclusion of appeal under section 105: Scotland

- (1) This section applies if immediately after the judge orders the person's discharge the judge is informed on behalf of the category 2 territory of an intention to appeal under section 105 ("the High Court appeal").
- (2) The judge must remand the person in custody or on bail while the High Court appeal is pending.
- (3) The High Court appeal ceases to be pending at the earliest of these times—
  - (a) when the proceedings on the appeal are abandoned;
  - <sup>F67</sup>(aa) [ when the decision of the High Court refusing leave to appeal to it becomes final;]
  - (b) when the High Court—
    - (i) allows the appeal,
    - (ii) makes a direction under section 106(1)(b), or
    - (iii) dismisses the appeal.

<sup>F68</sup>(3A) [ The decision of the High Court refusing leave to appeal to it becomes final when, in accordance with rules of court, there is no further step that can be taken in relation to the application for leave to appeal (ignoring any power of a court to grant leave to take a step out of time).]

- (4) If—
  - (a) the High Court appeal is dismissed, and

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- (b) immediately after dismissing it, the High Court is informed of an intention to bring an appeal to the Supreme Court against a determination of a relevant devolution issue (“the Supreme Court appeal”),  
 the High Court must remand the person in custody or on bail while the Supreme Court appeal is pending.
- (5) The Supreme Court appeal ceases to be pending at the earliest of these times—
- (a) the end of the period of 28 days starting with the day when the High Court appeal is dismissed (unless, within that period, an application is made to the High Court for permission to make the Supreme Court appeal);
  - (b) the end of the period of 28 days starting with the day when the High Court refuses permission to make the Supreme Court appeal (unless, within that period, an application is made to the Supreme Court for permission to make the Supreme Court appeal);
  - (c) the end of the period of 28 days starting with the day on which permission is given to bring the Supreme Court appeal (unless the appeal is brought within that period);
  - (d) the time when the proceedings on the Supreme Court appeal are abandoned;
  - (e) the time when there is no further step that can be taken in relation to the Supreme Court appeal by the category 2 territory (ignoring any power of a court to grant leave to take a step out of time).
- (6) If the person is remanded in custody by the judge or the High Court, the appropriate judge may later grant bail.
- (7) In this section “ relevant devolution issue ” means a devolution issue relating to the person's extradition.
- (8) This section applies only to Scotland.]

#### Textual Amendments

- F66** S. 107A inserted (29.7.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 23\(2\)](#) (with [Sch. 20 para. 29](#)); [S.I. 2013/1682](#), art. 2(1)(b) (with art. 4(5))
- F67** S. 107A(3)(aa) inserted (15.4.2015) by [The Extradition Act 2003 \(Amendment to Designations and Appeals\) Order 2015 \(S.I. 2015/992\)](#), arts. 1(1), [3\(9\)\(a\)](#) (with art. 1(4))
- F68** S. 107A(3A) inserted (15.4.2015) by [The Extradition Act 2003 \(Amendment to Designations and Appeals\) Order 2015 \(S.I. 2015/992\)](#), arts. 1(1), [3\(9\)\(b\)](#) (with art. 1(4))

## 108 Appeal against extradition order

- (1) If the Secretary of State orders a person's extradition under this Part, the person may appeal to the High Court against the order.
- (2) But subsection (1) does not apply if the person has consented to his extradition under section 127.
- (3) An appeal under this <sup>F69</sup>section—
  - (a) may] be brought on a question of law or fact<sup>F70</sup>, but
  - (b) lies only with the leave of the High Court.]
- (4) <sup>F71</sup>Notice of application for leave to appeal under this section must be given—

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- (a) in accordance with rules of court, and
  - (a) subject to subsections (5) and (7A), before the end of the permitted period, which] is 14 days starting with the day on which the Secretary of State informs the person of the order under section 100(1).
- [<sup>F72</sup>(5) [<sup>F73</sup>Notice of application for leave to appeal] under this section may be given after the end of the permitted period if it is an [<sup>F74</sup>application for leave to] appeal on human rights grounds.
- (6) [<sup>F75</sup>Notice of application for leave to appeal on human rights grounds given after the end of the permitted period must be given] before the person is extradited to the category 2 territory in accordance with section 117.
- (7) Where [<sup>F76</sup>notice of application for leave to appeal] is given in accordance with subsections (5) and (6), the High Court is to [<sup>F77</sup>grant leave] only if it appears to the High Court that—
- (a) the appeal is necessary to avoid real injustice, and
  - (b) the circumstances are exceptional and make it appropriate [<sup>F78</sup>for the appeal to be heard].
- [ Where a person gives notice of application for leave to appeal after the end of the <sup>F79</sup>(7A) permitted period (whether or not the application is for leave to appeal on human rights grounds), the High Court must not for that reason refuse to entertain the application if the person did everything reasonably possible to ensure that the notice was given as soon as it could be given.]
- (8) In this section [<sup>F80</sup>“to appeal on human rights grounds” means to appeal] against the order for the person's extradition on the grounds (and only on the grounds) that the extradition would not be compatible with the Convention rights within the meaning of the Human Rights Act 1998. ]

#### Textual Amendments

- F69** Words in s. 108(3) substituted (15.4.2015) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), ss. 160\(5\)\(a\)](#), 185(1) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/987, art. 2(a) (with art. 4)
- F70** S. 108(3)(b) and preceding word inserted (15.4.2015) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), ss. 160\(5\)\(b\)](#), 185(1) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/987, art. 2(a) (with art. 4)
- F71** Words in s. 108(4) substituted (15.4.2015) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), s. 185\(1\), Sch. 11 para. 113\(2\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/987, art. 2(c)(iii) (with art. 4)
- F72** S. 108(5)-(8) inserted (29.7.2013 for E.W., 14.10.2013 for N.I.) by [Crime and Courts Act 2013 \(c. 22\), s. 61\(2\), Sch. 20 para. 12](#) (with Sch. 20 para. 1415); S.I. 2013/1682, art. 2(2)(b); S.I. 2013/2349, art. 2(4)
- F73** Words in s. 108(5) substituted (15.4.2015 for E.W.N.I.) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), s. 185\(1\), Sch. 11 para. 113\(3\)\(a\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/987, art. 3(b) (with art. 4)
- F74** Words in s. 108(5) inserted (15.4.2015 for E.W.N.I.) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), s. 185\(1\), Sch. 11 para. 113\(3\)\(b\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/987, art. 3(b) (with art. 4)
- F75** Words in s. 108(6) substituted (15.4.2015 for E.W.N.I.) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), s. 185\(1\), Sch. 11 para. 113\(4\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/987, art. 3(b) (with art. 4)

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- F76** Words in s. 108(7) substituted (15.4.2015 for E.W.N.I.) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), s. 185\(1\), Sch. 11 para. 113\(5\)\(a\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/987, art. 3(b) (with art. 4)
- F77** Words in s. 108(7) substituted (15.4.2015 for E.W.N.I.) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), s. 185\(1\), Sch. 11 para. 113\(5\)\(b\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/987, art. 3(b) (with art. 4)
- F78** Words in s. 108(7) substituted (15.4.2015 for E.W.N.I.) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), s. 185\(1\), Sch. 11 para. 113\(5\)\(c\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/987, art. 3(b) (with art. 4)
- F79** S. 108(7A) inserted (15.4.2015) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), ss. 160\(5\)\(c\), 185\(1\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/987, art. 2(a) (with art. 4)
- F80** Words in s. 108(8) substituted (15.4.2015 for E.W.N.I.) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), s. 185\(1\), Sch. 11 para. 113\(6\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/987, art. 3(b) (with art. 4)

#### **Commencement Information**

- I46** 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\(2\)](#))

## **109 Court's powers on appeal under section 108**

- (1) On an appeal under section 108 the High Court may—
- (a) allow the appeal;
  - (b) dismiss the appeal.
- (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.
- (3) The conditions are that—
- (a) the Secretary of State ought to have decided a question before him differently;
  - (b) if he had decided the question in the way he ought to have done, he would not have ordered the person's extradition.
- (4) The conditions are that—
- (a) an issue is raised that was not raised when the case was being considered by the Secretary of State or information is available that was not available at that time;
  - (b) the issue or information would have resulted in the Secretary of State deciding a question before him differently;
  - (c) if he had decided the question in that way, he would not have ordered the person's extradition.
- (5) If the court allows the appeal it must—
- (a) order the person's discharge;
  - (b) quash the order for his extradition.

#### **Modifications etc. (not altering text)**

- C10** S. 109(2)-(4) excluded (E.W.N.I.) (14.10.2013) by [The Extradition Appeals \(England and Wales and Northern Ireland\) Order 2013 \(S.I. 2013/2384\), arts. 1\(b\), 3\(2\)](#) (with art. 4)
- C11** S. 109(2)-(4) excluded (S.) (13.3.2024) by [The Extradition Appeals \(Scotland\) Order 2024 \(S.I. 2024/172\), arts. 1\(2\), 3\(2\)](#) (with art. 4)

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

#### Commencement Information

**I47** 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))

### 110 Appeal against discharge by Secretary of State

- (1) If the Secretary of State makes an order for a person's discharge under this Part, an appeal to the High Court may be brought on behalf of the category 2 territory against the relevant decision.
- (2) But subsection (1) does not apply if the order for the person's discharge was under section 123.
- (3) The relevant decision is the decision which resulted in the order for the person's discharge.
- (4) An appeal under this <sup>F81</sup>section—
  - (a) may] be brought on a question of law or fact<sup>F82</sup>, but
  - (b) lies only with the leave of the High Court.]
- (5) <sup>F83</sup>[Notice of application for leave to appeal] under this section must be given in accordance with rules of court before the end of the permitted period, which is 14 days starting with the day on which (under section 100(4)) the Secretary of State informs a person acting on behalf of the category 2 territory of the order.

#### Textual Amendments

- F81** Words in s. 110(4) substituted (15.4.2015) by *Anti-social Behaviour, Crime and Policing Act 2014* (c. 12), **ss. 160(6)(a)**, 185(1) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/987, art. 2(a) (with art. 4)
- F82** S. 110(4)(b) and preceding word inserted (15.4.2015) by *Anti-social Behaviour, Crime and Policing Act 2014* (c. 12), **ss. 160(6)(b)**, 185(1) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/987, art. 2(a) (with art. 4)
- F83** Words in s. 110(5) substituted (15.4.2015) by *Anti-social Behaviour, Crime and Policing Act 2014* (c. 12), s. 185(1), **Sch. 11 para. 114** (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/987, art. 2(c)(iv) (with art. 4)

#### Commencement Information

**I48** 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))

### 111 Court's powers on appeal under section 110

- (1) On an appeal under section 110 the High Court may—
  - (a) allow the appeal;
  - (b) dismiss the appeal.
- (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.
- (3) The conditions are that—
  - (a) the Secretary of State ought to have decided a question before him differently;

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- (b) if he had decided the question in the way he ought to have done, he would have ordered the person's extradition.
- (4) The conditions are that—
  - (a) an issue is raised that was not raised when the case was being considered by the Secretary of State or information is available that was not available at that time;
  - (b) the issue or information would have resulted in the Secretary of State deciding a question before him differently;
  - (c) if he had decided the question in that way, he would have ordered the person's extradition.
- (5) If the court allows the appeal it must—
  - (a) quash the order discharging the person;
  - (b) order the person's extradition.
- [<sup>F84</sup>(6) If the court allows the appeal it must remand the person in custody or on bail.
- (7) If the court remands the person in custody it may later grant bail.]<sup>F84</sup>

#### Textual Amendments

**F84** S. 111(6)(7) inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 8\(9\)](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)

#### Commencement Information

**I49** 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))

### [<sup>F85</sup>112 Detention pending conclusion of appeal under section 110

- (1) This section applies in a case where the Secretary of State orders the person's discharge under this Part.
- (2) Subject to subsection (3)—
  - (a) the order made by the appropriate judge under section 92(4) (“ the remand order ”) remains in force until the end of the period of three days beginning with the day on which the person's discharge is ordered;
  - (b) if within that period the Secretary of State is informed in writing on behalf of the category 2 territory of an intention to appeal under section 110, the remand order remains in force while the appeal is pending.
- (3) If the person is remanded in custody under section 92(4), the appropriate judge may grant bail.
- (4) An appeal under section 110 ceases to be pending at the earliest of these times—
  - (a) when the proceedings on the appeal are discontinued;
  - (b) when the High Court—
    - (i) allows the appeal, or
    - (ii) dismisses the appeal,

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unless, where the appeal is dismissed, the court is immediately informed on behalf of the category 2 territory of an intention to apply for leave to appeal to the [<sup>F86</sup> Supreme Court ];

- (c) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the [<sup>F86</sup> Supreme Court ] against the decision of the High Court on the appeal is granted, if no appeal to the [<sup>F86</sup> Supreme Court ] is brought before the end of that period;
- (d) when there is no further step that can be taken on behalf of the category 2 territory in relation to the appeal (ignoring any power of a court to grant leave to take a step out of time).

[<sup>F87</sup>(5) The preceding provisions of this section do not apply to Scotland.]]

#### Textual Amendments

- F85** S. 112 substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 8\(10\)](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)
- F86** Words in s. 112 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 148, [Sch. 9 para. 81\(4\)\(h\)](#); [S.I. 2009/1604](#), [art. 2\(d\)](#)
- F87** S. 112(5) substituted (29.7.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 24\(1\)](#) (with [Sch. 20 para. 29](#)); [S.I. 2013/1682](#), [art. 2\(1\)\(b\)](#) (with [art. 4\(6\)](#))

#### Commencement Information

- I50** 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))

### [<sup>F88</sup>112A Detention pending conclusion of appeal under section 110: Scotland

- (1) This section applies in a case where the Scottish Ministers order the person's discharge under this Part.
- (2) Subject to subsection (6)—
  - (a) the order made by the appropriate judge under section 92(4) (“the remand order”) remains in force until the end of the period of three days beginning with the day on which the person's discharge is ordered;
  - (b) if within that period the Scottish Ministers are informed in writing on behalf of the category 2 territory of an intention to appeal under section 110 (“the High Court appeal”), the remand order remains in force while the appeal is pending.
- (3) The High Court appeal ceases to be pending at the earliest of these times—
  - (a) when the proceedings on the appeal are abandoned;
  - (b) when the High Court—
    - (i) allows the appeal, or
    - (ii) dismisses the appeal.
- (4) If—
  - (a) the High Court appeal is dismissed,
  - (b) immediately after dismissing it, the High Court is informed of an intention to bring an appeal to the Supreme Court against a determination of a relevant devolution issue (“the Supreme Court appeal”), and
  - (c) the remand order has remained in force until that time,

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then, subject to subsection (6), the remand order continues to remain in force while the Supreme Court appeal is pending.

- (5) The Supreme Court appeal ceases to be pending at the earliest of these times—
- (a) the end of the period of 28 days starting with the day when the High Court appeal is dismissed (unless, within that period, an application is made to the High Court for permission to make the Supreme Court appeal);
  - (b) the end of the period of 28 days starting with the day when the High Court refuses permission to make the Supreme Court appeal (unless, within that period, an application is made to the Supreme Court for permission to make the Supreme Court appeal);
  - (c) the end of the period of 28 days starting with the day on which permission is given to bring the Supreme Court appeal (unless the appeal is brought within that period);
  - (d) the time when the proceedings on the Supreme Court appeal are abandoned;
  - (e) the time when there is no further step that can be taken in relation to the Supreme Court appeal by the category 2 territory (ignoring any power of a court to grant leave to take a step out of time).
- (6) If the person is remanded in custody under section 92(4), the appropriate judge may later grant bail.
- (7) In this section “relevant devolution issue” means a devolution issue relating to the person's extradition.
- (8) This section applies only to Scotland.]

**Textual Amendments**

**F88** S. 112A inserted (29.7.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 24\(2\)](#) (with [Sch. 20 para. 29](#)); [S.I. 2013/1682](#), art. 2(1)(b) (with art. 4(6))

**113 Appeal to High Court: time limit for start of hearing**

- (1) Rules of court must prescribe the period (the relevant period) within which the High Court must begin to hear an appeal under section 103, 105, 108 or 110.
- (2) The High Court must begin to hear the appeal before the end of the relevant period.
- (3) The High Court may extend the relevant period if it believes it to be in the interests of justice to do so; and this subsection may apply more than once.
- (4) The power in subsection (3) may be exercised even after the end of the relevant period.
- (5) If subsection (2) is not complied with and the appeal is under section 103 or 108—
  - (a) the appeal must be taken to have been allowed by a decision of the High Court;
  - (b) the person whose extradition has been ordered must be taken to have been discharged by the High Court;
  - (c) the order for the person’s extradition must be taken to have been quashed by the High Court.
- (6) If subsection (2) is not complied with and the appeal is under section 105 or 110 the appeal must be taken to have been dismissed by a decision of the High Court.



*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

#### Commencement Information

**151** 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))

#### 114 Appeal to [<sup>F89</sup>Supreme Court]<sup>F89</sup>

- (1) An appeal lies to the [<sup>F90</sup>Supreme Court]<sup>F90</sup> from a decision of the High Court on an appeal under section 103, 105, 108 or 110.
- (2) An appeal under this section lies at the instance of—
  - (a) the person whose extradition is requested;
  - (b) a person acting on behalf of the category 2 territory.
- (3) An appeal under this section lies only with the leave of the High Court or the [<sup>F91</sup>Supreme Court]<sup>F91</sup>.
- (4) Leave to appeal under this section must not be granted unless—
  - (a) the High Court has certified that there is a point of law of general public importance involved in the decision, and
  - (b) it appears to the court granting leave that the point is one which ought to be considered by the [<sup>F92</sup>Supreme Court]<sup>F92</sup>.
- (5) An application to the High Court for leave to appeal under this section must be made before the end of the permitted period, which is 14 days starting with the day on which the court makes its decision on the appeal to it.
- (6) An application to the [<sup>F93</sup>Supreme Court]<sup>F93</sup> for leave to appeal under this section must be made before the end of the permitted period, which is 14 days starting with the day on which the High Court refuses leave to appeal.
- (7) If leave to appeal under this section is granted, the appeal must be brought before the end of the permitted period, which is 28 days starting with the day on which leave is granted.
- (8) If subsection (7) is not complied with—
  - (a) the appeal must be taken to have been brought;
  - (b) the appeal must be taken to have been dismissed by the [<sup>F94</sup>Supreme Court]<sup>F94</sup> immediately after the end of the period permitted under that subsection.
- (9) These must be ignored for the purposes of subsection (8)(b)—
  - (a) any power of a court to extend the period permitted for bringing the appeal;
  - (b) any power of a court to grant leave to take a step out of time.
- <sup>F95</sup>(10) The High Court may grant bail to a person appealing under this section, or applying for leave to appeal under this section, against the dismissal of his appeal under section 103 or 108.]
- <sup>F95</sup>(11) Section 5 of the Appellate Jurisdiction Act 1876 (c. 59) (composition of House of Lords for hearing and determination of appeals) applies in relation to an appeal under this section or an application for leave to appeal under this section as it applies in relation to an appeal under that Act.

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- (12) An order of the House of Lords which provides for an application for leave to appeal under this section to be determined by a committee constituted in accordance with section 5 of the Appellate Jurisdiction Act 1876 may direct that the decision of the committee is taken on behalf of the House.
- (13) The preceding provisions of this section do not apply to Scotland.

#### **Textual Amendments**

- F89** Words in s. 114 sidenote substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40, 148, Sch. 9 para. 81\(3\)](#); [S.I. 2009/1604, art. 2\(d\)](#)
- F90** Words in s. 114(1) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40, 148, Sch. 9 para. 81\(3\)](#); [S.I. 2009/1604, art. 2\(d\)](#)
- F91** Words in s. 114(3) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40, 148, Sch. 9 para. 81\(3\)](#); [S.I. 2009/1604, art. 2\(d\)](#)
- F92** Words in s. 114(4)(b) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40, 148, Sch. 9 para. 81\(3\)](#); [S.I. 2009/1604, art. 2\(d\)](#)
- F93** Words in s. 114(6) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40, 148, Sch. 9 para. 81\(3\)](#); [S.I. 2009/1604, art. 2\(d\)](#)
- F94** Words in s. 114(8)(b) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40, 148, Sch. 9 para. 81\(3\)](#); [S.I. 2009/1604, art. 2\(d\)](#)
- F95** S. 114(10) substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\), ss. 42, 53, Sch. 13 para. 8\(11\)](#); [S.I. 2006/3364, art. 2\(d\)\(e\)](#)

#### **Commencement Information**

- I52** 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\(2\)](#))

### **115 Powers of [F96Supreme Court]<sup>F96</sup> on appeal under section 114**

- (1) On an appeal under section 114 the [F97Supreme Court]<sup>F97</sup> may—
- (a) allow the appeal;
  - (b) dismiss the appeal.
- (2) Subsection (3) applies if—
- (a) the person whose extradition is requested brings an appeal under section 114, and
  - (b) the [F97Supreme Court]<sup>F97</sup> allows the appeal.
- (3) The [F97Supreme Court]<sup>F97</sup> must—
- (a) order the person's discharge;
  - (b) quash the order for his extradition, if the appeal was against a decision of the High Court to dismiss an appeal under section 103 or 108 or to allow an appeal under section 110.
- (4) Subsection (5) applies if—
- (a) the High Court allows an appeal under section 103 or 108 by the person whose extradition is requested or dismisses an appeal under section 110 by a person acting on behalf of the category 2 territory,
  - (b) a person acting on behalf of the category 2 territory brings an appeal under section 114 against the decision of the High Court, and

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- (c) the [F97Supreme Court]F97 allows the appeal.
- (5) The [F97Supreme Court]F97 must—
- (a) quash the order discharging the person made by the High Court under section 104(5) or 109(5) or by the Secretary of State under this Part;
- (b) order the person to be extradited to the category 2 territory.
- (6) Subsection (7) applies if—
- (a) the High Court dismisses an appeal under section 105 against a decision made by the judge at the extradition hearing,
- (b) a person acting on behalf of the category 2 territory brings an appeal under section 114 against the decision of the High Court, and
- (c) the [F97Supreme Court]F97 allows the appeal.
- (7) The [F97Supreme Court]F97 must—
- (a) quash the order of the judge discharging the person whose extradition is requested;
- (b) remit the case to the judge;
- (c) direct him to proceed as he would have been required to do if he had decided the relevant question differently at the extradition hearing.
- (8) A question is the relevant question if the judge's decision on it resulted in the order for the person's discharge.
- [F98(9) In a case where subsection (5) or (7) applies, the [F97Supreme Court]F97 must remand, in custody or on bail, the person whose extradition is requested.
- (10) If the [F97Supreme Court]F97 remands the person in custody the High Court may later grant bail.]F98

#### Textual Amendments

- F96** Words in s. 115 sidenote substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40, 148, Sch. 9 para. 81\(4\)\(i\); S.I. 2009/1604, art. 2\(d\)](#)
- F97** Words in s. 115 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40, 148, Sch. 9 para. 81\(4\)\(i\); S.I. 2009/1604, art. 2\(d\)](#)
- F98** S. 115(9)(10) inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\), ss. 42, 53, Sch. 13 para. 8\(12\); S.I. 2006/3364, art. 2\(d\)\(e\)](#)

#### Commencement Information

- I53** 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\(2\)](#))

### [F99]115A Detention pending conclusion of certain appeals under section 114

- (1) This section applies if—
- (a) on an appeal under section 103 or 108 the High Court orders the person's discharge;
- (b) immediately after it does so, the court is informed on behalf of the category 2 territory of an intention to appeal under section 114.
- (2) The court must remand the person in custody or on bail while the appeal is pending.

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*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

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- (3) If the court remands the person in custody it may later grant bail.
- (4) An appeal under section 114 ceases to be pending at the earliest of these times—
  - (a) when the proceedings on the appeal are discontinued;
  - (b) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the House of Lords against the decision of the High Court on the appeal under section 103 or 108 is granted, if no appeal to the House of Lords is brought before the end of that period;
  - (c) when there is no further step that can be taken on behalf of the category 2 territory in relation to the appeal (ignoring any power of a court to grant leave to take a step out of time).
- (5) The preceding provisions of this section do not apply to Scotland.]

**Textual Amendments**

**F99** S. 115A inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 8\(13\)](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)

**[<sup>F100</sup>115B] Detention pending conclusion of appeals relating to devolution issues**

- (1) This section applies if—
  - (a) on an appeal under section 103 or 108 the High Court orders the person's discharge;
  - (b) immediately after ordering the person's discharge, the High Court is informed of an intention to bring an appeal to the Supreme Court against a determination of a relevant devolution issue (“the Supreme Court appeal”).
- (2) The High Court must remand the person in custody or on bail while the Supreme Court appeal is pending.
- (3) If the court remands the person in custody it may later grant bail.
- (4) The Supreme Court appeal ceases to be pending at the earliest of these times—
  - (a) the end of the period of 28 days starting with the day when the High Court orders the person's discharge (unless, within that period, an application is made to the High Court for permission to make the Supreme Court appeal);
  - (b) the end of the period of 28 days starting with the day when the High Court refuses permission to make the Supreme Court appeal (unless, within that period, an application is made to the Supreme Court for permission to make the Supreme Court appeal);
  - (c) the end of the period of 28 days starting with the day on which permission is given to bring the Supreme Court appeal (unless the appeal is brought within that period);
  - (d) the time when the proceedings on the Supreme Court appeal are abandoned;
  - (e) the time when there is no further step that can be taken in relation to the Supreme Court appeal (ignoring any power of a court to grant leave to take a step out of time).
- (5) In this section “relevant devolution issue” means a devolution issue relating to the person's extradition.

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

(6) This section applies only to Scotland.]

#### Textual Amendments

**F100** S. 115B inserted (29.7.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 25](#) (with [Sch. 20 para. 29](#)); [S.I. 2013/1682](#), art. 2(1)(b) (with art. 4(7))

### 116 Appeals: general

[<sup>F101</sup>(1)] A decision under this Part of the judge or the Secretary of State may be questioned in legal proceedings only by means of an appeal under this Part.

[<sup>F102</sup>(2) Subsection (1) does not prevent an appeal against a determination of a devolution issue.

(3) In this Part “ devolution issue ” has the same meaning as in Schedule 6 to the Scotland Act 1998. ]

#### Textual Amendments

**F101** S. 116 renumbered as s. 116(1) (29.7.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 26](#) (with [Sch. 20 para. 29](#)); [S.I. 2013/1682](#), art. 2(1)(b)

**F102** S. 116(2)(3) inserted (29.7.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 26](#) (with [Sch. 20 para. 29](#)); [S.I. 2013/1682](#), art. 2(1)(b)

#### Commencement Information

**I54** 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))

### *Time for extradition*

### 117 Extradition where no appeal

[<sup>F103</sup>(1) This section applies if the Secretary of State orders a person’s extradition to a category 2 territory under this Part and either—

- (a) no notice of application for leave to appeal under section 103 or 108 is given before the end of the permitted period, or
- (b) notice is given during that period but the High Court refuses leave to appeal to it.]

(2) The person must be extradited to the category 2 territory before the end of the required period, which is 28 days starting with —

- [<sup>F104</sup>(a) the day on which the Secretary of State makes the extradition order (where subsection (1)(a) applies and no order is made under section 118A or 118B),
- (b) the day on which the decision of the High Court refusing leave to appeal to it becomes final (where subsection (1)(b) applies and no order is made under section 118A or 118B), or
- (c) the earliest day on which the extradition order may be carried out (where an order is made under section 118A or 118B).]

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

- [<sup>F105</sup>(2A) The decision of the High Court refusing leave to appeal to it becomes final when, in accordance with rules of court, there is no further step that can be taken in relation to the application for leave to appeal.]
- (3) If subsection (2) is not complied with and the person applies to the appropriate judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay.
- (4) These must be ignored for the purposes of [<sup>F106</sup>subsections (1) to (2A)]—
- (a) any power of a court to extend the period permitted for giving [<sup>F107</sup>notice of application for leave to appeal];
  - (b) any power of a court to grant leave to take a step out of time.
- [<sup>F108</sup>(5) [<sup>F109</sup>If leave to appeal to the High Court is granted on an application notice of which was given after the end of the permitted period], this section ceases to apply (but section 118 applies instead).]
- [<sup>F110</sup>(6) In this section, “permitted period” means 14 days starting with the day on which the Secretary of State informs the person under section 100(1) that he has ordered his extradition.]

#### Textual Amendments

- F103** S. 117(1) substituted (15.4.2015) by [The Extradition Act 2003 \(Amendment to Designations and Appeals\) Order 2015 \(S.I. 2015/992\)](#), arts. 1(1), **3(10)(a)** (with art. 1(4))
- F104** S. 117(2)(a)-(c) substituted for s. 117(2)(b)(c) (15.4.2015) by [The Extradition Act 2003 \(Amendment to Designations and Appeals\) Order 2015 \(S.I. 2015/992\)](#), arts. 1(1), **3(10)(b)** (with art. 1(4))
- F105** S. 117(2A) inserted (15.4.2015) by [The Extradition Act 2003 \(Amendment to Designations and Appeals\) Order 2015 \(S.I. 2015/992\)](#), arts. 1(1), **3(10)(c)** (with art. 1(4))
- F106** Words in s. 117(4) substituted (15.4.2015) by [The Extradition Act 2003 \(Amendment to Designations and Appeals\) Order 2015 \(S.I. 2015/992\)](#), arts. 1(1), **3(10)(d)(i)** (with art. 1(4))
- F107** Words in s. 117(4) substituted (15.4.2015) by [The Extradition Act 2003 \(Amendment to Designations and Appeals\) Order 2015 \(S.I. 2015/992\)](#), arts. 1(1), **3(10)(d)(ii)** (with art. 1(4))
- F108** S. 117(5) inserted (29.7.2013 for E.W., 14.10.2013 for N.I.) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 20 para. 13** (with Sch. 20 para. 1415); S.I. 2013/1682, art. 2(2)(b); S.I. 2013/2349, art. 2(4)
- F109** Words in s. 117(5) substituted (15.4.2015) by [The Extradition Act 2003 \(Amendment to Designations and Appeals\) Order 2015 \(S.I. 2015/992\)](#), arts. 1(1), **3(10)(e)** (with art. 1(4))
- F110** S. 117(6) inserted (15.4.2015) by [The Extradition Act 2003 \(Amendment to Designations and Appeals\) Order 2015 \(S.I. 2015/992\)](#), arts. 1(1), **3(10)(f)** (with art. 1(4))

#### Commencement Information

- I55** 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))

## 118 Extradition following appeal

- (1) This section applies if—
- (a) there is an appeal to the High Court under section 103, 108 or 110 against a decision or order relating to a person’s extradition to a category 2 territory, and
  - (b) the effect of the decision of the relevant court on the appeal is that the person is to be extradited there.

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

- (2) The person must be extradited to the category 2 territory before the end of the required period, which is 28 days starting with—
- the day on which the decision of the relevant court on the appeal becomes final, or
  - the day on which proceedings on the appeal are discontinued.
- [<sup>F111</sup>(2A) But if the day referred to in paragraph (a) or (b) of subsection (3) is earlier than the earliest day on which, by reason of an order under section 118A or 118B, the extradition order may be carried out (“the postponed date”), the required period is 28 days beginning with the postponed date.]
- (3) The relevant court is—
- the High Court, if there is no appeal to the [<sup>F112</sup>Supreme Court] against the decision of the High Court on the appeal;
  - the [<sup>F112</sup>Supreme Court], if there is such an appeal.
- (4) The decision of the High Court on the appeal becomes final—
- when the period permitted for applying to the High Court for leave to appeal to the [<sup>F112</sup>Supreme Court] ends, if there is no such application;
  - when the period permitted for applying to the [<sup>F112</sup>Supreme Court] for leave to appeal to it ends, if the High Court refuses leave to appeal and there is no application to the [<sup>F112</sup>Supreme Court] for leave to appeal;
  - when the [<sup>F112</sup>Supreme Court] refuses leave to appeal to it;
  - at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the [<sup>F112</sup>Supreme Court] is granted, if no such appeal is brought before the end of that period.
- (5) These must be ignored for the purposes of subsection (4)—
- any power of a court to extend the period permitted for applying for leave to appeal;
  - any power of a court to grant leave to take a step out of time.
- (6) The decision of the [<sup>F112</sup>Supreme Court] on the appeal becomes final when it is made.
- (7) If subsection (2) is not complied with and the person applies to the appropriate judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay.
- [<sup>F113</sup>(8) The preceding provisions of this section do not apply to Scotland.]

#### Textual Amendments

**F111** S. 118(2A) inserted (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 11 para. 116](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 2(t)

**F112** Words in s. 118 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 148, {Sch. 9 para. 81(4)(j)}; S.I. 2009/1604, [art. 2\(d\)](#)

**F113** S. 118(8) substituted (29.7.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 27\(1\)](#) (with [Sch. 20 para. 29](#)); S.I. 2013/1682, art. 2(1)(b) (with art. 4(8))

#### Commencement Information

**I56** 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))

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*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

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## **[<sup>F114</sup>118A] Extradition following appeal: Scotland**

- (1) This section applies if—
  - (a) there is an appeal to the High Court under section 103, 108 or 110 against a decision or order relating to a person's extradition to a category 2 territory, and
  - (b) the effect of the decision in the relevant proceedings is that the person must be extradited to the category 2 territory.
- (2) The “relevant proceedings” are—
  - (a) the proceedings on the appeal under section 103, 108 or 110 if—
    - (i) no Supreme Court devolution appeal is made, or
    - (ii) a Supreme Court devolution appeal is made and the Supreme Court remits the case to the High Court, or
  - (b) the proceedings on a Supreme Court devolution appeal if such an appeal is made and the Supreme Court does not remit the case to the High Court.
- (3) The person must be extradited to the category 2 territory before the end of the required period, which is 28 days starting with—
  - (a) the day on which the decision in the relevant proceedings becomes final, or
  - (b) the day on which the relevant proceedings are abandoned.
- (4) In a case where the relevant proceedings are proceedings on the appeal under section 103, 108 or 110 (except the case has been remitted to the High Court on a Supreme Court devolution appeal), the decision in those proceedings becomes final—
  - (a) at the end of the period of 28 days starting with the day of the High Court's decision on the appeal (unless, within that period, an application is made to the High Court for permission to make a Supreme Court devolution appeal);
  - (b) at the end of the period of 28 days starting with the day when the High Court refuses permission to make a Supreme Court devolution appeal (unless, within that period, an application is made to the Supreme Court for permission to make the appeal);
  - (c) when the Supreme Court refuses permission to make a Supreme Court devolution appeal;
  - (d) at the end of the permitted period, which is 28 days starting with the day on which permission to make a Supreme Court devolution appeal is granted, if no such appeal is brought before the end of that period.
- (5) These must be ignored for the purposes of subsection (4)—
  - (a) any power of a court to extend the period permitted for applying for permission to appeal;
  - (b) any power of a court to grant permission to take a step out of time.
- (6) In a case where—
  - (a) the relevant proceedings are proceedings on the appeal under section 103, 108 or 110, and
  - (b) the case has been remitted to the High Court on a Supreme Court devolution appeal,
 the decision in those proceedings becomes final when it is made.
- (7) In a case where—
  - (a) the relevant proceedings are proceedings on a Supreme Court devolution appeal, and



*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

- (b) the decision is not to remit the case to the High Court, the decision in those proceedings becomes final when it is made.
- (8) If subsection (3) is not complied with and the person applies to the appropriate judge to be discharged, the judge must order the person's discharge, unless reasonable cause is shown for the delay.
- (9) In this section “ Supreme Court devolution appeal ” means an appeal to the Supreme Court against a determination of a devolution issue relating to a person's extradition.
- (10) This section applies only to Scotland.]

#### Textual Amendments

**F114** S. 118A inserted (29.7.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 27\(2\)](#) (with [Sch. 20 para. 29](#)); [S.I. 2013/1682](#), art. 2(1)(b) (with art. 4(8))

#### [<sup>F115</sup>**118B** Scottish devolution issue: remand in custody or on bail

- (1) This section applies where, on an appeal to the Supreme Court against a determination of a devolution issue relating to a person's extradition under this Part, the Supreme Court—
- (a) remits the case to the High Court, or
- (b) orders the person's extradition.
- (2) The Supreme Court must remand the person in custody or on bail pending the person's extradition.
- (3) If the Supreme Court remands the person in custody, the High Court may later grant bail.]

#### Textual Amendments

**F115** S. 118B inserted (29.7.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 28](#) (with [Sch. 20 para. 29](#)); [S.I. 2013/1682](#), art. 2(1)(b) (with art. 4(9))

#### [<sup>F116</sup>**118C** Judge informed after extradition order that person is charged with offence in United Kingdom

- (1) This section applies if—
- (a) the Secretary of State has made an order for a person's extradition under this Part, and
- (b) before the extradition order is carried out the appropriate judge is informed that the person is charged with an offence in the United Kingdom.
- (2) The appropriate judge must order the extradition order not to be carried out until one of these occurs—
- (a) the charge is disposed of;
- (b) the charge is withdrawn;
- (c) proceedings in respect of the charge are discontinued;

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*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

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- (d) an order is made for the charge to lie on the file, or in relation to Scotland, the diet is deserted *pro loco et tempore*.
- (3) If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the appropriate judge may order the extradition order not to be carried out until the person is released from detention pursuant to the sentence (whether on licence or otherwise).
- (4) Rules of court may provide that where there is an appeal against the extradition order —
  - (a) a reference in this section to the appropriate judge has effect, in prescribed circumstances, as if it were a reference to the court hearing the appeal, and
  - (b) this section has effect with any other prescribed modifications.

**Textual Amendments**

**F116** Ss. 118C, 118D inserted (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), [ss. 161\(2\), 185\(1\)](#) (with [ss. 21, 33, 42, 58, 75, 93](#)); S.I. 2014/1916, art. 2(g)

**118D Judge informed after extradition order that person is serving sentence in United Kingdom**

- (1) This section applies if—
  - (a) the Secretary of State has made an order for a person's extradition under this Part, and
  - (b) before the extradition order is carried out the appropriate judge is informed that the person is serving a sentence of imprisonment or another form of detention in the United Kingdom.
- (2) The appropriate judge may order the extradition order not to be carried out until the person is released from detention pursuant to the sentence (whether on licence or otherwise).
- (3) Rules of court may provide that where there is an appeal against the extradition order—
  - (a) a reference in this section to the appropriate judge has effect, in prescribed circumstances, as if it were a reference to the court hearing the appeal, and
  - (b) this section has effect with any other prescribed modifications.]

**Textual Amendments**

**F116** Ss. 118C, 118D inserted (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), [ss. 161\(2\), 185\(1\)](#) (with [ss. 21, 33, 42, 58, 75, 93](#)); S.I. 2014/1916, art. 2(g)

**119 Undertaking in relation to person serving sentence in United Kingdom**

- (1) This section applies if—
  - (a) the Secretary of State orders a person's extradition to a category 2 territory under this Part;
  - (b) the person is serving a sentence of imprisonment or another form of detention in the United Kingdom <sup>F117</sup>, either—

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*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

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- (i) in custody, or
  - (ii) on licence].
- (2) The Secretary of State may make the order for extradition subject to the condition that extradition is not to take place before he receives an undertaking given on behalf of the category 2 territory in terms specified by him.
- (3) The terms which may be specified by the Secretary of State in relation to a person [<sup>F118</sup>within subsection (1)(b)(i) who is] accused in a category 2 territory of the commission of an offence include terms—
  - (a) that the person be kept in custody until the conclusion of the proceedings against him for the offence and any other offence in respect of which he is permitted to be dealt with in the category 2 territory;
  - (b) that the person be returned to the United Kingdom to serve the remainder of his sentence on the conclusion of those proceedings.
- [<sup>F119</sup>(3A) The terms which may be specified by the Secretary of State in relation to a person within subsection (1)(b)(ii) who is accused in a category 2 territory of the commission of an offence include terms that the person be returned to the United Kingdom to serve the remainder of his sentence after serving any sentence imposed on him in the category 2 territory for—
  - (a) the offence, and
  - (b) any other offence in respect of which he is permitted to be dealt with in the category 2 territory.]
- (4) The terms which may be specified by the Secretary of State in relation to a person alleged to be unlawfully at large after conviction of an offence by a court in a category 2 territory include terms that the person be returned to the United Kingdom to serve the remainder of his sentence after serving any sentence imposed on him in the category 2 territory for—
  - (a) the offence, and
  - (b) any other offence in respect of which he is permitted to be dealt with in the category 2 territory.
- (5) Subsections (6) and (7) apply if the Secretary of State makes an order for extradition subject to a condition under subsection (2).
- (6) If the Secretary of State does not receive the undertaking before the end of the period of 21 days starting with the day on which he makes the order and the person applies to the High Court to be discharged, the court must order his discharge.
- (7) If the Secretary of State receives the undertaking before the end of that period—
  - (a) in a case where section 117 applies, the required period for the purposes of section 117(2) is 28 days starting with the day on which the Secretary of State receives the undertaking;
  - (b) in a case where section 118 applies, the required period for the purposes of section 118(2) is 28 days starting with the day on which the decision of the relevant court on the appeal becomes final (within the meaning of that section) or (if later) the day on which the Secretary of State receives the undertaking.

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

### Textual Amendments

- F117** S. 119(1)(b)(i)(ii) and word inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 13\(2\)](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)
- F118** Words in s. 119(3) inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 13\(3\)](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)
- F119** S. 119(3A) inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 13\(4\)](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)

### Commencement Information

- I57** 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))

## 120 Extradition following deferral for competing claim

- (1) This section applies if—
- an order is made under this Part for a person to be extradited to a category 2 territory in pursuance of a request for his extradition;
  - before the person is extradited to the territory an order is made under section 126(2) or 179(2) for the person's extradition in pursuance of the request to be deferred;
  - the appropriate judge makes an order under section 181(2) for the person's extradition in pursuance of the request to cease to be deferred.
- (2) In a case where section 117 applies, the required period for the purposes of section 117(2) is 28 days starting with the day on which the order under section 181(2) is made.
- (3) In a case where section 118 applies, the required period for the purposes of section 118(2) is 28 days starting with the day on which the decision of the relevant court on the appeal becomes final (within the meaning of that section) or (if later) the day on which the order under section 181(2) is made.

### Commencement Information

- I58** 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))

## 121 Asylum claim

<sup>F120</sup>(1) .....

<sup>F120</sup>(2) .....

(3) [<sup>F121</sup>If—

- an order is made under this Part for a person to be extradited in pursuance of a request, and
- the person has made an asylum claim (whether before or after the making of the request),

the person] must not be extradited in pursuance of the request before the asylum claim is finally determined; and sections 117 and 118 have effect subject to this.

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

- (4) If the Secretary of State allows the asylum claim, the claim is finally determined when he makes his decision on the claim.
- (5) If the Secretary of State rejects the asylum claim, the claim is finally determined—
  - (a) when the Secretary of State makes his decision on the claim, if there is no right to appeal against the Secretary of State’s decision on the claim;
  - (b) when the period permitted for appealing against the Secretary of State’s decision on the claim ends, if there is such a right but there is no such appeal;
  - (c) when the appeal against that decision is finally determined or is withdrawn or abandoned, if there is such an appeal.
- (6) An appeal against the Secretary of State’s decision on an asylum claim is not finally determined for the purposes of subsection (5) at any time when a further appeal or an application for leave to bring a further appeal—
  - (a) has been instituted and has not been finally determined or withdrawn or abandoned, or
  - (b) may be brought.
- (7) The remittal of an appeal is not a final determination for the purposes of subsection (6).
- (8) The possibility of an appeal out of time with leave must be ignored for the purposes of subsections (5) and (6).

#### Textual Amendments

- F120** S. 121(1)(2) repealed (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), [ss. 162\(2\)\(a\)](#), [185\(1\)](#) (with [ss. 21, 33, 42, 58, 75, 93](#)); [S.I. 2014/1916](#), [art. 2\(h\)](#); [S.I. 2014/1916](#), [art. 2\(h\)](#)
- F121** Words in s. 121(3) substituted (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), [ss. 162\(2\)\(b\)](#), [185\(1\)](#) (with [ss. 21, 33, 42, 58, 75, 93](#)); [S.I. 2014/1916](#), [art. 2\(h\)](#)

#### Commencement Information

- I59** 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\(2\)](#))

### *Withdrawal of extradition request*

#### Commencement Information

- I60** 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\(2\)](#))

## 122 Withdrawal of request before end of extradition hearing

- (1) This section applies if at any time in the relevant period the appropriate judge is informed by the Secretary of State that a request for a person’s extradition has been withdrawn.
- (2) The relevant period is the period—
  - (a) starting when the person first appears or is brought before the appropriate judge following his arrest under this Part;

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- (b) ending when the judge orders the person's discharge or sends the case to the Secretary of State for his decision whether the person is to be extradited.
- (3) The judge must order the person's discharge.
- (4) If the person is not before the judge at the time the judge orders his discharge, the judge must inform him of the order as soon as practicable.

**Commencement Information**

**I61** 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))

**123 Withdrawal of request after case sent to Secretary of State**

- (1) This section applies if at any time in the relevant period the Secretary of State is informed that a request for a person's extradition has been withdrawn.
- (2) The relevant period is the period—
  - (a) starting when the judge sends the case to the Secretary of State for his decision whether the person is to be extradited;
  - (b) ending when the person is extradited in pursuance of the request or discharged.
- (3) The Secretary of State must order the person's discharge.

**Commencement Information**

**I62** 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))

**124 Withdrawal of request while<sup>F122</sup> application or] appeal to High Court pending**

- (1) This section applies if at any time in the relevant period the High Court is informed by the Secretary of State that a request for a person's extradition has been withdrawn.
  - (2) The relevant period is the period—
    - (a) starting when [<sup>F123</sup>notice of application for leave to appeal to the High Court] is given by the person whose extradition is requested or by a person acting on behalf of the category 2 territory to which his extradition is requested;
    - (b) ending [<sup>F124</sup>with the relevant day].
- <sup>F125</sup>(2A) “The relevant day” is—
- (a) if the High Court refuses leave to appeal to it, the day on which the decision to refuse leave becomes final;
  - (b) if leave to appeal is given but proceedings on the appeal are discontinued, the day of discontinuance;
  - (c) if leave to appeal is given and proceedings on the appeal are not discontinued, the day on which the court makes its decision on the appeal.

For the purposes of paragraph (a), the decision to refuse leave becomes final when, in accordance with rules of court, there is no further step that can be taken in relation

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to the application for leave to appeal (ignoring any power of a court to grant leave to take a step out of time).]

- (3) If the<sup>F126</sup> application or] appeal is under section 103 or 108, the court must—
- (a) order the person’s discharge;
  - (b) quash the order for his extradition, if the Secretary of State has ordered his extradition.

[<sup>F127</sup>(4) If the application or appeal is under section 105 or 110, the court must dismiss the application or appeal.]

- (5) If the person is not before the court at the time the court orders his discharge, the court must inform him of the order as soon as practicable.

#### Textual Amendments

- F122** Words in s. 124 heading inserted (15.4.2015) by [The Extradition Act 2003 \(Amendment to Designations and Appeals\) Order 2015 \(S.I. 2015/992\)](#), arts. 1(1), **3(11)(a)** (with art. 1(4))
- F123** Words in s. 124(2)(a) substituted (15.4.2015) by [The Extradition Act 2003 \(Amendment to Designations and Appeals\) Order 2015 \(S.I. 2015/992\)](#), arts. 1(1), **3(11)(b)(i)** (with art. 1(4))
- F124** Words in s. 124(2)(b) substituted (15.4.2015) by [The Extradition Act 2003 \(Amendment to Designations and Appeals\) Order 2015 \(S.I. 2015/992\)](#), arts. 1(1), **3(11)(b)(ii)** (with art. 1(4))
- F125** S. 124(2A) inserted (15.4.2015) by [The Extradition Act 2003 \(Amendment to Designations and Appeals\) Order 2015 \(S.I. 2015/992\)](#), arts. 1(1), **3(11)(c)** (with art. 1(4))
- F126** Words in s. 124(3) inserted (15.4.2015) by [The Extradition Act 2003 \(Amendment to Designations and Appeals\) Order 2015 \(S.I. 2015/992\)](#), arts. 1(1), **3(11)(d)** (with art. 1(4))
- F127** S. 124(4) substituted (15.4.2015) by [The Extradition Act 2003 \(Amendment to Designations and Appeals\) Order 2015 \(S.I. 2015/992\)](#), arts. 1(1), **3(11)(e)** (with art. 1(4))

#### Commencement Information

- I63** 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))

### 125 Withdrawal of request while appeal to [<sup>F128</sup>Supreme Court]<sup>F128</sup> pending

- (1) This section applies if at any time in the relevant period the [<sup>F129</sup>Supreme Court]<sup>F129</sup> is informed by the Secretary of State that a request for a person’s extradition has been withdrawn.
- (2) The relevant period is the period—
- (a) starting when leave to appeal to the [<sup>F129</sup>Supreme Court]<sup>F129</sup> is granted to the person whose extradition is requested or a person acting on behalf of the category 2 territory to which his extradition is requested;
  - (b) ending when proceedings on the appeal are discontinued or the [<sup>F129</sup>Supreme Court]<sup>F129</sup> makes its decision on the appeal.
- (3) If the appeal is brought by the person whose extradition is requested the [<sup>F129</sup>Supreme Court]<sup>F129</sup> must—
- (a) order the person’s discharge;
  - (b) quash the order for his extradition, in a case where the appeal was against a decision of the High Court to dismiss an appeal under section 103 or 108.

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- (4) If the appeal is brought by a person acting on behalf of the category 2 territory the [F129Supreme Court]F129 must dismiss the appeal.
- (5) If the person whose extradition is requested is not before the [F129Supreme Court]F129 at the time it orders his discharge, the [F129Supreme Court]F129 must inform him of the order as soon as practicable.

#### **Textual Amendments**

**F128** Words in s. 125 sidenote substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40, 148, Sch. 9 para. 81\(4\)\(k\)](#); [S.I. 2009/1604, art. 2\(d\)](#)

**F129** Words in s. 125 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40, 148, Sch. 9 para. 81\(4\)\(k\)](#); [S.I. 2009/1604, art. 2\(d\)](#)

#### **Commencement Information**

**I64** 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\(2\)](#))

### *Competing extradition requests*

#### **Commencement Information**

**I65** 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\(2\)](#))

## **126 Competing extradition requests**

- (1) This section applies if—
- (a) the Secretary of State receives a valid request for a person's extradition to a category 2 territory;
  - (b) the person is in the United Kingdom;
  - (c) before the person is extradited in pursuance of the request or discharged, the Secretary of State receives another valid request for the person's extradition.
- (2) The Secretary of State may—
- (a) order proceedings (or further proceedings) on one of the requests to be deferred until the other one has been disposed of, if neither of the requests has been disposed of;
  - (b) order the person's extradition in pursuance of the request under consideration to be deferred until the other request has been disposed of, if an order for his extradition in pursuance of the request under consideration has been made.
- (3) In applying subsection (2) the Secretary of State must take account in particular of these matters—
- (a) the relative seriousness of the offences concerned;
  - (b) the place where each offence was committed (or was alleged to have been committed);
  - (c) the date when each request was received;



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- (d) whether, in the case of each offence, the person is accused of its commission (but not alleged to have been convicted) or is alleged to be unlawfully at large after conviction.

**Commencement Information**

**I66** 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))

*Consent to extradition*

**Commencement Information**

**I67** 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))

**127 Consent to extradition: general**

- (1) A person arrested under a warrant issued under section 71 may consent to his extradition to the category 2 territory to which his extradition is requested.
- (2) A person arrested under a provisional warrant [<sup>F130</sup>or under section 74A] may consent to his extradition to the category 2 territory in which he is accused of the commission of an offence or is alleged to have been convicted of an offence.
- (3) Consent under this section—
  - (a) must be given in writing;
  - (b) is irrevocable.
- (4) Consent under this section which is given by a person before his case is sent to the Secretary of State for the Secretary of State's decision whether he is to be extradited must be given before the appropriate judge.
- (5) Consent under this section which is given in any other case must be given to the Secretary of State.
- (6) A person may not give his consent under this section before the appropriate judge unless—
  - (a) he is legally represented before the appropriate judge at the time he gives consent, or
  - (b) he is a person to whom subsection (7) applies.
- (7) This subsection applies to a person if—
  - (a) he has been informed of his right to apply for legal aid and has had the opportunity to apply for legal aid, but he has refused or failed to apply;
  - (b) he has applied for legal aid but his application has been refused;
  - (c) he was granted legal aid but the legal aid was withdrawn.
- (8) In subsection (7) “legal aid” means—

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- [<sup>F131</sup>(a) in England and Wales, representation for the purposes of criminal proceedings provided under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;]
- (b) in Scotland, such legal aid as is available by virtue of section 183(a) of this Act;
- (c) in Northern Ireland, such free legal aid as is available by virtue of sections 184 and 185 of this Act.
- (9) For the purposes of subsection (6) a person is to be treated as legally represented before the appropriate judge if (and only if) he has the assistance of counsel or a solicitor to represent him in the proceedings before the appropriate judge.

#### Textual Amendments

**F130** Words in s. 127(2) inserted (31.12.2020) by [Extradition \(Provisional Arrest\) Act 2020 \(c. 18\)](#), s. 2(4), [Sch. para. 14](#); [S.I. 2020/1652](#), reg. 2(1)(b)

**F131** S. 127(8)(a) substituted (1.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 5 para. 64](#); [S.I. 2013/453](#), art. 3(h) (with savings and transitional provisions in [S.I. 2013/534](#), art. 6)

#### Commencement Information

**I68** 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))

## 128 Consent to extradition before case sent to Secretary of State

- (1) This section applies if a person gives his consent under section 127 to the appropriate judge.
- (2) If the judge has not fixed a date under section 75 or 76 on which the extradition hearing is to begin he is not required to do so.
- (3) If the extradition hearing has begun the judge is no longer required to proceed or continue proceeding under sections 78 to 91.
- (4) The judge must send the case to the Secretary of State for his decision whether the person is to be extradited.

<sup>F132</sup>(5) .....

#### Textual Amendments

**F132** S. 128(5) repealed (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), [ss. 163\(b\)](#), [185\(1\)](#) (with [ss. 21, 33, 42, 58, 75, 93](#)); [S.I. 2014/1916](#), art. 2(i) (with art. 5)

#### Commencement Information

**I69** 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))

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### *Post-extradition matters*

#### **Commencement Information**

**I70** 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))

## **129 Consent to other offence being dealt with**

- (1) This section applies if—
  - (a) a person is extradited to a category 2 territory in accordance with this Part;
  - (b) the Secretary of State receives a valid request for his consent to the person being dealt with in the territory for an offence other than the offence in respect of which he was extradited.
- (2) A request for consent is valid if it is made by an authority which is an authority of the territory and which the Secretary of State believes has the function of making requests for the consent referred to in subsection (1)(b) in that territory.
- (3) The Secretary of State must serve notice on the person that he has received the request for consent, unless he is satisfied that it would not be practicable to do so.
- (4) The Secretary of State must decide whether the offence is an extradition offence.
- (5) If the Secretary of State decides the question in subsection (4) in the negative he must refuse his consent.
- (6) If the Secretary of State decides that question in the affirmative he must decide whether the appropriate judge would send the case to him (for his decision whether the person was to be extradited) under sections 79 to 91 if—
  - (a) the person were in the United Kingdom, and
  - (b) the judge were required to proceed under section 79 in respect of the offence for which the Secretary of State's consent is requested.
- (7) If the Secretary of State decides the question in subsection (6) in the negative he must refuse his consent.
- (8) If the Secretary of State decides that question in the affirmative he must decide whether, if the person were in the United Kingdom, his extradition in respect of the offence would be prohibited under section 94, 95 or 96.
- (9) If the Secretary of State decides the question in subsection (8) in the affirmative he must refuse his consent.
- (10) If the Secretary of State decides that question in the negative he may give his consent.

#### **Commencement Information**

**I71** 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))

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### **130 Consent to further extradition to category 2 territory**

- (1) This section applies if—
  - (a) a person is extradited to a category 2 territory (the requesting territory) in accordance with this Part;
  - (b) the Secretary of State receives a valid request for his consent to the person’s extradition to another category 2 territory for an offence other than the offence in respect of which he was extradited.
- (2) A request for consent is valid if it is made by an authority which is an authority of the requesting territory and which the Secretary of State believes has the function of making requests for the consent referred to in subsection (1)(b) in that territory.
- (3) The Secretary of State must serve notice on the person that he has received the request for consent, unless he is satisfied that it would not be practicable to do so.
- (4) The Secretary of State must decide whether the offence is an extradition offence in relation to the category 2 territory referred to in subsection (1)(b).
- (5) If the Secretary of State decides the question in subsection (4) in the negative he must refuse his consent.
- (6) If the Secretary of State decides that question in the affirmative he must decide whether the appropriate judge would send the case to him (for his decision whether the person was to be extradited) under sections 79 to 91 if—
  - (a) the person were in the United Kingdom, and
  - (b) the judge were required to proceed under section 79 in respect of the offence for which the Secretary of State’s consent is requested.
- (7) If the Secretary of State decides the question in subsection (6) in the negative he must refuse his consent.
- (8) If the Secretary of State decides that question in the affirmative he must decide whether, if the person were in the United Kingdom, his extradition in respect of the offence would be prohibited under section 94, 95 or 96.
- (9) If the Secretary of State decides the question in subsection (8) in the affirmative he must refuse his consent.
- (10) If the Secretary of State decides that question in the negative he may give his consent.

#### **Commencement Information**

**I72** 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))

### **131 Consent to further extradition to category 1 territory**

- (1) This section applies if—
  - (a) a person is extradited to a category 2 territory (the requesting territory) in accordance with this Part;
  - (b) the Secretary of State receives a valid request for his consent to the person’s extradition to a category 1 territory for an offence other than the offence in respect of which he was extradited.

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- (2) A request for consent is valid if it is made by an authority which is an authority of the requesting territory and which the Secretary of State believes has the function of making requests for the consent referred to in subsection (1)(b) in that territory.
- (3) The Secretary of State must serve notice on the person that he has received the request for consent, unless he is satisfied that it would not be practicable to do so.
- (4) The Secretary of State must decide whether the offence is an extradition offence within the meaning given by section 64 in relation to the category 1 territory.
- (5) If the Secretary of State decides the question in subsection (4) in the negative he must refuse his consent.
- (6) If the Secretary of State decides that question in the affirmative he must decide whether the appropriate judge would order the person's extradition under sections 11 to 25 if—
  - (a) the person were in the United Kingdom, and
  - (b) the judge were required to proceed under section 11 in respect of the offence for which the Secretary of State's consent is requested.
- (7) If the Secretary of State decides the question in subsection (6) in the affirmative he must give his consent.
- (8) If the Secretary of State decides that question in the negative he must refuse his consent.

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**Commencement Information**

**I73** 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))

**[<sup>F133</sup>132 Return of person to serve remainder of sentence**

- (1) This section applies if—
  - (a) a person who is serving a sentence of imprisonment or another form of detention in the United Kingdom is extradited to a category 2 territory in accordance with this Part;
  - (b) the person is returned to the United Kingdom to serve the remainder of the sentence or the person otherwise returns to the United Kingdom.
- (2) Time during which the person was outside the United Kingdom as a result of the extradition does not count as time served by the person as part of the sentence.
- (3) But subsection (2) does not apply if—
  - (a) the person was extradited for the purpose of being prosecuted for an offence, and
  - (b) the person has not been convicted of the offence or of any other offence in respect of which the person was permitted to be dealt with in the category 2 territory.
- (4) In a case falling within subsection (3), time during which the person was outside the United Kingdom as a result of the extradition counts as time served by the person as part of the sentence if (and only if) it was spent in custody in connection with the

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- offence or any other offence in respect of which the person was permitted to be dealt with in the territory.
- (5) In a case where the person is not entitled to be released from detention pursuant to the sentence—
- (a) the person is liable to be detained in pursuance of the sentence, and
  - (b) if at large, the person must be treated as being unlawfully at large.
- (6) In a case where the person is entitled to be released from detention on licence pursuant to the sentence—
- (a) if the person was released on licence at the time of extradition, the licence is suspended until the person's return,
  - (b) if the person was not released on licence at that time, subsections (7) to (10) apply in relation to the person (“the offender”).
- (7) The offender is liable to be detained, on return, in any place in which the offender could have been detained pursuant to the sentence before the time of extradition.
- (8) A constable or immigration officer may—
- (a) take the offender into custody, and
  - (b) convey the offender to the place mentioned in subsection (7).
- (9) The offender must be released on licence within the period of 5 days beginning when the offender is taken (or retaken) into custody under this section.
- (10) In calculating a period of 5 days for the purposes of subsection (9) no account is to be taken of any day mentioned in any of paragraphs (a) to (d) of section 59(10).
- (11) A person is entitled to be released from detention if there is—
- <sup>F134</sup>(a) .....
  - (b) a duty to release the person under [<sup>F135</sup>Chapter 6 of Part 12] of the Criminal Justice Act 2003 <sup>F136</sup>....,
  - (c) a duty to release the person under section 1, 1AA [<sup>F137</sup>, 1AB] or 7(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 or section 5, 11(2), 13, 19 or 23 of the Custodial Sentences and Weapons (Scotland) Act 2007, or
  - (d) a duty to release the person under section 1 of the Northern Ireland (Remission of Sentences) Act 1995, Article 26 of the Criminal Justice (Northern Ireland) Order 1996 or Article 17 [<sup>F138</sup>, 18(8) or 20A(8)] of the Criminal Justice (Northern Ireland) Order 2008.
- (12) The powers conferred on a constable by subsection (8) are exercisable in any part of the United Kingdom.
- (13) An immigration officer is a person who is an immigration officer within the meaning of the Immigration Act 1971. ]

#### Textual Amendments

**F133** S. 132 substituted (25.1.2010) by [Policing and Crime Act 2009 \(c. 26\)](#), **ss. 73**, 116; S.I. 2009/3096, **art. 3(p)**

**F134** S. 132(11)(a) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 16 para. 11(a)**; S.I. 2012/2906, art. 2(n)

**F135** Words in s. 132(11)(b) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 16 para. 11(b)**; S.I. 2012/2906, art. 2(n)

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- F136** Words in s. 132(11)(b) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 10 para. 11\(2\)\(b\)](#); S.I. 2012/2906, art. 2(h)
- F137** Word in s. 132(11)(c) inserted (30.4.2021) by [Counter-Terrorism and Sentencing Act 2021 \(c. 11\)](#), s. 50(1)(i), [Sch. 13 para. 56\(b\)](#)
- F138** Words in s. 132(11)(d) substituted (30.4.2021) by [Counter-Terrorism and Sentencing Act 2021 \(c. 11\)](#), s. 50(1)(i), [Sch. 13 para. 73\(b\)](#)

#### Commencement Information

- I74** 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))

### Costs

#### Commencement Information

- I75** 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))

### 133 Costs where extradition ordered

- (1) This section applies if any of the following occurs in relation to a person whose extradition is requested under this Part—
- (a) an order for the person's extradition is made under this Part;
  - <sup>[F139]</sup>(aa) the High Court dismisses an application for leave to appeal to it under section 103 or 108;
  - (b) the High Court dismisses an appeal under section 103 or 108;
  - (c) the High Court or the <sup>[F140]</sup>Supreme Court <sup>[F140]</sup> dismisses an application for leave to appeal to the <sup>[F140]</sup>Supreme Court <sup>[F140]</sup> under section 114, if the application is made by the person;
  - (d) the <sup>[F140]</sup>Supreme Court <sup>[F140]</sup> dismisses an appeal under section 114, if the appeal is brought by the person.
- (2) In a case falling within subsection (1)(a), the appropriate judge may make such order as he considers just and reasonable with regard to the costs to be paid by the person.
- <sup>[F141]</sup>(2A) In a case falling within subsection (1)(aa), the High Court may make such order as it considers just and reasonable with regard to the costs to be paid by the person.]
- (3) In a case falling within subsection (1)(b) by virtue of section 104(7), the judge who decides the question that is (or all the questions that are) the subject of a direction under section 104(1)(b) may make such order as he considers just and reasonable with regard to the costs to be paid by the person.
- (4) In any other case falling within subsection (1)(b), the High Court may make such order as it considers just and reasonable with regard to the costs to be paid by the person.
- (5) In a case falling within subsection (1)(c) or (d), the court by which the application or appeal is dismissed may make such order as it considers just and reasonable with regard to the costs to be paid by the person.
- (6) An order for costs under this section—
- (a) must specify their amount;

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

- (b) may name the person to whom they are to be paid.

#### Textual Amendments

- F139** S. 133(1)(aa) inserted (15.4.2015) by [The Extradition Act 2003 \(Amendment to Designations and Appeals\) Order 2015 \(S.I. 2015/992\)](#), arts. 1(1), **3(12)(a)** (with art. 1(4))
- F140** Words in s. 133 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 148, **Sch. 9 para. 81(4)(1)**; [S.I. 2009/1604](#), **art. 2(d)**
- F141** S. 133(2A) inserted (15.4.2015) by [The Extradition Act 2003 \(Amendment to Designations and Appeals\) Order 2015 \(S.I. 2015/992\)](#), arts. 1(1), **3(12)(b)** (with art. 1(4))

#### Commencement Information

- I76** 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))

### 134 Costs where discharge ordered

- (1) This section applies if any of the following occurs in relation to a person whose extradition to a category 2 territory is requested under this Part—
- (a) an order for the person’s discharge is made under this Part;
  - (b) the person is taken to be discharged under this Part;
  - <sup>[F142]</sup>(ba) the High Court dismisses an application for leave to appeal to it under section 105 or 110;
  - (c) the High Court dismisses an appeal under section 105 or 110;
  - (d) the High Court or the <sup>[F143]</sup>Supreme Court] dismisses an application for leave to appeal to the <sup>[F143]</sup>Supreme Court] under section 114, if the application is made on behalf of the category 2 territory;
  - (e) the <sup>[F143]</sup>Supreme Court] dismisses an appeal under section 114, if the appeal is brought on behalf of the category 2 territory.
- (2) In a case falling within subsection (1)(a), an order under subsection (5) in favour of the person may be made by—
- (a) the appropriate judge, if the order for the person’s discharge is made by him or by the Secretary of State;
  - (b) the High Court, if the order for the person’s discharge is made by it;
  - (c) the <sup>[F143]</sup>Supreme Court], if the order for the person’s discharge is made by it.
- (3) In a case falling within subsection (1)(b), the appropriate judge may make an order under subsection (5) in favour of the person.
- (4) In a case falling within subsection <sup>[F144]</sup>(1)(ba), (c)], (d) or (e), the court by which the application or appeal is dismissed may make an order under subsection (5) in favour of the person.
- (5) An order under this subsection in favour of a person is an order for a payment of the appropriate amount to be made to the person out of money provided by Parliament.
- <sup>[F145]</sup>(5A) In England and Wales, an order under subsection (5) is to be made, and the appropriate amount is to be determined, in accordance with sections 135A and 135B.
- (5B) In Scotland and Northern Ireland, an order under subsection (5) is to be made, and the appropriate amount is to be determined, in accordance with subsections (6) to (9).]



*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

- (6) The appropriate amount is such amount as the judge or court making the order under subsection (5) considers reasonably sufficient to compensate the person in whose favour the order is made for any expenses properly incurred by him in the proceedings under this Part.
- (7) But if the judge or court making an order under subsection (5) is of the opinion that there are circumstances which make it inappropriate that the person in whose favour the order is made should recover the full amount mentioned in subsection (6), the judge or court must—
- (a) assess what amount would in his or its opinion be just and reasonable;
  - (b) specify that amount in the order as the appropriate amount.
- (8) Unless subsection (7) applies, the appropriate amount—
- (a) must be specified in the order, if the court considers it appropriate for it to be so specified and the person in whose favour the order is made agrees the amount;
  - (b) must be determined in accordance with regulations made by the Lord Chancellor for the purposes of this section, in any other case.
- [<sup>F146</sup>(9) In relation to proceedings in Northern Ireland (including proceedings in the Supreme Court on an appeal, or on an application for leave to appeal, from proceedings in Northern Ireland)—
- (a) subsection (5) has effect as if for “out of money provided by Parliament” there were substituted by the Department of Justice in Northern Ireland;
  - (b) the power to make regulations under subsection (8)(b) is exercisable by the Department of Justice in Northern Ireland (and not by the Lord Chancellor). ]

#### Textual Amendments

- F142** S. 134(1)(ba) inserted (15.4.2015) by [The Extradition Act 2003 \(Amendment to Designations and Appeals\) Order 2015 \(S.I. 2015/992\)](#), arts. 1(1), **3(13)(a)** (with art. 1(4))
- F143** Words in s. 134 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 148, **Sch. 9 para. 81(4)(m)**; S.I. 2009/1604, **art. 2(d)**
- F144** Words in s. 134(4) substituted (15.4.2015) by [The Extradition Act 2003 \(Amendment to Designations and Appeals\) Order 2015 \(S.I. 2015/992\)](#), arts. 1(1), **3(13)(b)** (with art. 1(4))
- F145** S. 134(5A)(5B) inserted (1.10.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 7 para. 16(2)** (with Sch. 7 Pt. 4); S.I. 2012/2412, art. 2(g)
- F146** S. 134(9) inserted (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(2)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

#### Commencement Information

- I77** 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))

### 135 Costs where discharge ordered: supplementary

- <sup>F147</sup>(1) . . . . .
- <sup>F147</sup>(2) . . . . .

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*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

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- (3) In Northern Ireland, section 7 of the Costs in Criminal Cases Act (Northern Ireland) 1968 (c. 10) (rules relating to costs) applies in relation to section 134 as that section applies in relation to sections 2 to 5 of that Act.

#### **Textual Amendments**

**F147** S. 135(1)(2) omitted (1.10.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 7 para. 17](#) (with [Sch. 7 Pt. 4](#)); S.I. 2012/2412, art. 2(g); S.I. 2012/2412, art. 2(g)

#### **Commencement Information**

**I78** 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))

### **[<sup>F148</sup>135A] Appropriate amount: England and Wales**

- (1) For the purposes of an order under section 134(5), the appropriate amount is such amount as the judge or court making the order considers reasonably sufficient to compensate the person in whose favour the order is made for any expenses properly incurred by the person in the proceedings under this Part.
- (2) But if the judge or court considers that there are circumstances that make it inappropriate for the person to recover the full amount mentioned in subsection (1), the order under section 134(5) must be for the payment out of money provided by Parliament of such lesser amount as the judge or court considers just and reasonable.
- (3) Subsections (1) and (2) have effect subject to—
  - (a) section 135B, and
  - (b) regulations under section 20(1A)(d) of the Prosecution of Offences Act 1985 (as applied by this section).
- (4) When making an order under section 134(5), the judge or court must fix the amount to be paid out of money provided by Parliament in the order if the judge or court considers it appropriate to do so and—
  - (a) the person in whose favour the order is made agrees the amount, or
  - (b) subsection (2) applies.
- (5) Where the judge or court does not fix the amount to be paid out of money provided by Parliament in the order—
  - (a) the judge or court must describe in the order any reduction required under subsection (2), and
  - (b) the amount must be fixed by means of a determination made by or on behalf of the court in accordance with procedures specified in regulations made by the Lord Chancellor.
- (6) Subsections (1A) to (1C) and (3) of section 20 of the Prosecution of Offences Act 1985 (regulations as to amounts ordered to be paid out of central funds) apply in relation to amounts payable out of money provided by Parliament in pursuance of an order under section 134 as they apply in relation to amounts payable out of central funds in pursuance of costs orders made under section 16 of that Act.
- (7) This section extends to England and Wales only.

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

### Textual Amendments

**F148** Ss. 135A, 135B inserted (E.W.) (1.10.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 7 para. 18](#) (with [Sch. 7 Pt. 4](#)); [S.I. 2012/2412, art. 2\(g\)](#)

## 135B Legal costs: England and Wales

- (1) An order under section 134(5) may not require the payment out of money provided by Parliament of an amount that includes an amount in respect of legal costs incurred by the person in whose favour the order is made, subject to the following provisions of this section.
- (2) Subsection (1) does not apply in relation to legal costs incurred in—
  - (a) proceedings in a magistrates' court, or
  - (b) proceedings in the Supreme Court.
- (3) The Lord Chancellor may by regulations make provision about exceptions from the prohibition in subsection (1), including—
  - (a) provision amending this section by adding, modifying or removing an exception, and
  - (b) provision for an exception to arise where a determination has been made by a person specified in the regulations.
- (4) Regulations under subsection (3) may not remove or limit the exception provided by subsection (2)(b).
- (5) Where a judge or court makes an order under section 134(5) requiring the payment out of money provided by Parliament of an amount that includes an amount in respect of legal costs, the order must include a statement to that effect.
- (6) Where, in an order under section 134(5), a judge or court fixes an amount to be paid out of money provided by Parliament that includes an amount in respect of legal costs incurred in proceedings in a court other than the Supreme Court, the latter amount must not exceed an amount specified by regulations made by the Lord Chancellor.
- (7) In this section—
  - “ legal costs ” means fees, charges, disbursements and other amounts payable in respect of advocacy services or litigation services including, in particular, expert witness costs;
  - “ advocacy services ” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide;
  - “ expert witness costs ” means amounts payable in respect of the services of an expert witness, including amounts payable in connection with attendance by the witness at court or elsewhere;
  - “ litigation services ” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to proceedings, or contemplated proceedings, to provide.
- (8) This section extends to England and Wales only.]

*Changes to legislation: There are currently no known outstanding effects  
for the Extradition Act 2003, Part 2. (See end of Document for details)*

### Textual Amendments

**F148** Ss. 135A, 135B inserted (E.W.) (1.10.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 7 para. 18** (with [Sch. 7 Pt. 4](#)); S.I. 2012/2412, art. 2(g)

### *Repatriation cases*

### Commencement Information

**I79** 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))

## 136 Persons serving sentences outside territory where convicted

- (1) This section applies if—
- (a) a request is made for a person's extradition to a category 2 territory and the request contains the statement referred to in subsection (2),<sup>F149</sup> ...
  - (b) a provisional warrant for a person's arrest is sought on behalf of a category 2 territory and the information laid before the justice contains the statement referred to in subsection (2)<sup>F150</sup>, or
  - (c) a request for the person's arrest is made by an authority of a specified category 2 territory (within the meaning of section 74B(7)) and the request contains the statement referred to in subsection (2).]
- (2) The statement is one that the person—
- (a) is alleged to be unlawfully at large from a prison in one territory (the imprisoning territory) in which he was serving a sentence after conviction of an offence specified in the request by a court in another territory (the convicting territory), and
  - (b) was serving the sentence in pursuance of international arrangements for prisoners sentenced in one territory to be repatriated to another territory in order to serve their sentence.
- (3) If the category 2 territory is either the imprisoning territory or the convicting territory—
- (a) section 70(3) has effect as if the reference to the statement referred to in subsection (4) of that section were a reference to the statement referred to in subsection (2) of this section;
  - (b) section 73(1) has effect as if the reference to a person within subsection (2) of that section were a reference to the person referred to in subsection (1)(b) [<sup>F151</sup>or (c) (as the case may be) ] of this section.
  - <sup>F152</sup>(c) section 74C(1)(b) has effect as if the reference to the statement referred to in subsection (4) of that section were a reference to the statement in subsection (2) of this section;
  - (d) section 74C(5) has effect as if paragraph (c) were omitted and as if in paragraph (d)—
    - (i) “the category 2 territory” read “the convicting territory”;
    - (ii) “if the person has been sentenced for the offence” were omitted.]

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*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Part 2. (See end of Document for details)*

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- (4) If the category 2 territory is the imprisoning territory—
- (a) sections 71(2)(a), 73(3)(a) and 78(4)(b) have effect as if “an extradition offence” read “an extradition offence in relation to the convicting territory”;
  - [<sup>F153</sup>(aa) section 74(7)(a) has effect as if “accused of the commission of an offence in a category 2 territory or that he is alleged to be unlawfully at large after conviction of an offence by a court in a category 2 territory” read “alleged to be unlawfully at large from a prison in the imprisoning territory after conviction of an offence in the convicting territory”];
  - (b) sections 74(8)(a) and 127(2) have effect as if “the category 2 territory in which he is accused of the commission of an offence or is alleged to have been convicted of an offence” read “the imprisoning territory”;
  - (c) section 74(11)(b) has effect as if “the category 2 territory” read “the imprisoning territory”;
  - [<sup>F154</sup>(ca) section 74B(1)(b) has effect as if sub-paragraph (i) were omitted and as if for sub-paragraph (ii) there were substituted—
    - “(ii) the person is alleged to be unlawfully at large from a prison in the imprisoning territory after conviction of an offence in the convicting territory”;
  - (cb) section 74B(1)(c) has effect as if “a serious extradition offence” read “a serious extradition offence in relation to the convicting territory”;
  - (cc) section 74E(1)(a) has effect as if “accused of the commission of an offence in a category 2 territory or are alleged to be unlawfully at large after conviction of an offence by a court in a category 2 territory” read “alleged to be unlawfully at large from a prison in the imprisoning territory after conviction of an offence in the convicting territory”;
  - (cd) section 74E(2)(a) has effect as if “the category 2 territory in which the person is accused of the commission of an offence or is alleged to have been convicted of an offence” read “the imprisoning territory”];
  - (d) section 78(2)(e) has effect as if “the category 2 territory” read “the convicting territory”;
  - (e) section 85(5) has effect as if after “entitled” there were inserted “in the convicting territory”;
  - (f) section 119(4) has effect as if “a category 2 territory” read “the convicting territory” and as if “the category 2 territory” in both places read “the convicting territory”;
  - (g) section 138(1) has effect as if “a category 2 territory” read “the convicting territory”;
  - (h) in section 138, subsections (2), (3), (4), (5) and (7) have effect as if “the category 2 territory” read “the convicting territory”.
- (5) Subsection (1)(b) applies to Scotland with the substitution of “application by the procurator fiscal sets out the matters referred to in paragraphs (a) and (b) of subsection (2)” for “information laid by the justice contains the statement referred to in subsection (2)”.
- (6) Subsection (1)(b) applies to Northern Ireland with the substitution of “the complaint made to” for “the information laid before”.

*Changes to legislation: There are currently no known outstanding effects  
for the Extradition Act 2003, Part 2. (See end of Document for details)*

### Textual Amendments

- F149** Word in s. 136(1)(a) omitted (31.12.2020) by virtue of [Extradition \(Provisional Arrest\) Act 2020 \(c. 18\), s. 2\(4\), Sch. para. 15\(2\)\(a\)](#); S.I. 2020/1652, reg. 2(1)(b)
- F150** S. 136(1)(c) and word inserted (31.12.2020) by [Extradition \(Provisional Arrest\) Act 2020 \(c. 18\), s. 2\(4\), Sch. para. 15\(2\)\(b\)](#); S.I. 2020/1652, reg. 2(1)(b)
- F151** Words in s. 136(3)(b) inserted (31.12.2020) by [Extradition \(Provisional Arrest\) Act 2020 \(c. 18\), s. 2\(4\), Sch. para. 15\(3\)\(a\)](#); S.I. 2020/1652, reg. 2(1)(b)
- F152** S. 136(3)(c)(d) inserted (31.12.2020) by [Extradition \(Provisional Arrest\) Act 2020 \(c. 18\), s. 2\(4\), Sch. para. 15\(3\)\(b\)](#); S.I. 2020/1652, reg. 2(1)(b)
- F153** S. 136(4)(aa) inserted (31.12.2020) by [Extradition \(Provisional Arrest\) Act 2020 \(c. 18\), s. 2\(4\), Sch. para. 15\(4\)\(a\)](#); S.I. 2020/1652, reg. 2(1)(b)
- F154** S. 136(4)(ca)-(cd) inserted (31.12.2020) by [Extradition \(Provisional Arrest\) Act 2020 \(c. 18\), s. 2\(4\), Sch. para. 15\(4\)\(b\)](#); S.I. 2020/1652, reg. 2(1)(b)

### Commencement Information

- I80** 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\(2\)](#))

## *Interpretation*

### Commencement Information

- I81** 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

- [<sup>F155</sup>(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;
  - (b) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the relevant part of the United Kingdom

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- 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.
- [<sup>F156</sup>(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.
- <sup>F157</sup>(9) .....

#### Textual Amendments

- F155** 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)
- F156** 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)
- F157** 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)

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*Changes to legislation: There are currently no known outstanding effects  
for the Extradition Act 2003, Part 2. (See end of Document for details)*

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#### **Commencement Information**

**182** 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**

[<sup>F158</sup>(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);
- (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);



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- (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.
- [<sup>F159</sup>(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.
- <sup>F160</sup>(9) .....

**Textual Amendments**

- F158** 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](#))
- F159** 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](#))
- F160** 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**

- I83** 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 [<sup>F161</sup>by the Lord Chief Justice of England and Wales after consulting the Lord Chancellor]<sup>F161</sup>;
  - (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 [<sup>F162</sup>Lord Chief Justice of Northern Ireland after consulting the [<sup>F163</sup>Department of Justice in Northern Ireland]]<sup>F163F162</sup>.
- (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.
- (3) More than one designation may be made under subsection (1).

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[<sup>F164</sup>(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.]

<sup>F164</sup>(4) This section applies for the purposes of this Part.

[<sup>F165</sup>(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).]<sup>F165</sup>

#### Textual Amendments

**F161** 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)

**F162** 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)

**F163** 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\(2\)](#)

**F164** 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\(d\)\(e\)](#)

**F165** 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

**I84** 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

**I85** 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))

## [<sup>F166</sup>140A] Unlawfully at large

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

- (a) he is alleged to have been convicted of it, and

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- (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.]

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**Textual Amendments**

**F166** 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 [<sup>F167</sup>in paragraph (b) of section 70(2), in paragraph (c) of section 93(4) and]<sup>F167</sup> in sections 83(3), 101(5) and 121.

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**Textual Amendments**

**F167** 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\(d\)\(e\)](#)

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**Commencement Information**

**I86** 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, Part 2.