

EXTRADITION ACT 2003

EXPLANATORY NOTES

TERRITORIAL APPLICATION: WALES

Part 2

Extradition to Category 2 Territories

Section 85: Case where person has been convicted

249. This section deals with conviction cases – that is those where the person has already been tried for the offence for which extradition is sought and has been found guilty.
250. *Subsection (1)* requires the judge to consider whether the person was convicted in his presence or in his absence. If the person was convicted in his presence, the judge must proceed with the extradition hearing under section 87 (*subsection (2)*).
251. If the person was convicted in his absence, the judge must then decide whether he deliberately absented himself from the trial (*subsection (3)*). If the person deliberately absented himself from his trial, the judge must proceed with the extradition hearing (*subsection (4)*).
252. If the person did not deliberately absent himself from his trial, the judge must then decide whether he would be entitled to a retrial or review amounting to a retrial on return to the requesting territory (*subsection (5)*).
253. If the person would be entitled to such a retrial, the judge must proceed with the extradition hearing under section 86. If he would not, the judge must order the person's discharge (*subsections (6) and (7)*).
254. *Subsection (8)* provides that a person's extradition must not be ordered unless retrial proceedings would include specific rights for the person. These include the right to defend himself, be provided with free legal aid if necessary and to examine witnesses called to give evidence against him. These rights can be found in Article 6.3 of the European Convention on Human Rights.