

# EXTRADITION ACT 2003

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## EXPLANATORY NOTES

### TERRITORIAL APPLICATION: WALES

#### Part 2

#### Extradition to Category 2 Territories

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

209. This section defines the territories to which Part 2 of the Act applies. The territories will be designated for the purposes of this Part by order made by the Secretary of State.

##### *Section 70: Extradition request and certificate*

210. This section provides for what is to happen when the Secretary of State receives a request for a person's extradition to a category 2 territory.
211. *Subsection (1)* requires the Secretary of State to issue a certificate if he receives a valid extradition request from a category 2 territory in respect of a person who is in the United Kingdom. The exception to this rule, under *subsection (2)*, is where the Secretary of State has decided that a competing request is to take priority (see section 126). *Subsection (3)* explains that a request is valid if it contains the statement referred to in *subsection (4)* – that the person is accused of a specified offence, or is unlawfully at large after conviction of a specified offence – and if it is made in the approved way. *Subsections (5) to (7)* set out the manner in which the request must be made to be approved.
212. The Secretary of State is required (*subsections (8) and (9)*) to send the certificate confirming that the request has been made in the approved way to the appropriate judge (see section 149 below). The certificate must be accompanied by the extradition request and a copy of the relevant Order in Council.

##### *Section 71: Arrest warrant following extradition request*

213. Extradition requests to the United Kingdom, and accompanying arrest of the person concerned, can follow one of two paths. The first is a request for the provisional arrest of a person considered to be at risk of leaving or travelling to another jurisdiction. Such requests are generally made through police channels pending receipt of a formal extradition request and supporting documentation. The second is a full order request, where the formal request and supporting documentation is submitted through the diplomatic channel in advance of arrest. This section is concerned with full order requests.
214. *Subsection (1)* states that this section applies if the Secretary of State sends the documents to the appropriate judge under section 70 above. *Subsection (2)* allows the judge to issue a warrant for arrest if he has reasonable grounds for believing that the relevant conditions are met. These conditions are that the offence for which extradition has been requested is an extradition offence and that there is evidence that would justify

the issue of an arrest warrant if the person was accused of the offence or was unlawfully at large following a conviction for that offence (*subsection (3)*). *Subsection (4)* replaces the requirement to submit evidence with a requirement to submit information for those countries that have been designated for that purpose by order made by the Secretary of State. *Subsection (5)* provides that a warrant issued under this section may be executed by any police constable or customs officer, or by any person to whom it is directed, even if neither the warrant nor a copy is held by that person at the time of execution.

215. Where a warrant is directed to a service policeman it may be executed only in a place where that service policeman would have the power to arrest a person under the relevant service law (*subsections (6) and (8)*). In all other cases a warrant can be executed in any part of the United Kingdom (*subsection (7)*).

### ***Section 72: Person arrested under section 71***

216. A person who has been arrested following an extradition request must be given a copy of the relevant warrant as soon as practicable after the arrest. (*subsections (1) and (2)*). If this requirement is not met and the person applies to the judge, the judge may order the person's discharge (*subsection (5)*).
217. Under *subsection (3)* the person must be brought before the appropriate judge as soon as practicable. However, *subsection (4)* states that this does not apply if the person was granted police bail following the arrest or if the Secretary of State has decided that the request is not to go any further because a competing request is to take priority (see section 126). *Subsection (4)(a)* applies to Scotland without reference to bail being granted by a constable, as the police in Scotland cannot grant bail (*subsection (10)*). If the person is not brought before the judge as soon as practicable, and he applies to the judge, the judge must order his discharge (*subsection (6)*).
218. *Subsections (7) to (9)* require the judge to inform the person of the contents of the request for his extradition, to give the person the required information about consent, and to remand him in custody or on bail. If the person is remanded in custody he may subsequently be granted bail. The required information about consent is:
- that the person may consent to his extradition;
  - an explanation of the effect of consent and procedures that will apply (see section 127);
  - that consent must be given in writing and is irrevocable.

### ***Section 73: Provisional warrant***

219. This section provides for the issue of a provisional arrest warrant for a person who is in or on his way to the United Kingdom.
220. *Subsection (1)* explains that this section applies if a justice of the peace receives an information (in Northern Ireland a complaint – see *subsection (11)*) in writing and on oath that a person is in, or believed to be in, or travelling to, the United Kingdom. The justice of the peace must be satisfied that the person is accused of an offence or is unlawfully at large after conviction of an offence (*subsection (2)*).
221. *Subsection (3)* allows a justice of the peace to issue a warrant if he has reasonable grounds to believe that certain conditions are met. The conditions are that the offence is an extradition offence and that there is evidence that would justify the issue of a warrant if the alleged offence had occurred in the relevant part of the United Kingdom or if the person was unlawfully at large in the relevant part of the United Kingdom after conviction for that offence (*Subsection (4)*). *Subsection (5)* replaces the requirement to submit evidence with a requirement to submit information, for those countries that have been designated for this purpose by order made by the Secretary of State. *Subsection (6)* provides that a provisional warrant may be executed by any police constable or customs

officer, or by any person to whom it is directed, even if neither the warrant nor a copy is held by that person at the time of execution.

222. Where a warrant is directed to a service policeman it may be executed only in a place where that service policeman would have the power to arrest a person under the relevant service law (*subsections (7) and (9)*). In all other cases a warrant can be executed in any part of the United Kingdom (*subsection (8)*).
223. *Subsection (10)* states that this section applies to Scotland with certain modifications. All references to a "justice (of the peace)" should be read as a sheriff in Scotland. The reference in subsection (1) to "information in writing and on oath" is replaced by "an application by a procurator fiscal".

#### ***Section 74: Person arrested under provisional warrant***

224. A person who has been arrested under a provisional warrant must be given a copy of the relevant warrant as soon as practicable after the arrest (*subsections (1) and (2)*). If this requirement is not met and the person applies to the judge, the judge may order the person's discharge (*subsection (5)*).
225. Under *subsection (3)* he must also be brought before the appropriate judge as soon as practicable. However, *subsection (4)* states that this does not apply if the person was granted police bail following the arrest or if the Secretary of State has decided that the request is not to go any further because a competing request is to take priority (see section 124). Subsection (4)(a) applies to Scotland without reference to bail being granted by a constable, as the police in Scotland cannot grant bail (*subsection (12)*). If the person is not brought before the judge as soon as practicable, and he applies to the judge, the judge must order his discharge (*subsection (6)*).
226. *Subsections (7) to (9)* require the judge to inform the person either that he is accused of an offence in the relevant territory or that he is alleged to be unlawfully at large after conviction. The judge must also give the person the required information about consent and remand him in custody or on bail. If the person is remanded in custody he may subsequently be granted bail. The required information about consent is:
- that the person may consent to his extradition;
  - an explanation of the effect of consent and procedures that will apply (see section 127);
  - that consent must be given in writing and is irrevocable.
227. If a certified extradition request and supporting documents are not received by the judge within the required period the person's discharge must be ordered. This period is 45 days from the date of arrest or any longer period permitted by order made by the Secretary of State for a designated category 2 territory (*subsections (10) and (11)*). This longer period takes account of the different time periods specified in particular bilateral extradition treaties. This prevents the individual treaties from having to be renegotiated.

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

228. This section applies where a person arrested under section 71 appears before the appropriate judge (*subsection (1)*). *Subsections (2) and (3)* require the judge to fix a date for the extradition hearing. The date is to be within 2 months of the date on which the person first appears before the judge. Where it would be in the interests of justice, a later hearing date may be fixed. *Subsection (4)* requires the person to be discharged if the extradition hearing does not begin by the fixed date and the person applies to the judge.

**Section 76: Date of extradition hearing: arrest under provisional warrant**

229. This section applies where the person has been provisionally arrested and the documents in section 70(9) have been received by the judge within the required period (*subsection (1)*). *Subsections (2) and (3)* require the judge to fix a date for the extradition hearing. The date must be within 2 months of the date on which the judge receives the documents. Where it would be in the interests of justice, a later hearing date may be fixed (*subsection (4)*). *Subsection (5)* requires the person to be discharged if the extradition hearing does not begin by the date fixed and the person applies to the judge.

**Section 77: Judge's powers at extradition hearing**

230. The section provides for the powers available to the judge at the extradition hearing under this Part of the Act.
231. The powers available to the judge are as nearly as possible the same as those available to (*subsections (1) to (3)*):-
- a magistrates' court at a summary trial, in England and Wales;
  - a judge at summary proceedings, in Scotland;
  - a magistrates' court in the hearing and determination of a complaint.

The judge therefore has the power to adjourn the hearing and remand a person in custody or on bail (*subsections (4) and (5)*).

**Section 78: Initial stages of extradition hearing**

232. This section requires the judge to begin the extradition hearing by considering the sufficiency of the extradition request and supporting documentation before him.
233. *Subsection (2)* requires the judge to decide whether the documents sent to him by the Secretary of State consist of or include:
- the documents referred to section 70(9), namely the extradition request, certificate and copy of the relevant Order in Council;
  - identification evidence;
  - details of the offence(s) in question;
  - a warrant of arrest or judicial document authorising the person's arrest (*subsection (8)*) issued in the category 2 territory, in accusation cases;
  - a certificate of conviction and (if sentence has been imposed) of sentence, in a conviction case.
234. If the documents do not meet the requirements then the judge must order the person's discharge (*subsection (3)*). If the documents are considered sufficient then the judge must decide under *subsection (4)* whether:
- on a balance of probabilities (see *subsection (5)*), the person before him is the person whose extradition is requested;
  - the specified offence is an extradition offence;
  - copies of the documents have been served on the person.
235. If the judge is not satisfied on any of these points then *subsection (6)* requires that he order the person's discharge. If the judge is satisfied then *subsection (7)* requires that he proceed under section 79.

### **Section 79: Bars to extradition**

236. This section provides for the bars to extradition under this Part of the Act. The judge must consider whether any of these bars prevent the extradition of the person and order the person's discharge if any of the bars are applicable.
237. *Subsection (1)* requires the judge to decide whether extradition is barred by:
- the rule against double jeopardy;
  - extraneous considerations;
  - the passage of time;
  - hostage-taking considerations.
238. **Sections 80 to 83** below explain what is meant by each bar (*subsection (2)*). *Subsection (3)* requires the judge to order the person's discharge if any of the bars in subsection (1) apply. If none of them applies the judge must proceed under the provisions of section 84 (in an accusation case) or section 85 (in a conviction case) (*subsections (4) and (5)*).

### **Section 80: Rule against double jeopardy**

239. The effect of this section is to bar the extradition of a person if he would be entitled to be discharged because of a previous acquittal or conviction if he were charged with the offence in question in the part of the United Kingdom where the judge exercises jurisdiction.

### **Section 81: Extraneous considerations**

240. The effect of this section is to bar a person's extradition to a category 2 territory if it appears that the request has been issued for the purpose of prosecuting or punishing that person for reasons of his race, religion, nationality, gender, sexual orientation or political opinions. His extradition would also be barred if it appears that he would be prejudiced at trial, or his liberty restricted, for any of the same reasons.

### **Section 82: Passage of time**

241. The effect of this section is to bar the extradition of a person where it appears that it would be unjust or oppressive to extradite him by reason of the passage of time since he is alleged to have committed the extradition offence or since he is alleged to have become unlawfully at large.

### **Section 83 Hostage-taking considerations**

242. A person's extradition is barred if the category 2 territory requesting extradition is a party to the Hostage-taking Convention and certain conditions apply. These are that, if extradited, communication between the person and the appropriate (consular) authorities would not be possible and the conduct constituting an extradition offence would constitute an offence under section 1 of the Taking of Hostages Act 1982 or an attempt to commit such an offence (*subsection (1)*).
243. *Subsections (2) to (4)* make interpretative provision relating to the hostage-taking bar to surrender.

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

244. This section deals with accusation cases – that is those where the person has been accused of a crime but has not stood trial.
245. The judge is required to decide whether the evidence supplied to him would be sufficient to make a case requiring an answer if the proceedings were a summary trial in this

country (*subsection (1)*). (*Subsections (8) and (9)* contain the relevant modifications, relating to the reference to proceedings, for this section to apply to Scotland and Northern Ireland respectively.) In making the decision required by *subsection (1)* the judge may treat any statement made by a person to a police officer or investigating officer as admissible evidence of a fact if direct oral evidence of the fact would be admissible (*subsection (2)*).

246. In deciding whether to treat such a statement as admissible evidence, *subsection (3)* requires the judge to have particular regard to:
- the nature and source of the document;
  - whether or not it is likely that the document is authentic;
  - the extent to which the statement appears to supply evidence which would not otherwise be readily available;
  - the relevance of the purported evidence in deciding whether there would be sufficient evidence to make a case requiring an answer if the proceedings were a summary trial in this country;
  - any risk that the admission or exclusion of the statement will result in unfairness to the person, and in particular whether there will be the opportunity to challenge the evidence if the person making the statement is not giving oral evidence in these proceedings.
247. *Subsection (4)* provides that a documentary summary of such a statement must be treated as a statement as described in *subsection (2)*.
248. If the judge decides the evidence is insufficient to make out a case requiring an answer at a summary trial, then he must order the person's discharge (*subsection (5)*). If the evidence is sufficient, then the judge must proceed to consider human rights issues under section 87 (*subsection (6)*). *Subsection (7)* explains that *subsection (1)* does not apply to category 2 territories designated by order made by the Secretary of State as territories not required to submit prima facie evidence. In the case of requests from such countries the judge must proceed to consider human rights under section 87.

### ***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.

### ***Section 86: Conviction in person's absence***

255. This section deals with cases where a person has been tried in his absence and found guilty of the offence for which extradition is sought.
256. The judge is required to decide whether the evidence supplied to him would be sufficient to make a case requiring an answer if the proceedings were a summary trial in this country (*subsection (1)*). (*Subsections (7) and (8)* contain the relevant modifications, relating to the reference to proceedings, for this section to apply to Scotland and Northern Ireland respectively.) In making the decision required by subsection (1) the judge may treat any statement made by a person to a police officer or investigating officer as admissible evidence of a fact if direct oral evidence of that fact would be admissible (*subsection (2)*).
257. In deciding whether to treat such a statement as admissible evidence, *subsection (3)* requires the judge to have particular regard to:
- the nature and source of the document;
  - whether or not it is likely that the document is authentic;
  - the extent to which the statement appears to supply evidence which would not otherwise be readily available;
  - the relevance of the purported evidence in deciding whether there would be sufficient evidence to make a case requiring an answer if the proceedings were a summary trial in this country;
  - any risk that the admission or exclusion of the statement will result in unfairness to the person, and in particular whether there will be the opportunity to challenge the evidence if the person making the statement is not giving oral evidence in the proceedings.
258. *Subsection (4)* provides that a documentary summary of such a statement must be treated as a statement as described in subsection (2).
259. If the judge decides the evidence is insufficient to make out a case requiring an answer at a summary trial, then he must order the person's discharge (*subsection (5)*). If the evidence is sufficient, then the judge must proceed to consider human rights issues under section 87 (*subsection (6)*). *Subsection (7)* explains that subsection (1) does not apply to category 2 territories designated by order made by the Secretary of State as territories not required to submit prima facie evidence. In the case of requests from such countries the judge must proceed to consider human rights under section 87.

### ***Section 87: Human rights***

260. Under this section the judge must decide whether the person's extradition would be compatible with his human rights. The rights in question are those set out in the European Convention on Human Rights, incorporated into United Kingdom domestic legislation by the Human Rights Act 1998. The judge must order the person's discharge if extradition would not be compatible with these rights. Otherwise, he must send the case to the Secretary of State for him to decide on the person's extradition.

### ***Section 88: Person charged with offence in United Kingdom***

261. This section applies if a person who is subject to an extradition request has also been charged with an offence in the United Kingdom.

262. *Subsection (1)* explains that this section applies if the judge is informed that the person has been charged with an offence in the United Kingdom. In these circumstances the judge must adjourn the extradition hearing until (*subsection (2)*):
- the charge is disposed of (see section 214 below) or withdrawn;
  - proceedings on the charge are discontinued; or
  - proceedings on the charge are discontinued with the option that a fresh prosecution on the same charge could be brought in the future.
263. Where the person is given a custodial sentence for the United Kingdom offence, the extradition hearing can be adjourned until the sentence has been served (*subsection (3)*). If the judge has considered the question of double jeopardy under section 80 before adjourning the hearing, he must consider it again when the hearing is resumed (*subsection (4)*).

### ***Section 89: Person serving sentence in United Kingdom***

264. This section applies if the judge is informed that the person who is the subject of an extradition request is also serving a custodial sentence in the United Kingdom (*subsection (1)*). Under these circumstances the judge is allowed to adjourn the extradition hearing until the sentence has been served (*subsection (2)*).

### ***Section 90: Competing extradition claim***

265. This section addresses the situation where a category 2 extradition request or a Part 1 warrant is received while a different extradition request from a category 2 territory (in respect of the same person) is already under consideration and has yet to be disposed of.
266. *Subsection (1)* explains that this section applies when a judge is notified at any time during the extradition hearing either that the conditions are met with regard to a competing category 2 extradition request or that the conditions are met with regard to a competing Part 1 warrant.
267. The conditions concerning a competing category 2 request are that (*subsection (2)*):
- the Secretary of State has received another valid request from a category 2 territory for the extradition of the same person;
  - this competing request has not yet been disposed of; and
  - the Secretary of State has made an order under section 126(2) that proceedings on the request under consideration are to be deferred pending the disposal of the competing request.
268. The conditions concerning a competing Part 1 warrant are that (*subsection (3)*):
- a Part 1 warrant, issued in respect of the same person, has been certified under section 2;
  - the warrant has not yet been disposed of; and
  - the Secretary of State has made an order under section 179(2) that proceedings on the request under consideration are to be deferred pending the disposal of the competing request.
269. In either situation *subsection (4)* requires the judge to remand the person in custody or on bail. If the person is remanded in custody he may later be granted bail (*subsection (5)*).



### **Section 91: Physical or mental condition**

270. This section sets out what is to happen if the judge decides, at any time during the extradition hearing, that the person is not physically or mentally fit to be extradited (*subsection (1)*).
271. If it appears to the judge that, by reason of the person's mental or physical condition, it would be unjust or oppressive to extradite him (*subsection (2)*), the judge must either order the person's discharge or adjourn the hearing. The hearing would continue at such time as the person's condition has improved to the extent that extradition would no longer be unjust or oppressive (*subsection (3)*).

### **Section 92: Case sent to Secretary of State**

272. This section applies if the judge sends a person's case to the Secretary of State (*subsection (1)*). The judge is required to notify the person that he has a right of appeal but that his appeal will not be heard until after the Secretary of State has made his decision (*subsection (2)*).
273. This requirement does not apply if the person has consented to his extradition under section 127 (*subsection (3)*). *Subsections (4) and (5)* require the judge to remand the person in custody or on bail to await the Secretary of State's decision. If the judge remands the person in custody he may later grant bail.

### **Section 93: Secretary of State's consideration of case**

274. This section deals with what happens once a case is sent to the Secretary of State.
275. The Secretary of State is required to consider the case and to order the person's discharge if extradition is prohibited by the provisions of sections 94 to 96 (*subsections (2) and (3)*). If it is not prohibited he must order the person's extradition unless (*subsection (4)*):
- he is informed that the extradition request has been withdrawn;
  - he makes an order for further proceedings on the request to be deferred, by virtue of section 126(2) or 179(2), and the person is discharged under section 180; or
  - he orders the person's discharge for reasons of national security (see section 208).
276. In deciding whether a person's extradition is prohibited, the Secretary of State is not required to consider any representations made by or on behalf of the person after the end of the specified period of time (*subsections (5) and (6)*). This is six weeks from the appropriate day (see section 102).

### **Section 94: Death penalty**

277. This section prevents the Secretary of State from ordering the extradition of a person who has been, will be or could be sentenced to death, unless an assurance has been received either that the sentence, if imposed, will not be carried out or that it will not be imposed.

### **Section 95: Speciality**

278. The speciality rule is a long-standing protection in extradition. It prohibits a person from being prosecuted after his extradition for an offence committed before his extradition. The exceptions are where the offence is that in respect of which he was extradited, where the consent of the requested state is obtained or the person has had an opportunity to leave the country to which he was extradited.
279. This section prohibits the Secretary of State from ordering a person's extradition to a category 2 territory where there are no speciality arrangements in place (*subsection (1)*). This does not apply if a person has consented to his extradition under section 127

*These notes refer to the Extradition Act 2003 (c.41)  
which received Royal Assent on 20th November 2003*

(*subsection (2)*). *Subsection (3)* explains when speciality arrangements are considered to be in place. These are if the offence falls within *subsection (4)* or the person has first had the opportunity to leave the territory. The offences within *subsection (4)* are:

- the offence for which the person was extradited;
- an extradition offence disclosed by the same facts as that offence;
- an extradition offence for which the Secretary of State has consented to the person being dealt with;
- an offence in respect of which the person has waived his right not to be dealt with.

280. *Subsection (5)* allows speciality arrangements with a Commonwealth country or a British overseas territory to be made either generally or for particular cases. A certificate issued by or under the authority of the Secretary of State confirming the existence of such arrangements and stating their terms is conclusive evidence of those matters (*subsection (6)*).

### ***Section 96: Earlier extradition to United Kingdom from other territory***

281. This section applies where a person has been extradited to the United Kingdom from another country (the extraditing territory) and his extradition is now requested to a category 2 territory. The Secretary of State is prohibited from ordering his extradition if arrangements with the extraditing territory require consent for re-extradition to another country and that consent has not been given.

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

282. This section applies where a person is the subject of an extradition request under this Part of the Act, his case has been sent to the Secretary of State and he has also been charged with an offence in the United Kingdom (*subsection (1)*). The Secretary of State is required to defer making a decision until (*subsection (2)*):

- the charge is disposed of (see section 214 below) or withdrawn;
- proceedings on the charge are discontinued; or
- proceedings on the charge are discontinued with the option that a fresh prosecution on the same charge could be brought in the future.

283. If the person is sentenced to a custodial sentence for the United Kingdom offence, the Secretary of State may delay making a decision as to extradition until the end of that sentence (*subsection (3)*).

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

284. This section applies if a person is the subject of an extradition request under this Part of the Act, his case has been sent to the Secretary of State, and he is also serving a custodial sentence in the United Kingdom (*subsection (1)*). Under these circumstances the Secretary of State is allowed to delay making his decision until the sentence has been served (*subsection (2)*).

### ***Section 99: Time limit for order for extradition or discharge***

285. Once a case is sent to the Secretary of State, he is required to make a decision on a person's extradition within two months (*subsections (1)* and *(3)*). If the Secretary of State fails to do so and the person applies to the High Court, the court must order his discharge (*subsection (2)*). However, under *subsection (4)*, this period can be extended on application to the High Court.

### ***Section 100: Information***

286. If the Secretary of State decides to order a person's extradition he is required to inform the person of his decision and of his right of appeal to the High Court. He must also inform a representative of the category 2 territory of any such order (*subsection (1)*). However, subsection (1)(b) (right of appeal to the High Court) does not apply if the person has consented to his extradition under section 127 (*subsection (2)*). If the Secretary of State orders a person's extradition and has received an assurance in respect of the death penalty under section 94(2), a copy of this assurance must be given to the person when he is informed of the order (*subsection (3)*).
287. If the Secretary of State decides to order a person's discharge he is required to inform both the person and a representative of the category 2 territory (*subsection (4)*).

### ***Section 101: Making of order for extradition or discharge***

288. This section specifies who may make an order that is required under this Part of the Act to be made by the Secretary of State.
289. *Subsections (1) to (4)* explain that an order for a person's extradition or discharge may be made by either the Secretary of State, a Minister of State, Parliamentary Under Secretary of State or a senior official. The last of these is defined as a member of the Senior Civil Service or a member of the Senior Management Structure of Her Majesty's Diplomatic Service. In Scotland such an order would be made by a member of the Scottish Executive, a junior Scottish Minister or a senior official of the Scottish Administration. *Subsection (5)* allows the Secretary of State, by order, to amend the category of senior officials authorised to make orders to take account of any future changes to structure or grading in the civil service.

### ***Section 102: The appropriate day***

290. This clause defines "the appropriate day", for the purposes of sections 93 to 99, when a case has been sent by the judge to the Secretary of State for his consideration (*subsection (1)*). The appropriate day is the day on which the relevant period of time will commence within which the Secretary of State is required to make his decision.
291. Where the person has also been charged with an offence in the United Kingdom the appropriate day is the day that proceedings on the United Kingdom charge end (*subsection (2)*). That is:
- the charge is disposed of (see section 214 below) or withdrawn;
  - proceedings on the charge are discontinued; or
  - proceedings on the charge are discontinued with the option that a fresh prosecution on the same charge could be brought in the future.
292. If the Secretary of State defers his decision under the power given in section 97(3) or 98(2), the appropriate day is the day on which the person finishes serving the sentence (*subsection (3)*).
293. In the case of competing extradition claims the appropriate day is the day on which the Secretary of State makes an order under section 126 or 179. However, if proceedings on the request have been deferred under either of these sections, it is the day on which the order is made under section 180 for proceedings to be resumed (*subsections (4) and (5)*).
294. If more than one of these provisions apply the appropriate day is the latest of the relevant days (*subsection (6)*). In all other cases it begins on the day that the judge sends the case to the Secretary of State (*subsection (7)*).

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

295. This section provides a right of appeal against the decision of the judge to send the case to the Secretary of State.
296. *Subsections (1) and (3)* allow a person to appeal to the High Court against the decision of the judge to send the case to the Secretary of State. This does not apply to a person who has consented to his extradition under section 127 (*subsection (2)*). The appeal can be on a question of law or fact (*subsection (4)*).
297. If an appeal is lodged it will be heard after the Secretary of State has made his decision (*subsection (5)*), unless the Secretary of State decides to order the person's discharge, in which case the appeal will not be proceeded with (*subsections (6) and (7)*). However, where notice of an appeal is given under section 110 against the Secretary of State's order to discharge the person, *subsections (6) and (7)* do not apply and the person's appeal against the judge's decision will be proceeded with. However, no appeal may be brought by the person against the judge's decision if the High Court has already made its decision on the appeal against the Secretary of State's order (*subsection (8)*).
298. Any appeal under this section must be lodged within 14 days starting on the day the Secretary of State notifies the person of the order he has made (*subsection (9)*).

### ***Section 104: Court's powers on appeal under section 103***

299. This section sets out the powers available to the High Court on an appeal under section 103.
300. The High Court may allow or dismiss the appeal or direct the judge to reconsider issues that were decided at the extradition hearing (*subsection (1)*). The appeal can only be allowed if the conditions in *subsection (3) or (4)* are met (*subsection (2)*). The conditions in *subsection (3)* are that the judge ought to have decided a question before him at the extradition hearing differently and, if he had done so, he would have been required to order the person's discharge.
301. The conditions in *subsection (4)* are that:
- an issue is raised or evidence is available that was not raised or available at the extradition hearing;
  - the issue or evidence would have resulted in the judge making a different decision at the hearing; and
  - this would have resulted in the judge ordering the person's discharge.
302. The court must order the person's discharge and quash the extradition order if it allows the appeal (*subsection (5)*). The judge must also order the person's discharge if he comes to a different decision on a question that he has been directed to decide again by the High Court (*subsection (6)*). If the judge comes to the same decision as he did at the extradition hearing the appeal must be taken to have been dismissed by a decision of the High Court (*subsection (7)*).

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

303. This section provides a right for an appeal to be brought on behalf of the requesting state against a decision at the extradition hearing to discharge the person.
304. *Subsections (1), (3) and (4)* allow an appeal to be brought on behalf of the requesting territory against the decision that resulted in the order for the discharge of the person, on any question of law or fact. The exception to this right of appeal, in *subsection (2)*, is when the discharge was under section 122, as a result of the request being withdrawn.

305. Notice of appeal must be given within 14 days of the order for the person's discharge (*subsection (5)*).

***Section 106: Court's powers on appeal under section 105***

306. This section sets out the powers available to the High Court following an appeal under section 105.
307. The High Court may allow or dismiss the appeal or direct the judge to decide the relevant question again (*subsection (1)*). The relevant question is one that resulted in the person's discharge. The appeal can only be allowed if the conditions in *subsection (4)* or *(5)* are met (*subsection (3)*). The conditions in *subsection (4)* are that the judge ought to have decided a question before him at the extradition hearing differently and, if he had done so, he would not have been required to order the person's discharge.
308. The conditions in *subsection (5)* are that:
- an issue is raised or evidence is available that was not raised or available at the extradition hearing;
  - the issue or evidence would have resulted in the judge making a different decision at the hearing; and
  - as a result the judge would not have been required to order the person's discharge.
309. *Subsection (6)* requires the High Court, if it allows the appeal, to quash the order discharging the person and remit the case back to the judge with a direction that he proceed as he would have been required to do if he had decided differently on the question that resulted in the person's discharge. If the court directs the judge to decide that question again and he decides it differently, the extradition hearing will continue from that point. If the judge makes the same decision then the appeal must be taken as have been dismissed by a decision of the High Court (*subsections (7)* and *(8)*).

***Section 107: Detention pending conclusion of appeal under section 105***

310. This section sets out the arrangements for detaining a person if an authority of the requesting state gives notice of its intention to appeal against a decision at the extradition hearing to discharge the person.
311. *Subsection (1)* states that this section applies if, immediately after the judge orders the person's discharge, the judge is informed that the requesting authority intends to appeal under the provisions of section 105 above. The judge must remand the person in custody or on bail while the appeal is pending, but he may later grant bail if the person is remanded in custody (*subsections (2)* and *(3)*). The appeal ceases to be pending, under *subsection (4)*, when the earliest of any of these applies:
- the proceedings on the appeal are discontinued;
  - the High Court dismisses the appeal and the court is not immediately informed that the authority intends to apply for leave to appeal to the House of Lords (except for Scotland);
  - the High Court dismisses the appeal (Scotland only – see *subsection (5)*);
  - leave to appeal to the House of Lords has been granted but no appeal is brought by the authority within 28 days (except for Scotland);
  - there are no further avenues of appeal available to the authority.

***Section 108: Appeal against extradition order***

312. *Subsections (1)* to *(3)* allow a person to appeal on a question of law or fact against the decision of the Secretary of State to order his extradition. This does not apply where



a person has consented to his extradition under section 127 (*subsection (2)*). Notice of appeal must be given to the High Court within 14 days from the date the person was notified of the Secretary of State's decision (*subsection (4)*).

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

313. This section sets out the powers available to the High Court on an appeal by a person against the extradition order.
314. The High Court may allow or dismiss the appeal (*subsection (1)*). The court may only allow the appeal if the conditions in *subsections (3)* or the conditions in *subsection (4)* are met. The conditions in *subsection (3)* are that the Secretary of State should have decided a question before him differently and, if he had done so, would not have ordered the person's extradition. The conditions in *subsection (4)* are that:
- an issue or information is raised or available that was not raised or available to the Secretary of State at the time;
  - the issue or information would have resulted in the Secretary of State deciding a question differently; and
  - this would have resulted in a decision not to order the person's extradition.
315. The person must be discharged and the extradition order quashed if the court allows the appeal (*subsection (5)*).

### ***Section 110: Appeal against discharge by Secretary of State***

316. *Subsections (1), (3) and (4)* allow the authority representing the requesting territory to appeal to the High Court against the decision that resulted in the discharge of the person by the Secretary of State. The appeal may be brought on any question of law or fact. The exception to this right of appeal, in *subsection (2)*, is when the order for the person's discharge was made under section 123, as a result of the request being withdrawn.
317. Notice of appeal must be given within 14 days of the authority in the requesting state being notified of the order for the person's discharge (*subsection (5)*).

### ***Section 111: Court's powers on appeal under section 110***

318. This section sets out the powers available to the High Court on an appeal by a category 2 territory against a decision not to order a person's extradition.
319. The High Court may allow or dismiss the appeal (*subsection (1)*). The court may only allow the appeal if the conditions in *subsection (3)* or the conditions in *subsection (4)* are met (*subsection (2)*). The conditions in *subsection (3)* are that the Secretary of State should have decided a question before him differently and, if he had done so, would not have ordered the person's extradition. The conditions in *subsection (4)* are that:
- an issue or information is raised or available that was not raised or available to the Secretary of State at the time;
  - the issue or information would have resulted in the Secretary of State deciding a question differently; and
  - this would have resulted in a decision to order the person's extradition.
320. The court must quash the order to discharge the person and order his extradition if it allows the appeal (*subsection (5)*).



### ***Section 112: Detention pending conclusion of appeal under section 110***

321. This section sets out the arrangements for the detention of a person when the Secretary of State is informed that the category 2 territory intends to appeal against the decision of the Secretary of State to order the person's discharge.
322. *Subsection (1)* states that this section applies if, immediately after the Secretary of State orders the person's discharge, he is informed that the requesting authority intends to appeal under the provisions of section 110 above. The judge must remand the person in custody or on bail while the appeal is pending, but he may later grant bail if the person is remanded in custody (*subsections (2) and (3)*). The appeal ceases to be pending, under *subsection (4)*, when the earliest of any of these applies:
- the proceedings on the appeal are discontinued;
  - the High Court dismisses the appeal and the court is not immediately informed that the authority intends to apply for leave to appeal to the House of Lords (except for Scotland);
  - the High Court dismisses the appeal (Scotland only – see *subsection (5)*);
  - leave to appeal to the House of Lords has been granted but no appeal is brought by the authority within 28 days (except for Scotland);
  - there are no further avenues of appeal available to the authority.

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

323. This section provides for the time limits within which the High Court must begin to hear an appeal under section 103, 105, 108 or 110.
324. *Subsections (1) and (2)* provide that rules of court must prescribe the period within which the High Court must begin to hear the appeal. However, the High Court has the power to extend this period where it would be in the interests of justice to do so, and it may do this more than once and after the period has expired (*subsections (3) and (4)*).
325. *Subsection (5)* explains what happens if the appeal is against a decision to order extradition (under section 103 or 108) and the High Court does not begin to hear the case within the set time period. In these circumstances the appeal will be considered to have been allowed, the person discharged and the order for the person's extradition quashed. If the appeal is by the requesting state (under section 105 or 110) and the High Court does not begin to hear the appeal within the set time period, then it will be considered as having been dismissed (*subsection (6)*).

### ***Section 114: Appeal to House of Lords***

326. This section provides rights of appeal to the House of Lords.
327. An appeal to the House of Lords following a decision of the High Court can be made by the person whose extradition is requested or a person acting on behalf of the category 2 territory (*subsections (1) and (2)*). An appeal can only be made when leave has been granted by the High Court or House of Lords (*subsection (3)*). Leave can only be granted where the High Court has certified that there is a point of law of general public importance involved in the decision and the court granting leave believes that there is a point which should be considered by the House of Lords (*subsection (4)*).
328. *Subsections (5) and (6)* provide that an application to the High Court for leave to appeal must be made within 14 days of the court's decision and applications to the House of Lords must be made within 14 days from the date the High Court refuses the application for leave to appeal. If leave to appeal is granted, the appeal must be brought within 28 days of the leave being granted (*subsection (7)*). If this is not complied with, the appeal is deemed to have been dismissed immediately after the end of the period permitted

under subsection (7) (*subsection (8)*), ignoring any powers of a court to extend the period for bringing the appeal or to grant leave to take a step out of time (*subsection (9)*). The High Court may grant bail to person appealing under this section (*subsection (10)*). *Subsections (11)* and *(12)* apply provisions of the Appellate Jurisdiction Act 1876 which concern the composition of the House of Lords for the hearing and determination of appeals.

329. *Subsection (13)* states that this section does not apply to Scotland (see section 32 above).

### ***Section 115: Powers of House of Lords on appeal under section 114***

330. This section sets out the powers available to the House of Lords on an appeal by the person who is the subject of the extradition request or by the requesting state.
331. *Subsection (1)* provides that the House of Lords may allow or dismiss an appeal. *Subsections (2)* and *(3)* provide that if the House of Lords allows an appeal by the person who is subject to the extradition order, it must order his discharge and quash the extradition order.
332. *Subsections (4)* and *(5)* apply if the House of Lords allows an appeal by the requesting state against a decision of the High Court to discharge a person or not to quash an order by the Secretary of State for his discharge. The House of Lords is required to quash the order discharging the person and order his extradition.
333. *Subsections (6)* and *(7)* apply where the requesting state appeals to the House of Lords against a decision of the High Court to dismiss its earlier appeal against the order to discharge a person at the extradition hearing. If the House of Lords allows the appeal – i.e. it decides that the basis of the judge’s decision to order a person's discharge was wrong – it must quash the order discharging the person, remit the case back to the judge and require him to proceed as if his original decision had been different.

### ***Section 116: Appeals: general***

334. This section provides that decisions made by the judge or the Secretary of State under this Part of the Act may only be challenged by means of the appeals described in this Part of the Act.

### ***Section 117: Extradition where no appeal***

335. This section provides the time limits for extraditing a person who is subject to an extradition order and has not appealed against the decision. *Subsection (1)* states that this section applies where the Secretary of State has ordered the person's extradition and no appeal has been lodged within 14 days, ignoring any powers of a court to extend the period for giving notice of appeal or to grant leave to take a step out of time (see *subsection (4)*). The person must be extradited within 28 days of the date on which the order was made (*subsection (2)*). The judge must, on a person's application, order his discharge if this deadline is not met, unless reasonable cause is shown for the delay (*subsection (3)*).

### ***Section 118: Extradition following appeal***

336. This section provides the time limit for extraditing a person subject to an extradition order where an appeal has been brought and the outcome is that he is to be extradited.
337. *Subsection (1)* states that this section applies where an appeal to the High Court under section 103, 108 or 110 has been brought and the result of the final decision on the appeal is that the person is to be extradited. *Subsection (2)* requires the person to be extradited within 28 days of the date on which the appeal decision becomes final or the days on which the appeal proceedings are discontinued. If this deadline is not complied with the judge must, on the person's application, order his discharge, unless reasonable cause is shown for the delay (*subsection (6)*). *Subsection (3)* defines the relevant court

as the High Court, where there is no appeal to the House of Lords, or the House of Lords if there is such an appeal. *Subsection (4)* explains that the decision of the High Court becomes final:

- when the period permitted for applying to the High Court for leave to appeal to the House of Lords ends, if no application for leave is made;
- when the period permitted for applying to the House of Lords for leave to appeal to it ends, if leave is refused by the High Court and there is no application for leave to the House of Lords;
- when the House of Lords refuses leave to appeal;
- after 28 days from the day on which leave to appeal to the House of Lords is granted, if no such appeal is brought in that time.

338. For the purposes of determining when the decision of the High Court is final, any powers of a court to extend the period for applying for leave to appeal or to grant leave to take a step out of time must be ignored (*subsection (5)*).

339. The decision of the House of Lords is immediately final (*subsection (6)*).

340. *Subsection (8)* includes the relevant modifications for this section to apply to Scotland. For this purpose the relevant court in this section will always be the High Court and all references to the House of Lords are omitted.

### ***Section 119: Undertaking in relation to person serving sentence in United Kingdom***

341. This section allows the Secretary of State to make an extradition order subject to a condition that extradition will not take place until he has received certain undertakings on behalf of the category 2 territory that submitted the extradition request. This section only applies if the person is serving a custodial sentence in the United Kingdom (*subsections (1) and (2)*).

342. The Secretary of State can specify the terms of any such undertaking, including that the person is kept in custody during the entire proceedings in the category 2 territory. He may also require the person to be returned to the United Kingdom to serve his United Kingdom sentence, on conclusion of the proceedings in the category 2 territory or after serving any sentence(s) imposed there (*subsections (3) and (4)*).

343. Where the Secretary of State imposes a condition on an extradition order under the power given by this section, no undertaking is received within 21 days and the person applies to the High Court, the court must order his discharge (*subsections (5) and (6)*).

344. Where the undertaking is received within 21 days and section 117 (extradition where no appeal) applies, the 28-day period described in section 117 begins on the day the Secretary of State receives the undertaking. Where a condition is imposed and section 118 (extradition following appeal) applies, the 28 days start from the day on which the appeal decision becomes final or, if later, the day the Secretary of State receives the undertaking (*subsection (7)*).

### ***Section 120: Extradition following deferral for competing claim***

345. This section applies where a person's extradition has been deferred, in the event of a competing Part 1 warrant or category 2 extradition request, and the judge subsequently orders that extradition is to go ahead under section 181(2) (*subsection (1)*).

346. Where these circumstances occur and no appeal is made (see section 117, extradition where no appeal), the 28-day period described in section 117 begins on the day the judge makes the order under section 181(2) (*subsection (2)*). Where this situation occurs and there is an appeal (see section 118, extradition following appeal), the 28 days start from

the day on which the appeal decision becomes final or, if later, the day the judge makes the order under section 181(2) (*subsection (3)*).

***Section 121: Position where asylum claimed***

347. This section sets out what is to happen where a person makes an asylum claim at any time during extradition proceedings under this Part of the Act. This section applies where such a claim is made by the person at any time between the issue of a certificate on a extradition request from a category 2 territory (under section 70) and the person's extradition in pursuance of that warrant (*subsections (1) and (2)*).
348. *Subsection (3)* states that the person in question must not be extradited until his asylum claim is finally determined. (Sections 117 and 118 set out the procedure for a person's extradition and take effect subject to this subsection.)
349. Under *subsection (4)* an asylum claim is finally determined, if it is allowed, when the Secretary of State has made this decision. Where the Secretary of State rejects the claim, it is finally determined when the Secretary of State makes his decision, if there is no right to appeal that decision. Where there is a right of appeal, the claim is finally determined when the period allowed to appeal against the decision has lapsed (and no appeal has been brought), or when the appeal is finally determined, withdrawn or abandoned (*subsection (5)*). An appeal is not finally determined until there is no further possibility of appeal or applying for leave to appeal. The remittal of an appeal does not amount to final determination (*subsections (6) and (7)*). Under *subsection (8)* the possibility of leave to appeal out of time against the Secretary of State's decision on an asylum claim must be ignored.

***Section 122: Withdrawal of request before end of extradition hearing***

350. This section deals with the situation where an extradition request is withdrawn before the end of the extradition hearing and the judge is informed of the withdrawal (*subsection (1)*).
351. The judge is required to order the person's discharge and, if the person is not present when it is ordered, inform the person of his discharge as soon as practicable (*subsections (3) and (4)*).

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

352. This section applies if the Secretary of State is informed that an extradition request is withdrawn after the case has been sent to him to decide on extradition, but before the person is either discharged or extradited (*subsections (1) and (2)*). Under *subsection (3)* the Secretary of State is required to order the person's discharge in such circumstances.

***Section 124: Withdrawal of request while appeal to High Court pending***

353. This section applies if the High Court is informed that an extradition request is withdrawn before the end of the appeal hearing.
354. Where these circumstances occur and the appeal is brought by the person (under section 103 or 108) the court is required to order his discharge and quash the extradition order if one has been made (*subsection (3)*). If the appeal has been brought on behalf of the category 2 territory (under section 105 or 110) the court must dismiss the appeal (*subsection (4)*). *Subsection (5)* requires the court to inform the person of his discharge as soon as practicable if he is not present when it is ordered.

***Section 125: Withdrawal of request while appeal to House of Lords pending***

355. This section applies if the House of Lords is informed that an extradition request is withdrawn before the House of Lords has given its decision on the case.

356. Where these circumstances occur and the appeal is brought by the person, the House of Lords is required to order his discharge and quash the extradition order if one has been made (*subsection (3)*). If the appeal has been brought on behalf of the category 2 territory the House of Lords must dismiss the appeal under *subsection (4)*. *Subsection (5)* requires the House of Lords to inform the person of his discharge as soon as practicable if he is not present when it is ordered.

### ***Section 126: Competing extradition requests***

357. This section sets out what is to happen when the Secretary of State receives an extradition request in respect of a person in the United Kingdom who is already the subject of Part 2 proceedings and who has not yet been extradited or discharged (*subsection (1)*).
358. The Secretary of State has the power, under *subsection (2)*, to order proceedings on one of the requests to be deferred until the other request has been disposed of. In taking this decision the Secretary of State must take into account in particular the factors listed in *subsection (3)*:
- the relative seriousness of the offences;
  - the place where they were committed;
  - the dates on which the requests were received; and
  - whether each is an accusation or conviction case.
359. Where that Secretary of State has ordered Part 2 proceedings to be deferred under *subsection (2)* and an order for the person's extradition has already been made, the Secretary of State may order the extradition itself to be deferred pending the disposal of the competing category 2 request (*subsection (2)*).

### ***Section 127: Consent to extradition: general***

360. This section provides that a person who has been arrested under a warrant issued following the receipt of an extradition request or under a provisional warrant may consent to his extradition. Consent must be given in writing and is irrevocable (*subsection (3)*). If a person consents to his extradition before his case is sent to the Secretary of State, he must do so before the appropriate judge. However, if a person consents after this point he must give his consent to the Secretary of State (*subsections (4) and (5)*).
361. *Subsections (6) and (7)* provide that a person may only give his consent to extradition under certain circumstances. These are that the person is legally represented at the time he consents, or that he has been informed of his right to apply for legal aid but has failed to exercise this right, or legal aid has been refused or withdrawn. This has the effect that no person can consent to his extradition without having received, or having had the opportunity to receive legal, advice. *Subsections (8) and (9)* provide definitions for the purposes of this section.

### ***Section 128: Consent to extradition before case sent to Secretary of State***

362. This section applies if a person consents to his extradition before the appropriate judge.
363. If a person consents the judge is no longer required to fix a date for the extradition hearing or, if the hearing has started, the judge no longer has to continue with it (*subsections (2) and (3)*). *Subsection (4)* requires the judge to send the case to the Secretary of State for his decision as to whether the person is to be extradited. If a person consents then it is taken that he has waived his right to speciality, that is the right not to be dealt with in the category 2 territory for an offence committed before his extradition unless certain exceptions apply (*subsection (5)*).



***Section 129: Consent to other offence being dealt with***

364. This section applies where a person has been extradited to a category 2 territory and the Secretary of State receives a valid request for consent to prosecute the person for an offence other than the offence for which he was extradited (*subsection (1)*). A valid request is one made by a recognised authority (*subsection (2)*). The Secretary of State must serve notice on the person that he has received a request for consent, unless it would not be practicable to do so (*subsection (3)*).
365. The Secretary of State must decide whether the offence to which the request for consent relates is an extradition offence (*subsection (4)*). If he decides it is not, he must refuse consent (*subsection (5)*). If he decides that it is, he must then decide whether the appropriate judge would send the case to him under sections 79 to 91, if the person were in the United Kingdom and the judge were required to proceed under section 79 in respect of the offence in question. If the Secretary of State decides that the judge would not send the case to him in these circumstances, he must refuse consent (*subsections (6) and (7)*).
366. If the Secretary of State decides that the judge would send the case to him, he must then decide whether extradition in respect of the offence would be prohibited by section 94 (death penalty), 95 (speciality) or 96 (earlier extradition), if the person were in the United Kingdom (*subsection (5)*). If the Secretary of State decides that extradition would be prohibited for any of these reasons, then consent must be refused (*subsection (9)*). If the Secretary of State is satisfied that the extradition would not be barred, then consent may be given (*subsection (10)*).

***Section 130: Consent to further extradition to category 2 territory***

367. This section applies where a person has been extradited to a category 2 territory and the Secretary of State receives a valid request for consent to re-extradite the person to another category 2 territory for an offence other than the offence for which he was extradited (*subsection (1)*). A valid request is one made by a recognised authority (*subsection (2)*). The Secretary of State must serve notice on the person that he has received a request for consent, unless it would not be practicable to do so (*subsection (3)*).
368. The Secretary of State must decide whether the offence to which the request for consent relates is an extradition offence (*subsection (4)*). If he decides it is not, he must refuse consent (*subsection (5)*). If he decides that it is, he must then decide whether the appropriate judge would send the case to him under sections 79 to 91, if the person were in the United Kingdom and the judge were required to proceed under section 79 in respect of the offence in question. If the Secretary of State decides that the judge would not send the case to him in these circumstances, he must refuse consent (*subsections (6) and (7)*).
369. If the Secretary of State decides that the judge would send the case to him, he must then decide whether extradition in respect of the offence would be prohibited by section 94 (death penalty), 95 (speciality) or 96 (earlier extradition), if the person were in the United Kingdom (*subsection (5)*). If the Secretary of State decides that extradition would be prohibited for any of these reasons, then consent must be refused (*subsection (9)*). If the Secretary of State is satisfied that the extradition would not be barred, then consent may be given (*subsection (10)*).

***Section 131: Consent to further extradition to category 1 territory***

370. This section applies where a person has been extradited to a category 2 territory and the Secretary of State receives a valid request for consent to re-extradite the person to a category 1 territory for an offence other than the offence for which he was extradited (*subsection (1)*). A valid request is one made by a recognised authority (*subsection (2)*).



and the Secretary of State must serve notice on the person that he has received a request for consent, unless it would not be practicable to do so (*subsection (3)*).

371. The Secretary of State must decide whether the offence is an extradition offence within the meaning of section 64 (*subsection (4)*). If he decides that it is the Secretary of State must decide if the appropriate judge would order extradition under sections 11 to 25 if the person were in the United Kingdom (*subsection (6)*). If the Secretary of State decides that the offence is not an extradition offence, or that the judge would not order extradition, then consent must be refused (*subsections (5) and (8)*). If the Secretary of State is satisfied that the offence is an extradition offence and that the judge would order extradition, then consent may be given (*subsection (7)*).

### ***Section 132: Return of person to serve remainder of sentence***

372. This section applies where a person who was serving a custodial sentence in the United Kingdom is extradited and then returned to this country to serve the rest of his United Kingdom sentence (*subsection (1)*). In this situation the person is liable to be detained to serve the sentence and, if he is at large, he is to be treated as being unlawfully at large (*subsections (2) and (3)*).
373. Time spent out of the United Kingdom in connection with the person's extradition does not count as time served towards his sentence in the United Kingdom (*subsection (4)*), unless he is acquitted of the extradition offences or any other offences in respect of which he was allowed to be dealt with in the requesting territory (*subsection (5)*). In this situation, as set out in *subsection (6)*, time spent in custody outside the United Kingdom, in connection with these offences, does count as time served for the purpose of the United Kingdom sentence.

### ***Section 133: Costs where extradition ordered***

374. This section allows for an order for costs to be made against a person who unsuccessfully challenges proceedings held under this Part of the Act. This is based on section 18 of the Prosecution of Offences Act 1985, which allows a court in a criminal case to make an award of costs against the accused.
375. *Subsection (1)* states that this section applies when any of these occur:
- a person's extradition is ordered in pursuance of a category 2 extradition request;
  - the High Court dismisses a person's appeal against an order for his extradition (brought under section 103 or 108);
  - the High Court or House of Lords refuses a person leave to appeal a decision of the High Court under section 114;
  - the House of Lords dismisses a person's appeal under section 114.
376. In each of the above cases the relevant judge or court has the power to make an order for the person to pay costs that he/it considers just and reasonable (*subsections (2) to (5)*). Such an order for costs must specify the amount to be paid and may also include the name of the person to whom the costs are to be paid (*subsection (6)*).

### ***Section 134: Costs where discharge ordered***

377. This section allows an order for costs to be made in favour of a person who is discharged or taken to be discharged under this Part of the Act.
378. *Subsection (1)* states that this section applies when any of these occur:
- a person's discharge is ordered under Part 2;
  - a person is taken to be discharged under this Part;

*These notes refer to the Extradition Act 2003 (c.41)  
which received Royal Assent on 20th November 2003*

- the High Court dismisses an appeal against an order for a person's discharge (brought under section 105 or 110);
- the High Court or House of Lords refuses the requesting territory leave to appeal a decision of the High Court under section 114;
- the House of Lords dismisses the appeal of the requesting territory under section 114.

379. In each of the above cases the relevant judge or court has the power to make an order for costs in the discharged person's favour (*subsections (2) to (4)*). *Subsection (5)* provides for such an order to be an order for payment of an amount to be made out of money provided by Parliament. The amount is that which the relevant judge or court thinks is reasonably sufficient to compensate the person in question for any expenses incurred as a result of the extradition proceedings under this Part of the Act (*subsection (6)*).

380. *Subsection (7)* allows the relevant judge or court to come to a different decision where he or it considers it inappropriate for the person to recover the full amount under *subsection (6)*. In this situation the judge or court is required to assess the amount considered to be just and reasonable and specify that as the appropriate amount in the order. Under *subsection (8)*, the appropriate amount must be specified in the order, where it is considered appropriate to do so and the discharged person agrees the amount. If this is not the case, then the amount must be calculated in accordance with regulations made by the Lord Chancellor.

### ***Section 135: Costs where discharge ordered: supplementary***

381. *Subsections (1) and (2)* of this section mean that section 20(1) and (3) of the Prosecution of Offences Act 1985 apply to section 132 in the same way as they apply in relation to Part 2 of that Act. In Northern Ireland (*subsection (3)*) the relevant provision is section 7 of the Costs in Criminal Cases Act (Northern Ireland) 1968, which applies to section 132 as it does to sections 2 to 5 of that Act.

### ***Section 136: Persons serving sentences outside territory where convicted***

382. This section applies when an extradition request is made in relation to a person who has been convicted of an offence in one territory (the convicting territory), is repatriated to another territory (the imprisoning territory) under an international arrangement to serve his sentence, and is unlawfully at large from a prison in that other territory (*subsections (1) and (2)*).

383. *Subsections (3) and (4)* modify the application of the relevant sections in this Part of the Act to allow extradition of a person in these circumstances, where the request is made either by the convicting territory or by the imprisoning territory.

### ***Section 137: Extradition offences: person not sentenced for offence***

384. This section defines the different types of conduct that constitute an extradition offence in respect of category 2 territories, but only in cases where the person is accused or convicted of the offence in the category 2 territory but has not yet sentenced (*subsection (1)*). (Section 138 addresses cases where the person has been sentenced.)

385. Conduct is an extradition offence if certain conditions are met (*subsection (2)*). These are that:

- the conduct occurs in the category 2 territory;
- the conduct would amount to an offence punishable with detention for a period of 12 months or more if it occurred in the United Kingdom;
- it is similarly punishable under the law of the requesting category 2 territory.

386. *Subsections (3) to (5)* allow a category 2 territory to request extradition for offences over which it claims extra-territorial jurisdiction. Extra-territorial jurisdiction is where a country claims jurisdiction (and therefore the right to prosecute) even though the conduct did not take place on its soil. Conduct is therefore an extradition offence if (subsection (3)):
- the conduct occurs outside the category 2 territory;
  - it is punishable under the law of the category 2 territory with a custodial sentence of 12 months or more;
  - in corresponding circumstances the equivalent conduct would constitute an extra-territorial offence against the law of the United Kingdom punishable with a custodial sentence of 12 months or more.
387. Under subsection (4) conduct is also an extradition offence if:
- the conduct occurs outside the category 2 territory and no part of it occurs in the United Kingdom;
  - the conduct would amount to an offence punishable with detention for 12 months or more if it occurred in the United Kingdom;
  - it is similarly punishable under the law of the category 2 territory.
388. Subsection (5) states that conduct also constitutes an extradition offence if:
- the conduct occurs outside the category 2 territory and no part of it occurs in the United Kingdom;
  - it is punishable under the law of the category 2 territory with detention for a term of 12 months or more;
  - the conduct constitutes an offence mentioned in *subsection (6)*.
389. The offences in subsection (6) are those covered by sections 51, 52, 58 and 59 of the International Criminal Court Act 2001 relating to genocide, crimes against humanity and war crimes, and ancillary offences under section 55 or 62 of that Act. For Scotland the relevant corresponding offences are those covered by sections 1 and 2 of the International Criminal Court (Scotland) Act 2001 and ancillary offences under section 7 of that Act.
390. *Subsection (7)* provides that if conduct constitutes an offence under the military law of a category 2 territory but not an offence under the general criminal law of the United Kingdom, it does not amount to an extradition offence within the definitions given in this section. Where there is reference to the relevant part of the United Kingdom this means the part of the United Kingdom where the extradition proceedings have taken place, or are taking place, as appropriate (*subsection (8)*).

***Section 138: Extradition offences: person sentenced for offence***

391. This section defines the different types of conduct that constitute an extradition offence in respect of category 2 territories in cases where the person has been convicted and sentenced for the offence (*subsection (1)*).
392. Under *subsection (2)* conduct constitutes an extradition offence if the following conditions are met:
- the conduct occurs in the category 2 territory;
  - the conduct would constitute an offence punishable with imprisonment for a period of 12 months or more if it occurred in the United Kingdom; and

*These notes refer to the Extradition Act 2003 (c.41)  
which received Royal Assent on 20th November 2003*

- a sentence of detention for 4 months or more has been imposed in the category 2 territory.
393. Conduct also constitutes an extradition offence if (*subsection (3)*):
- the conduct occurs outside the category 2 territory;
  - a custodial sentence of 4 months or more has been imposed in that territory for the conduct;
  - in corresponding circumstances the conduct would constitute an extra-territorial offence punishable with imprisonment for a period of 12 months or more under the law of this country.
394. Under *subsection (4)* conduct would also constitute an extradition offence if:
- it occurs outside the category 2 territory and no part of it occurs in the United Kingdom;
  - the conduct would constitute an offence punishable with imprisonment for a period of 12 months or more under the law of this country if it had occurred here;
  - a sentence of detention for 4 months or more has been imposed for the conduct in the category 2 territory.
395. Under *subsection (5)* conduct would also constitute an extradition offence if:
- the conduct occurs outside the category 2 territory and no part of it occurs in the United Kingdom;
  - a sentence of detention for 4 months or more has been imposed for the conduct in the category 2 territory;
  - the conduct constitutes or would constitute an offence in the United Kingdom mentioned in *subsection (6)*.
396. The offences in subsection (6) are those covered by sections 51, 52, 58 and 59 of the International Criminal Court Act 2001 relating to genocide, crimes against humanity and war crimes, and ancillary offences under section 55 or 62 of that Act. For Scotland the relevant corresponding offences are those covered by sections 1 and 2 of the International Criminal Court (Scotland) Act 2001 and ancillary offences under section 7 of that Act.
397. *Subsection (7)* provides that if conduct constitutes an offence under the military law of a category 2 territory but not an offence under the general criminal law of the United Kingdom, it does not amount to an extradition offence within the definitions given in this section. Where there is reference to the relevant part of the United Kingdom this means the part of the United Kingdom where the extradition proceedings have taken place, or are taking place, as appropriate (*subsection (8)*).

### ***Section 139: The appropriate judge***

398. This section defines who is the appropriate judge for hearing extradition cases under this Part of the Act.
399. *Subsection (1)* defines the appropriate judge in England and Wales, Scotland and Northern Ireland. *Subsections (2)* and *(3)* allow the Lord Chancellor to make one or more designations under subsection (1), for all cases or for specific cases.

### ***Section 140: The extradition hearing***

400. The extradition hearing is defined as the hearing at which the judge is required to deal with a request for extradition to a category 2 territory.

***Section 141: Scotland: references to Secretary of State***

401. This section applies to all references in this Part of the Act to the Secretary of State. Where any provision in this Part is being used solely in Scotland, a reference to the Secretary of State should be taken to mean the Scottish Ministers (*subsection (1)*). Where, for example, there are two competing extradition requests in Scotland, this section would apply. However, where there are two competing extradition requests in different parts of the United Kingdom, this would not apply. *Subsection (2)* gives the exceptions to this rule, which are in section 83(3) (hostage-taking considerations), section 101(5) (making of order for extradition or discharge) and section 121 (where asylum claimed).