

# EXTRADITION ACT 2003

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## EXPLANATORY NOTES

### TERRITORIAL APPLICATION: WALES

#### Part 3

#### Extradition to the United Kingdom

#### *Section 142: Issue of Part 3 warrant*

402. This section provides for the issue of an arrest warrant to form the basis of extradition to the United Kingdom from a category 1 territory.
403. The appropriate judge (this term is defined for this Part in section 149 below) has the power to issue this warrant, on the application of a police constable or other appropriate person, if the condition in *subsection (2)* is met. (An appropriate person is someone who has been given authority to perform this role by the Secretary of State (*subsection (9)*). The Secretary of State designates such persons by statutory instrument subject to the affirmative resolution procedure in both Houses of Parliament (see section 223). *Subsection (10)* states that subsection (1) applies to Scotland but with the modification that it is only a procurator fiscal who can apply for a Part 3 warrant.) A domestic warrant must have been issued in this country for the arrest of the person in question. There must also be grounds to believe that the person has committed an extradition offence or is unlawfully at large after having been convicted of an extradition offence in this country.
404. *Subsection (3)* defines a Part 3 warrant as one that contains the necessary statement and certificate. The statement must confirm:
- that the person is accused in this country of a specified extradition offence and that the warrant is issued for the purpose of his arrest, extradition and prosecution (*subsection (4)*); or
  - that the person is alleged to be unlawfully at large, having been convicted of a specified extradition offence in the United Kingdom, and that the warrant is issued for the purpose of his arrest, extradition and sentencing or serving a sentence (*subsection (5)*).
405. *Subsection (6)* provides that the certificate must certify:
- whether the conduct amounting to the specified extradition offence falls within the European framework list;
  - whether the offence is an extra-territorial offence;
  - what is the maximum punishment that could be imposed if the person is convicted or, if the person has been sentenced, what sentence was imposed.
406. *Subsection (7)* ensures that conduct falling within the European framework list includes associated offences. This covers any aiding, abetting, counselling or procuring such conduct or an attempt, conspiracy or incitement to commit such conduct.

407. *Subsection (8)* provides that a domestic warrant is an arrest warrant issued under any of the provisions listed. This covers warrants routinely issued in criminal proceedings in the United Kingdom.

***Section 143: Undertaking in relation to person serving sentence***

408. This section concerns the situation where a person, in respect of whom a Part 3 warrant is issued, is already serving a custodial sentence in the category 1 territory to which the warrant is sent. In these circumstances the person's extradition to the United Kingdom may be made subject to conditions relating to the treatment of the person whilst in the United Kingdom and/or that person's return to the category 1 territory (*subsection (1)*).
409. Under *subsection (2)* the Secretary of State can give an undertaking regarding the treatment in the United Kingdom and/or return to the category 1 territory of the person named on the warrant. The terms of such an undertaking could include that the person is kept in custody in this country until all proceedings have finished and that he is returned to serve the remainder of the sentence in the category 1 territory on conclusion of the proceedings here (*subsection (3)*).
410. *Subsection (4)* covers the situation where a person's extradition is sought in a conviction case. Where the person's extradition is sought in order for him to serve the remainder of a custodial sentence in the United Kingdom, an undertaking can still be given under this section. This could include terms that the person will be returned to the category 1 territory (to serve the rest of his domestic sentence there) after he has served the remainder of the sentence here for the United Kingdom offence.
411. For the purposes of this section, where the Part 3 warrant was issued by a sheriff, references to the Secretary of State are to be read as references to the Scottish Ministers (*subsection (5)*).

***Section 144: Return to extraditing territory to serve sentence***

412. This section concerns the return of a person convicted in the United Kingdom to the extraditing territory to serve his sentence there. *Subsection (1)* provides that the section applies in the following circumstances. The person must have been extradited to the United Kingdom from a category 1 territory on the basis of a Part 3 warrant, for the purposes of being prosecuted. His extradition must have been on the condition that, if convicted and sentenced to a term of detention, he will be returned to the extraditing country to serve the custodial sentence imposed here. The person must have been convicted and a sentence of detention imposed.
413. Under *subsection (2)* the person must be returned to the extraditing country as soon as is reasonably practicable. If he is returned in this way his sentence is taken to have been remitted but the conviction stands for all other purposes (*subsection (3)*). If the person is not returned as required, the judge must, on the person's application, order his discharge, unless reasonable cause can be shown for the delay (*subsection (4)*).

***Section 145: Service of sentence in territory executing Part 3 warrant***

414. This section enables a person who is the subject of a Part 3 warrant issued on the basis of a conviction and sentence to serve his sentence in a category 1 territory in place of extradition to the United Kingdom. The section applies where (*subsection (1)*) a Part 3 warrant has been issued on the basis of the person's conviction and sentence, an undertaking is given by a category 1 territory that he will be required to serve his sentence there and, on that basis, he is not extradited to the United Kingdom. In this case the person's sentence is taken to have been remitted but the conviction stands for all other purposes (*subsection (2)*).

***Section 146: Dealing with person for other offences***

415. This section sets out the speciality arrangements for dealing with a person for offences committed before his extradition to the United Kingdom from a category 1 territory.
416. *Subsection (2)* provides that a person may be dealt with for an offence committed before his extradition only if the offence falls within *subsection (3)* or the condition in *subsection (4)* is met. Under *subsection (3)* the offence must be:
- the offence in respect of which the person was extradited;
  - an offence disclosed by the information provided to the category 1 territory in respect of the extradition offence;
  - an extradition offence in respect of which the relevant authority of the category 1 territory has consented to the person being dealt with in the United Kingdom;
  - an offence which is not punishable with any form of detention;
  - an offence in respect of which the person will not be detained at any time; or
  - an offence in respect of which the person waives the right not to be dealt with.
417. The condition in *subsection (4)* is that the person has had the opportunity to leave the United Kingdom and he has either failed to do so within 45 days of his arrival in the United Kingdom or he has left the United Kingdom and then returned.

***Section 147: Effect of consent to extradition to the United Kingdom***

418. This section applies where a person is extradited to the United Kingdom under a Part 3 warrant with his consent. The speciality protection in *section 146(2)* does not apply if the conditions in *subsection (3)* or the conditions in *subsection (4)* are met (*subsection (2)*).
419. The conditions in *subsection (3)* are that the effect of the person's consent under the law of the category 1 territory is that he waives his right to the speciality protection given in *section 146(2)* and he has not revoked that consent (if permitted to do so under the law of that country).
420. Alternatively (*subsection (4)*), where the effect of his consent to extradition is not to waive his speciality rights, the person must have expressly waived his speciality rights under the law of that country. Additionally, he must not have revoked either his consent to extradition or the waiver of his speciality rights, if the law of that country so allows.

***Section 148: Extradition offences***

421. This section defines an extradition offence for the purposes of *sections 142 to 147 (subsection (8))*.
422. Conduct constitutes an extradition offence if it occurs in the United Kingdom and is punishable here with detention of 12 months or more (*subsection (1)*). If the conduct occurs outside this country it will still amount to an extradition offence if it constitutes an extra-territorial offence and is punishable in the same way (*subsection (2)*).
423. However, *subsections (1) and (2)* do not apply in cases where the person is unlawfully at large after conviction and has been sentenced (*subsection (3)*). In this situation, where the conduct occurred in this country, a sentence of detention for a period of 4 months or more must have been imposed (*subsection (4)*). Where the conduct occurred outside the United Kingdom, it must amount to an extra-territorial offence and the same minimum sentence requirement applies (*subsection (5)*).

424. Where there is reference to the relevant part of the United Kingdom this means the part of the United Kingdom where the proceedings (in which the question arises of whether conduct is an extradition offence) are taking place (*subsections (6) and (7)*).

***Section 149: The appropriate judge***

425. This section defines who is the appropriate judge, for the purposes of sections 142 to 147, in England and Wales, Scotland and Northern Ireland.

***Section 150: Dealing with person for other offences: Commonwealth countries etc.***

426. This section applies where a person is extradited to the United Kingdom from a category 2 territory that is a Commonwealth country, a British overseas territory or the Hong Kong Special Administrative Region.

427. *Subsection (2)* provides that a person may be dealt with for an offence committed before his extradition only if the offence falls within *subsection (3)* or the condition in *subsection (6)* is met. The *subsection (3)* offences are:

- the offence in respect of which the person was extradited;
- a lesser offence disclosed by information provided to the category 2 territory in respect of that offence; or
- an offence in respect of which the relevant authority of the category 2 territory has consented to the person being dealt with in the United Kingdom.

428. A lesser offence is one that carries a maximum punishment that is less severe than the maximum punishment for the extradition offence (*subsection (4)*).

429. The relevant authority is defined at *subsection (5)* as the:

- government of a Commonwealth Country;
- person administering a British overseas territory; or
- government of the Hong Kong Special Administrative Region.

430. A person may also be dealt with for offences committed before his extradition to the United Kingdom if the protected period of 45 days has ended (*subsections (6) and (7)*). The protected period starts on the first day after extradition that the person is given the opportunity to leave the United Kingdom.

431. *Subsection (8)* explains that a person is dealt with in the United Kingdom if he is tried or detained with a view to trial in this country in respect of the offence in question.

***Section 151: Dealing with person for other offences: other category 2 territories***

432. This section applies where a person is extradited to the United Kingdom from a category 2 territory not covered by section 150 above.

433. The provisions of this section are similar to those in section 150. The differences are that the person may be dealt with for an offence disclosed by the information provided to the category 2 territory even if it is not a lesser offence. In addition, there is no 45-day protected period. Instead the person must either have returned to the territory from which he was extradited or been given the opportunity to leave the United Kingdom (*Subsection (4)*).

***Section 152: Remission of punishment for other offences***

434. This section applies to a person who has been convicted of an offence in the United Kingdom prior to his extradition but this is not the offence for which he has been

extradited to the United Kingdom. Any punishment for the offence must be treated as remitted, although the conviction must be treated as a conviction for all other purposes.

***Section 153: Return of person acquitted or not tried***

435. This section applies to a person who is accused of an offence in the United Kingdom, is extradited from a category 1 or 2 territory to stand trial and the conditions in either *subsection (2)* or *subsection (3)* are met. The conditions in subsection (2) are that the proceedings have not started within six months of the person's return to the United Kingdom and that, within a further three months, the person asks the Secretary of State to return him to the extraditing territory. The conditions in subsection (3) are that the person is acquitted at his trial and that, within three months of the acquittal, the person asks the Secretary of State to return him to the extraditing territory.
436. If these conditions are met then the Secretary of State is required to arrange for his return to the extraditing territory free of charge and as soon as possible (*subsection (5)*). If the case relates to an offence in Scotland the requirement in subsection (5) applies to the Scottish Ministers (*subsection (6)*).

***Section 154: Restrictions on bail where undertaking given by Secretary of State***

437. This section applies where the Secretary of State has given an undertaking, in connection with a person's extradition, which includes terms that the person be kept in custody in the United Kingdom. In this situation a judge or court may only grant the person bail where he/it considers that there are exceptional circumstances to justify doing so.

***Section 155: Service personnel***

438. This section allows the Secretary of State to make an order applying this Part of the Act, with any modification as required, to an extradition case concerning a person subject to the law of the services.