



# Extradition Act 2003

## 2003 CHAPTER 41

### PART 2

#### EXTRADITION TO CATEGORY 2 TERRITORIES

##### *The extradition hearing*

###### **Commencement Information**

- II** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103, art. 2](#) (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258](#) art. 2(2) and [S.I. 2003/3312](#) art. 2(2))

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

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

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Cross Heading: The extradition hearing. (See end of Document for details)*

#### Commencement Information

- I2** Act wholly in force at 1.1.2004, see s. 221 and S.I. 2003/3103, **art. 2** (subject to **arts. 3-5**) (as amended by S.I. 2003/3258 art. 2(2) and S.I. 2003/3312 art. 2(2))

### 76 Date of extradition hearing: arrest under provisional warrant [<sup>F1</sup>or under section 74A]

- (1) Subsection (2) applies if—
- (a) a person is arrested under a provisional warrant [<sup>F2</sup>or under section 74A], and
  - (b) the documents referred to in section 70(9) are received by the appropriate judge within the period required under section 74(10) [<sup>F3</sup>or 74E(4)].
- (2) The judge must fix a date on which the extradition hearing is to begin.
- (3) The date fixed under subsection (2) must not be later than the end of the permitted period, which is 2 months starting with the date on which the judge receives the documents.
- (4) If before the date fixed under subsection (2) (or this subsection) a party to the proceedings applies to the judge for a later date to be fixed and the judge believes it to be in the interests of justice to do so, he may fix a later date; and this subsection may apply more than once.
- (5) If the extradition hearing does not begin on or before the date fixed under this section and the person applies to the judge to be discharged, the judge must order his discharge.

#### Textual Amendments

- F1** Words in s. 76 heading inserted (31.12.2020) by Extradition (Provisional Arrest) Act 2020 (c. 18), s. 2(4), **Sch. para. 11(2)**; S.I. 2020/1652, reg. 2(1)(b)
- F2** Words in s. 76(1)(a) inserted (31.12.2020) by Extradition (Provisional Arrest) Act 2020 (c. 18), s. 2(4), **Sch. para. 11(3)(a)**; S.I. 2020/1652, reg. 2(1)(b)
- F3** Words in s. 76(1)(b) inserted (31.12.2020) by Extradition (Provisional Arrest) Act 2020 (c. 18), s. 2(4), **Sch. para. 11(3)(b)**; S.I. 2020/1652, reg. 2(1)(b)

#### Commencement Information

- I3** Act wholly in force at 1.1.2004, see s. 221 and S.I. 2003/3103, **art. 2** (subject to **arts. 3-5**) (as amended by S.I. 2003/3258 art. 2(2) and S.I. 2003/3312 art. 2(2))

### [<sup>F4</sup>76A Person charged with offence in United Kingdom before extradition hearing

- (1) This section applies if—
- (a) a person has been brought before the appropriate judge under section 72(3) [<sup>F5</sup>, 74(3) or 74A(3)] but the extradition hearing has not begun; and
  - (b) the judge is informed that the person is charged with an offence in the United Kingdom.
- (2) The judge must order further proceedings in respect of the extradition to be adjourned until one of these occurs—
- (a) the charge is disposed of;

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

#### Textual Amendments

- F4** Ss. 76A, 76B inserted (25.1.2010) by [Policing and Crime Act 2009 \(c. 26\)](#), **ss. 70, 116**; S.I. 2009/3096, **art. 3(m)** (with **art. 4**)
- F5** Words in s. 76A(1)(a) substituted (31.12.2020) by [Extradition \(Provisional Arrest\) Act 2020 \(c. 18\)](#), s. 2(4), **Sch. para. 12**; S.I. 2020/1652, reg. 2(1)(b)

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

- C1** [S. 76A\(2\)](#) modified (10.11.2016) by [The Extradition Act 2003 \(Overseas Territories\) Order 2016 \(S.I. 2016/990\)](#), arts. 1(1), 6(3), **Sch. 3**

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

- (1) This section applies if—
- (a) a person has been brought before the appropriate judge under section 72(3) [<sup>F6</sup>, 74(3) or 74A(3)] but the extradition hearing has not begun; and
  - (b) the judge is informed that the person is in custody serving a sentence of imprisonment or another form of detention in the United Kingdom.
- (2) The judge may order further proceedings in respect of the extradition to be adjourned until the person is released from detention pursuant to the sentence (whether on licence or otherwise).
- (3) In a case where further proceedings in respect of the extradition are adjourned under subsection (2)—
- (a) section 131 of the Magistrates' Courts Act 1980 (remand of accused already in custody) has effect as if a reference to 28 clear days in subsection (1) or (2) of that section were a reference to six months;
  - (b) Article 47(2) of the Magistrates' Courts (Northern Ireland) Order 1981 (period of remand in custody) has effect as if a reference to 28 days in—
    - (i) sub-paragraph (a)(iii), or
    - (ii) the words after sub-paragraph (b),were a reference to six months.]

#### Textual Amendments

- F4** Ss. 76A, 76B inserted (25.1.2010) by [Policing and Crime Act 2009 \(c. 26\)](#), **ss. 70, 116**; S.I. 2009/3096, **art. 3(m)** (with **art. 4**)
- F6** Words in s. 76B(1)(a) substituted (31.12.2020) by [Extradition \(Provisional Arrest\) Act 2020 \(c. 18\)](#), s. 2(4), **Sch. para. 13**; S.I. 2020/1652, reg. 2(1)(b)

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## 77 Judge's powers at extradition hearing

- (1) In England and Wales, at the extradition hearing the appropriate judge has the same powers (as nearly as may be) as a magistrates' court would have if the proceedings were the summary trial of an information against the person whose extradition is requested.
- (2) In Scotland—
  - (a) at the extradition hearing the appropriate judge has the same powers (as nearly as may be) as if the proceedings were summary proceedings in respect of an offence alleged to have been committed by the person whose extradition is requested; but
  - (b) in his making any decision under section 78(4)(a) evidence from a single source shall be sufficient.
- (3) In Northern Ireland, at the extradition hearing the appropriate judge has the same powers (as nearly as may be) as a magistrates' court would have if the proceedings were the hearing and determination of a complaint against the person whose extradition is requested.
- (4) If the judge adjourns the extradition hearing he must remand the person in custody or on bail.
- (5) [<sup>F7</sup>If the person is remanded in custody, the appropriate judge may]<sup>F7</sup> later grant bail.

### Textual Amendments

**F7** Words in s. 77(5) substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 16](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)

### Modifications etc. (not altering text)

**C2** [S. 77\(1\)](#) modified (10.11.2016) by [The Extradition Act 2003 \(Overseas Territories\) Order 2016 \(S.I. 2016/990\)](#), arts. 1(1), 6(2), [Sch. 3](#)

### Commencement Information

**I4** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103](#), [art. 2](#) (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258](#) art. 2(2) and [S.I. 2003/3312](#) art. 2(2))

## 78 Initial stages of extradition hearing

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

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- (3) If the judge decides the question in subsection (2) in the negative he must order the person's discharge.
- (4) If the judge decides that question in the affirmative he must decide whether—
  - (a) the person appearing or brought before him is the person whose extradition is requested;
  - (b) the offence specified in the request is an extradition offence;
  - (c) copies of the documents sent to the judge by the Secretary of State have been served on the person.
- (5) The judge must decide the question in subsection (4)(a) on a balance of probabilities.
- (6) If the judge decides any of the questions in subsection (4) in the negative he must order the person's discharge.
- (7) If the judge decides those questions in the affirmative he must proceed under section 79.
- (8) The reference in subsection (2)(d) to a warrant for a person's arrest includes a reference to a judicial document authorising his arrest.

#### Commencement Information

- I5** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103](#), [art. 2](#) (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258](#) art. 2(2) and [S.I. 2003/3312](#) art. 2(2))

## 79 Bars to extradition

- (1) If the judge is required to proceed under this section he must decide whether the person's extradition to the category 2 territory is barred by reason of—
  - (a) the rule against double jeopardy;
  - (b) extraneous considerations;
  - (c) the passage of time;
  - (d) hostage-taking considerations.

[<sup>F8</sup>(e) forum.]

[<sup>F9</sup>(1A) But the judge is to decide whether the person's extradition is barred by reason of forum only in a case where the request for extradition contains the statement referred to in section 70(4) (warrant issued for purposes of prosecution for offence in category 2 territory).]

- (2) [<sup>F10</sup>Sections 80 to 83E] apply for the interpretation of subsection (1).
- (3) If the judge decides any of the questions in subsection (1) in the affirmative he must order the person's discharge.
- (4) If the judge decides those questions in the negative and the person is accused of the commission of the extradition offence but is not alleged to be unlawfully at large after conviction of it, the judge must proceed under section 84.
- (5) If the judge decides those questions in the negative and the person is alleged to be unlawfully at large after conviction of the extradition offence, the judge must proceed under section 85.

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#### Textual Amendments

- F8** S. 79(1)(e) inserted (14.10.2013 for E.W.N.I.) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 5\(a\)](#) (with [Sch. 20 para. 78](#)); [S.I. 2013/2349](#), art. 2(3)
- F9** S. 79(1A) inserted (14.10.2013 for E.W.N.I.) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 5\(b\)](#) (with [Sch. 20 para. 78](#)); [S.I. 2013/2349](#), art. 2(3)
- F10** Words in s. 79(2) substituted (14.10.2013 for E.W.N.I.) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 5\(c\)](#) (with [Sch. 20 para. 78](#)); [S.I. 2013/2349](#), art. 2(3)

#### Commencement Information

- I6** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103](#), [art. 2](#) (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258](#) art. 2(2) and [S.I. 2003/3312](#) art. 2(2))

### 80 Rule against double jeopardy

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

#### Commencement Information

- I7** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103](#), [art. 2](#) (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258](#) art. 2(2) and [S.I. 2003/3312](#) art. 2(2))

### 81 Extraneous considerations

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

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

#### Commencement Information

- I8** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103](#), [art. 2](#) (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258](#) art. 2(2) and [S.I. 2003/3312](#) art. 2(2))

### 82 Passage of time

A person's extradition to a category 2 territory is barred by reason of the passage of time if (and only if) it appears that it would be unjust or oppressive to extradite him by reason of the passage of time <sup>[F11]</sup> since he is alleged to have—

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

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- (b) become unlawfully at large (where he is alleged to have been convicted of it)]  
F11

#### Textual Amendments

**F11** Words in s. 82 substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\), ss. 42, 53, Sch. 13 para. 2\(3\)](#); [S.I. 2006/3364, art. 2\(d\)\(e\)](#)

#### Commencement Information

**I9** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103, art. 2](#) (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258 art. 2\(2\)](#) and [S.I. 2003/3312 art. 2\(2\)](#))

### 83 Hostage-taking considerations

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

#### Commencement Information

**I10** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103, art. 2](#) (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258 art. 2\(2\)](#) and [S.I. 2003/3312 art. 2\(2\)](#))

### [<sup>F12</sup>83A Forum

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



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

#### **Textual Amendments**

**F12** Ss. 83A-83E inserted (18.9.2013 for specified purposes, 14.10.2013 for E.W.N.I. in so far as not already in force) by **Crime and Courts Act 2013 (c. 22)**, s. 61(2), **Sch. 20 para. 6** (with **Sch. 20 para. 78**); **S.I. 2013/2349**, art. 2(2)(3)

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

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



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

#### Textual Amendments

**F12** Ss. 83A-83E inserted (18.9.2013 for specified purposes, 14.10.2013 for E.W.N.I. in so far as not already in force) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 6](#) (with [Sch. 20 para. 78](#)); [S.I. 2013/2349](#), art. 2(2)(3)

### 83C Prosecutor's certificates

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

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

#### **Textual Amendments**

**F12** Ss. 83A-83E inserted (18.9.2013 for specified purposes, 14.10.2013 for E.W.N.I. in so far as not already in force) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 6](#) (with [Sch. 20 para. 78](#)); [S.I. 2013/2349](#), art. 2(2)(3)

### **83D Questioning of prosecutor's certificate**

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

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Cross Heading: The extradition hearing. (See end of Document for details)*

### Textual Amendments

**F12** Ss. 83A-83E inserted (18.9.2013 for specified purposes, 14.10.2013 for E.W.N.I. in so far as not already in force) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 6](#) (with [Sch. 20 para. 78](#)); S.I. 2013/2349, art. 2(2)(3)

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

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

### Textual Amendments

**F12** Ss. 83A-83E inserted (18.9.2013 for specified purposes, 14.10.2013 for E.W.N.I. in so far as not already in force) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 6](#) (with [Sch. 20 para. 78](#)); S.I. 2013/2349, art. 2(2)(3)

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*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Cross Heading: The extradition hearing. (See end of Document for details)*

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

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

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Cross Heading: The extradition hearing. (See end of Document for details)*

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

- C3** S. 84(1) modified (10.11.2016) by [The Extradition Act 2003 \(Overseas Territories\) Order 2016 \(S.I. 2016/990\)](#), arts. 1(1), 6(2), [Sch. 3](#)

**Commencement Information**

- I11** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103](#), [art. 2](#) (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258](#) art. 2(2) and [S.I. 2003/3312](#) art. 2(2))

**85 Case where person has been convicted**

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

**Commencement Information**

- I12** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103](#), [art. 2](#) (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258](#) art. 2(2) and [S.I. 2003/3312](#) art. 2(2))

**86 Conviction in person's absence**

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

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*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Cross Heading: The extradition hearing. (See end of Document for details)*

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

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

- C4** S. 86(1) modified (10.11.2016) by [The Extradition Act 2003 \(Overseas Territories\) Order 2016 \(S.I. 2016/990\)](#), arts. 1(1), 6(2), **Sch. 3**

**Changes to legislation:** There are currently no known outstanding effects for the Extradition Act 2003, Cross Heading: The extradition hearing. (See end of Document for details)

#### Commencement Information

**I13** Act wholly in force at 1.1.2004, see s. 221 and S.I. 2003/3103, art. 2 (subject to arts. 3-5) (as amended by S.I. 2003/3258 art. 2(2) and S.I. 2003/3312 art. 2(2))

### 87 Human rights

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

#### Commencement Information

**I14** Act wholly in force at 1.1.2004, see s. 221 and S.I. 2003/3103, art. 2 (subject to arts. 3-5) (as amended by S.I. 2003/3258 art. 2(2) and S.I. 2003/3312 art. 2(2))

### 88 Person charged with offence in United Kingdom

- (1) This section applies if at any time in the extradition hearing the judge is informed that the person is charged with an offence in the United Kingdom.
- (2) The judge must adjourn the extradition hearing until one of these occurs—
  - (a) the charge is disposed of;
  - (b) the charge is withdrawn;
  - (c) proceedings in respect of the charge are discontinued;
  - (d) an order is made for the charge to lie on the file, or in relation to Scotland, the diet is deserted *pro loco et tempore*.
- (3) If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the judge may adjourn the extradition hearing until [F13 the person is released from detention pursuant to the sentence (whether on licence or otherwise)]<sup>F13</sup>.
- (4) If before he adjourns the extradition hearing under subsection (2) the judge has decided under section 79 whether the person's extradition is barred by reason of the rule against double jeopardy, the judge must decide that question again after the resumption of the hearing.

#### Textual Amendments

**F13** Words in s. 88(3) substituted (25.1.2010) by Policing and Crime Act 2009 (c. 26), ss. 71(4), 116; S.I. 2009/3096, art. 3(n) (with art. 4)

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

**C5** S. 88(2) modified (10.11.2016) by The Extradition Act 2003 (Overseas Territories) Order 2016 (S.I. 2016/990), arts. 1(1), 6(3), Sch. 3



*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Cross Heading: The extradition hearing. (See end of Document for details)*

#### Commencement Information

**I15** Act wholly in force at 1.1.2004, see s. 221 and S.I. 2003/3103, **art. 2** (subject to **arts. 3-5**) (as amended by S.I. 2003/3258 art. 2(2) and S.I. 2003/3312 art. 2(2))

### 89 Person serving sentence in United Kingdom

- (1) This section applies if at any time in the extradition hearing the judge is informed that the person is [<sup>F14</sup>in custody]<sup>F14</sup> serving a sentence of imprisonment or another form of detention in the United Kingdom.
- (2) The judge may adjourn the extradition hearing until [<sup>F15</sup>the person is released from detention pursuant to the sentence (whether on licence or otherwise)]<sup>F15</sup>.
- [<sup>F16</sup>(3) In a case where an extradition hearing is adjourned under subsection (2)—
  - (a) section 131 of the Magistrates' Courts Act 1980 (remand of accused already in custody) has effect as if a reference to 28 clear days in subsection (1) or (2) of that section were a reference to six months;
  - (b) Article 47(2) of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (period of remand in custody) has effect as if a reference to 28 days in—
    - (i) paragraph (a)(iii), or
    - (ii) the words after paragraph (b),
 were a reference to six months.]<sup>F16</sup>

#### Textual Amendments

- F14** Words in s. 89(1) inserted (25.1.2010) by Policing and Crime Act 2009 (c. 26), **ss. 71(5)(a)**, 116; S.I. 2009/3096, **art. 3(n)** (with art. 4)
- F15** Words in s. 89(2) substituted (25.1.2010) by Policing and Crime Act 2009 (c. 26), **ss. 71(5)(b)**, 116; S.I. 2009/3096, **art. 3(n)** (with art. 4)
- F16** S. 89(3) inserted (15.1.2007) by Police and Justice Act 2006 (c. 48), **ss. 42, 53, Sch. 13 para. 7**; S.I. 2006/3364, **art. 2(d)(e)**

#### Commencement Information

**I16** Act wholly in force at 1.1.2004, see s. 221 and S.I. 2003/3103, **art. 2** (subject to **arts. 3-5**) (as amended by S.I. 2003/3258 art. 2(2) and S.I. 2003/3312 art. 2(2))

### 90 Competing extradition claim

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

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Cross Heading: The extradition hearing. (See end of Document for details)*

- (3) The conditions are that—
  - (a) a certificate has been issued under section 2 in respect of a Part 1 warrant issued in respect of the person;
  - (b) the warrant has not been disposed of;
  - (c) the Secretary of State has made an order under section 179(2) for further proceedings on the request to be deferred until the warrant has been disposed of.
- (4) The judge must remand the person in custody or on bail.
- (5) [<sup>F17</sup>If the person is remanded in custody, the appropriate judge may]<sup>F17</sup> later grant bail.

#### Textual Amendments

**F17** Words in s. 90(5) substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 16](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)

#### Commencement Information

**I17** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103](#), [art. 2](#) (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258](#) art. 2(2) and [S.I. 2003/3312](#) art. 2(2))

## 91 Physical or mental condition

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

#### Commencement Information

**I18** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103](#), [art. 2](#) (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258](#) art. 2(2) and [S.I. 2003/3312](#) art. 2(2))

## 92 Case sent to Secretary of State

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

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**Changes to legislation:** There are currently no known outstanding effects for the Extradition Act 2003, Cross Heading: The extradition hearing. (See end of Document for details)

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- (4) The judge must remand the person in custody or on bail—
- (a) to wait for the Secretary of State’s decision, and
  - (b) to wait for his extradition to the territory to which extradition is requested (if the Secretary of State orders him to be extradited).
- (5) [<sup>F18</sup>If the person is remanded in custody, the appropriate judge may]<sup>F18</sup> later grant bail.

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**Textual Amendments**

**F18** Words in s. 92(5) substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 16](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)

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**Commencement Information**

**I19** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103](#), [art. 2](#) (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258](#) art. 2(2) and [S.I. 2003/3312](#) art. 2(2))

**Changes to legislation:**

There are currently no known outstanding effects for the Extradition Act 2003, Cross Heading:  
The extradition hearing.