

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

EXTRADITION ACT

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Extradition Act which received Royal Assent on 20th November 2003. They have been prepared by the Home Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. These notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.
3. Sections 157 to 160, 166 to 168, 171, 173 and 205 of the Act apply only to England, Wales and Northern Ireland. Sections 154, 198, 200 and 201 apply only to England and Wales. Sections 183 and 199 apply only to Scotland, and sections 184 and 185 apply only to Northern Ireland. All other sections of the Act apply to the whole of the United Kingdom.

SUMMARY

4. This Act reforms the law on extradition.
5. Extradition takes place when, at the request of another jurisdiction, a person accused or convicted of a serious offence is returned by the United Kingdom to that jurisdiction, or where a person is returned from another jurisdiction, at the United Kingdom's request, to stand trial or serve a custodial sentence. (This is distinct from deportation where the country in which the person is present initiates the removal process.)

BACKGROUND

6. Crime, particularly serious crime, is becoming increasingly international in nature and criminals can flee justice by crossing borders with increasing ease. Improved judicial co-operation between nations is needed to tackle this development. The reform of the United Kingdom's extradition law is designed to contribute to that process.
7. Extradition is an important tool in dealing with international crime: no one should be able to escape justice by simply crossing a border. The law should provide a quick and effective framework to extradite a person to the country where he is accused or has been convicted of a serious crime, provided that this does not breach his fundamental human rights.

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8. Current United Kingdom extradition legislation was enacted in 1989. However, the 1989 Act is essentially a consolidation of three earlier pieces of legislation: Part 1 of the Criminal Justice Act 1988, the Fugitive Offenders Act 1967 and the Extradition Act 1870 (as amended).

9. The Government set out its proposals to reform the law on extradition in a consultation document “The Law on Extradition: A Review” in March 2001. It was the outcome of an exercise started in 1997 to consider the legislative requirements of two European Union Conventions on Extradition. However, it developed into a much more extensive inquiry, following the adoption at the Tampere Special European Council in October 1999 of the principle of mutual recognition of judicial decisions by Member States of the European Union.

10. The publication of the Review followed an extensive period of consultation with officials from a number of organisations including the Crown Prosecution Service, Lord Chancellor’s Department, Bow Street Magistrates’ Court, Metropolitan Police, Foreign and Commonwealth Office and others. Its proposals, which were aimed at modernising arrangements between the United Kingdom and its extradition partners, included:

- creating a four level framework with countries being designated for each tier by way of an Order in Council;
- a simple fast track extradition procedure for Member States of the European Union;
- retention of current arrangements for non-European Union states with modifications to reduce the duplication and complexity of extradition procedures;
- a single avenue of appeal for all extradition cases; and
- accession to the 1995 and 1996 European Union Conventions on Extradition.

11. There were 22 written responses to the proposals contained in the document, seven of which requested that their responses should not be published. The remaining 15 were published on 24 October 2001. Many detailed comments were made, but overall, the majority of those that responded supported the Review’s proposals.

THE ACT

12. The Act makes provision to give effect to the proposals in the Review, although there are some changes which reflect the results of the consultation exercise and developments since the Review was published. (Accession to the 1995 and 1996 European Union Conventions on Extradition was approved by both Houses of Parliament on 19 December 2001.) The proposals in the Review have also been overtaken by progress in respect of extradition to other European Union Member States. This Act includes provisions implementing the following European Community Legislation: the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA). A Transposition Note setting out how the Government will transpose into United Kingdom law the main elements of this framework decision is available from the libraries of both Houses of Parliament, or from the Home Office:

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Extradition Act 2003 Team
Room 1021
Home Office
50 Queen Anne's Gate
London SW1H 9AT

<http://www.homeoffice.gov.uk/crimpol/oic/extradition/bill/index.html>

13. The Extradition Bill was published in draft form on 27 June 2002 and was open to public consultation until 30 September 2002. There were 11 responses to the consultation documents, nine of which were published and are available from the libraries of both Houses of Parliament, or on the Home Office website (above). (Two contributors asked for their responses not to be made public.) The Bill therefore included a number of amendments in the light of the comments received since it was published in draft.

14. The Act makes provision for new extradition procedures, the main features of which are:

- a system where each of the United Kingdom's extradition partners is in one of two categories. Each country is designated by order of the Secretary of State for a particular category. It will therefore be possible for a country to move from one category to the other when appropriate, depending on the extradition procedures that the United Kingdom negotiates with each extradition partner;
- the adoption of the Framework Decision on the European Arrest Warrant creating a fast-track extradition arrangement with Member States of the European Union and Gibraltar;
- retention of the current arrangements for extradition with non-European Union countries with important modifications to reduce duplication and complexity;
- a simplification of the rules governing the authentication of foreign documents;
- the abolition of the requirement to provide prima facie evidence in certain cases;
- a simplified single avenue of appeal for all cases.

TERRITORIAL APPLICATION: WALES

15. The Act does not affect the powers of the National Assembly for Wales.

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PART 1

EXTRADITION TO CATEGORY 1 TERRITORIES

Section 1: Extradition to category 1 territories

16. This section defines the territories that are covered by Part 1 of the Act.

17. *Subsections (1) and (2)* explain that Part 1 of the Act deals with extradition from the United Kingdom to those territories designated as category 1 territories by order made by the Secretary of State. Under *subsection (3)* a territory may not be designated as a category 1 territory if the death penalty is retained as a punishment under the general criminal law of that country.

Section 2: Part 1 warrant and certificate

18. This section sets out the arrangements for certifying a Part 1 warrant when it is received by the designated authority (defined below).

19. *Subsection (2)* defines a Part 1 warrant as an arrest warrant which has been issued by a judicial authority in the relevant category 1 country. It must contain either the statement given in *subsection (3)* and the information in *subsection (4)*, or the statement given in *subsection (5)* and the information in *subsection (6)*.

20. The *subsection (3)* statement must state that the person in question is accused in the territory issuing the warrant of the commission of a specified offence and that the warrant has been issued for the purposes of arrest and prosecution. The information required by *subsection (4)* is:

- details of the person's identity;
- details of any other warrant relating to the same offence issued in the requesting country;
- details of the circumstances surrounding the alleged commission of the offence, including the person's alleged conduct, where and when the offence allegedly took place and the applicable provision of the law in the requesting country;
- details of the sentence which could be imposed if the person is ultimately convicted of the offence.

21. The *subsection (5)* statement must state that the person is unlawfully at large after conviction of a specified offence by a court in the territory issuing the warrant, and that the warrant has been issued for the purposes of his being sentenced or serving a custodial sentence in respect of that offence. The information required by *subsection (6)* is:

- details of the person's identity;
- details of the conviction;
- details of any other warrant relating to the same offence issued in the requesting country;
- where the person has not yet been sentenced for the offence, details of the sentence which could be imposed if the person is ultimately convicted of the offence;

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- where the person has already been sentenced for the offence, details of the sentence which has been imposed.

22. *Subsection (7)* gives the designated authority power to issue a certificate if it believes that the Part 1 warrant has been issued by a judicial authority in the category 1 territory which has the function of issuing arrest warrants in that territory. *Subsection (8)* requires the certificate to state that the authority has the function referred to in subsection (7).

23. *Subsection (9)* defines the designated authority as being the authority that has been specified in an order made by the Secretary of State to perform this role. *Subsection (10)* enables more than one authority to be designated and enables an order to specify authorities for different parts of the United Kingdom. (The authorities for the United Kingdom are intended to be the National Criminal Intelligence Service and, in Scotland, the Crown Office.)

Section 3: Arrest under certified Part 1 Warrant

24. This section sets out the procedure for arrest on the basis of a certified Part 1 warrant.

25. *Subsection (2)* provides that an arrest on the basis of a Part 1 warrant can be made by a police constable or customs officer anywhere in the United Kingdom. A warrant can also be executed by a service policeman, but only if the person arrested is subject to the relevant service law, and in a place where the service policeman would have the authority to arrest the person under that law (*subsections (3), (4) and (6)*). The arresting officer need not have the warrant in his possession at the time of arrest in order to make that arrest (*subsection (5)*).

Section 4: Person arrested under Part 1 warrant

26. This section applies when a person has been arrested under the powers conferred in section 3 (*subsection (1)*).

27. *Subsection (2)* requires a copy of the warrant to be given to the arrested person as soon as is practicable after his arrest. If this requirement is not met and the person applies to the judge, the judge may order the person's discharge (*subsection (4)*).

28. *Subsection (3)* requires the arrested person to be brought before the appropriate judge (defined in section 67) as soon as practicable. If this requirement is not met and the arrested person applies to the judge, the judge must order the person's discharge (*subsection (5)*). A person is considered to be in legal custody until he is brought before the judge or discharged (*subsection (6)*).

Section 5: Provisional arrest

29. This section sets out the procedure for arrest where there are reasonable grounds to believe that a Part 1 warrant has been, or shortly will be, issued by a recognised authority in a category 1 territory.

30. *Subsection (1)* describes who may make an arrest in these circumstances. As with an arrest under section 3, a constable or a customs officer may make a provisional arrest anywhere in the United Kingdom. A service policeman may arrest a

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person who is subject to the relevant service law, in a place where he would have the authority to arrest that person under that law (*subsections (2) to (5)*).

Section 6: Person arrested under section 5

31. This section applies when a person has been arrested under the powers conferred in section 5 (*subsection (1)*).

32. *Subsection (2)* requires any person provisionally arrested to be brought, within 48 hours of arrest (*subsection (3)*), before the appropriate judge. Specific documents must also be produced to the judge within this period, being the relevant Part 1 warrant and certificate (as described in section 2) (*subsection (4)*). If this requirement is not met and the arrested person applies to the judge, the judge must order the person's discharge (*subsection (6)*).

33. Under *subsection (5)* the person must be given a copy of the Part 1 warrant as soon as practicable after his arrest. However, if this requirement is not met and the person applies to the judge, the judge may order the person's discharge under *subsection (7)*. A person is considered to be in legal custody until he is brought before the judge or discharged (*subsection (6)*).

Section 7: Identity of person arrested

34. This section requires the judge to establish that the person brought before him is the person in respect of whom the warrant was issued.

35. *Subsection (1)* explains that this section applies where a person who has been arrested, either under a Part 1 warrant or provisionally, is brought before the judge. *Subsection (2)* requires the judge to decide if the person brought before him is the person in respect of whom the warrant was issued. The judge is required to make this decision on the balance of probabilities (*subsection (3)*). If the judge decides the person brought before him is not the person in respect of whom the warrant was issued, then he must order his discharge (*subsection (4)*). If the judge decides the person brought before him is the person in respect of whom the warrant was issued, then he must proceed under the provisions of section 8 (*subsection (5)*).

36. *Subsection (6)* gives the judge the same powers (as nearly as possible) as a magistrates' court would have if the proceedings were a summary trial in England and Wales. In Scotland the judge is to have the same powers (as nearly as possible) as if the proceedings were summary proceedings (*subsection (7)*). In Northern Ireland the judge has the same powers (as nearly as possible) as a magistrates' court would have if the proceedings were the hearing and determination of a complaint (*subsection (8)*). These powers include the power to adjourn the proceedings. If the judge does adjourn the proceedings he must remand the arrested person on bail or in custody (*subsection (9)*). If he remands the person in custody he may subsequently grant him bail (*subsection (10)*).

Section 8: Remand etc.

37. This section deals with the arrangements for the remand of the arrested person and the judge's duty to inform the person of the contents of the warrant, and to explain that the person may consent to his extradition.

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38. *Subsection (1)* requires the judge to:
- fix a date for the extradition hearing. The date must be within 21 days of arrest (*subsection (4)*). This period can be extended by the judge where it is in the interests of justice (*subsection (5)*). If the hearing does not begin on or before the fixed date, and no reasonable cause is shown for the delay, then the judge must order the person's discharge (*subsections (6) to (8)*);
 - inform the person of the contents of the warrant;
 - give the person the required information about consent. This is outlined below;
 - remand the person in custody or on bail. The judge may also grant bail to a person originally remanded in custody (*subsection (2)*).
39. Under *subsection (3)* the required information about consent is:
- that the person may consent to his extradition;
 - an explanation of the effect of giving consent and the procedure that will apply (this is explained in section 45);
 - that consent must be given before the judge and is irrevocable.

Section 9: Judge's powers at extradition hearing

40. The section provides for the powers available to the judge at the extradition hearing under this Part of the Act.

41. The powers available to the judge at an extradition hearing in England & Wales are (as nearly as possible) the same as those available to a magistrates' court at a summary trial in England and Wales. In Scotland the judge has the same powers (as nearly as possible) as if the proceedings were summary proceedings; in Northern Ireland the judge has the same powers (as nearly as possible) as a magistrates' court would have in the hearing and determination of a complaint (*subsections (1) to (3)*). The judge therefore has the power to adjourn the hearing and remand a person in custody or on bail (*subsections (4) and (5)*).

Section 10: Initial stage of extradition hearing

42. This section requires the judge to consider whether the offence specified in the warrant is an extradition offence, where a person is brought before him at an extradition hearing under this Part of the Act.

43. If the judge is satisfied that the offence is an extradition offence then he must proceed to consider whether there are any statutory bars to extradition (*subsection (4)*), under the provisions of section 11. If the judge decides that the offence is not an extradition offence then he must order the person's discharge (*subsection (3)*).

Section 11: Bars to extradition

44. This section establishes a number of statutory bars to extradition. The judge must consider whether any of these bars prevent the extradition of the person. The person must be discharged if any of the bars are applicable.

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45. The bars are:

- the rule against double jeopardy;
- extraneous considerations;
- the passage of time;
- the person's age;
- hostage-taking considerations;
- speciality;
- the person's earlier extradition to the United Kingdom from another category 1 territory;
- the person's earlier extradition to the United Kingdom from a non-category 1 territory.

46. Sections 12 to 19 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 the judge decides that none of the statutory bars apply, and the person is accused of being unlawfully at large after conviction (described in these notes as being a “conviction case”) then the judge must proceed under section 20 (*subsection (4)*). If the judge decides that none of the bars apply, and the person is accused of having committed the extradition offence (described in these notes as being an “accusation case”), then *subsection (5)* requires that the judge proceed to consider human rights issues under section 21.

Section 12: Rule against double jeopardy

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

Section 13: Extraneous considerations

48. The effect of this section is to bar a person's extradition if it appears that the Part 1 warrant (although purporting to be issued in respect of the extradition offence) has actually been issued for the purpose of prosecuting or punishing him 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 14: Passage of time

49. 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 because of the time which has passed since he is alleged to have committed the extradition offence, or since he is alleged to have become unlawfully at large.

Section 15: Age

50. The effect of this section is to bar the extradition of a person who would have been under the age of criminal responsibility, had the offence occurred in the part of the United Kingdom where the hearing is taking place, at the time the extradition offence was committed.

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Section 16: Hostage-taking considerations

51. A person's extradition is barred if the category 1 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)*).

52. *Subsections (2) to (4)* make interpretative provision relating to the hostage-taking bar to extradition.

Section 17: Speciality

53. The speciality rule is a long-standing protection in extradition. It prohibits a person from being prosecuted in the requesting territory after his extradition for an offence committed before his extradition. The exceptions to this rule 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 but has failed to do so.

54. The effect of this section is to bar extradition if there are no speciality arrangements with the category 1 territory where the Part 1 warrant was issued (*subsection (1)*).

55. *Subsection (2)* provides that there are considered to be speciality arrangements in place if a person may be dealt with in the requesting territory for an offence committed before his extradition only if the offence falls within *subsection (3)* or if the condition in *subsection (4)* is met. The offences in *subsection (3)* are:

- the offences for which the person was extradited;
- an extradition offence disclosed by the same facts as the offence;
- an extradition offence to which the appropriate judge has given consent under section 54;
- an offence not punishable by imprisonment or detention;
- an offence for which the person will not be detained in connection with his trial, sentence or appeal;
- an offence in respect of which the person has waived his speciality protection.

56. The condition in *subsection (4)* is that the person is given the opportunity to leave the category 1 territory and does not do so within 45 days (*subsection (5)*) or leaves within that period and then returns to that country.

57. Under *subsection (6)* speciality arrangements may be made with any Commonwealth country or British overseas territory in category 1, either for a specific case or more generally. A certificate issued by or under the authority of the Secretary of State, stating the existence and terms of such arrangements, is conclusive evidence of those matters (*subsection (7)*).

Section 18: Earlier extradition to United Kingdom from category 1 territory

58. A person's extradition to a category 1 territory is barred by reason of his earlier extradition to the United Kingdom from another category 1 territory (the extraditing

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territory), unless consent to his further extradition has been given on behalf of the extraditing territory. This applies only if the extradition arrangements between the United Kingdom and the extraditing territory require consent to be given.

Section 19: Earlier extradition to United Kingdom from non-category 1 territory

59. A person's extradition is barred by reason of his earlier extradition to the United Kingdom from a non-category 1 territory (the extraditing territory), unless consent to his further extradition has been given on behalf of the extraditing territory. This applies only if the extradition arrangements between the United Kingdom and the extraditing territory require consent to be given to dealing with him in the United Kingdom for the offence under consideration.

Section 20: Case where person has been convicted

60. 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.

61. *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 21 (*subsection (2)*).

62. 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)*).

63. 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)*).

64. If the person would be entitled to such a retrial, the judge must proceed with the extradition hearing. If he would not, the judge must order the person's discharge (*subsections (6) and (7)*).

65. *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 21: Human rights

66. 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 extradition if it would be compatible with these rights (*subsection (3)*), but must order his discharge if it would not (*subsection (2)*). If the judge orders the person's extradition, he must remand the person in custody or on bail pending the extradition (*subsections (4) and (5)*).

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Section 22: Person charged with offence in United Kingdom

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

68. *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.

69. 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 11 before adjourning the hearing, he must consider it again (*subsection (4)*).

Section 23: Person serving sentence in United Kingdom

70. This section applies if the judge is informed that the person who is the subject of a Part 1 warrant 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 24: Extradition request

71. This section deals with the situation where, during the extradition hearing, the judge is notified that the Secretary of State has issued a certificate under section 70 in respect of an extradition request. This section applies where that request has not yet been disposed of and an order has been made under section 179(2) for proceedings on the Part 1 warrant to be deferred until the category 2 request has been disposed of (*subsection (1)*). (Section 213 below defines the disposal of a Part 1 warrant and of an extradition request.)

72. The judge is required, in these circumstances, to remand the person in custody or on bail. If he is remanded in custody the person may later be granted bail (*subsections (2) and (3)*).

Section 25: Physical or mental condition

73. 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)*).

74. 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)*).

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Section 26: Appeal against extradition order

75. This section gives a person a right to appeal against the decision of the judge to order extradition under Part 1 of the Act.

76. *Subsection (1)* explains that a person may appeal to the High Court against a decision of a judge to order extradition, except where (*subsection (2)*) the person has consented to his extradition (see sections 46 and 48). Appeals may be made on a question of law or fact (*subsection (3)*) and notice of an appeal must be given to the High Court within 7 days of the extradition order being made by the judge (*subsection (4)*).

Section 27: Court's powers on appeal under section 26

77. This section sets out the powers available to the High Court following an appeal against the extradition order.

78. The High Court may allow the appeal (*subsection (1)*) only if the conditions in *subsection (3)* or those in *subsection (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.

79. 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.

80. The High Court must order the person's discharge and quash the order for his extradition if it allows the appeal (*subsection (5)*).

Section 28: Appeal against discharge at extradition hearing

81. This section gives an authority of the requesting state a right to appeal against a decision at the extradition hearing to order the person's discharge.

82. *Subsections (1), (3) and (4)* allow the authority that issued the Part 1 warrant to appeal to the High Court against the decision that resulted in the order to discharge the person. The appeal may be on any question of law or fact. The exception to this right of appeal, in *subsection (2)*, is when the discharge was made under section 41, i.e. as a result of the warrant being withdrawn.

83. The court must be notified of an appeal within 7 days of the order for the person's discharge being made (*subsection (5)*).

Section 29: Court's powers on appeal under section 28

84. This section sets out the powers available to the High Court following an appeal against any order to discharge the person at the extradition hearing.

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85. The High Court may allow the appeal (*subsection (1)*) only if the conditions in *subsection (3)* or those in *subsection (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 not have been required to order the person's discharge.

86. 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
- as a result the judge would not have been required to order the person's discharge.

87. If the High Court allows the appeal, the order discharging the person is quashed and the case sent back to the judge with a direction to proceed as he would have been required to do if he had decided the relevant question differently. *Subsection (6)* defines a relevant question as one that resulted in the order for the person's discharge.

Section 30: Detention pending conclusion of appeal under section 28

88. 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.

89. *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 28 above. The judge must remand the person in custody or on bail for so long as 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 31: Appeal to High Court: time limit for start of hearing

90. This section provides for the time limits within which the High Court must begin to hear an appeal under section 26 or 28.

91. *Subsection (1)* states that rules of court must prescribe the period within which the High Court must begin to hear the appeal. The period will start from the date on

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which the person was arrested under the Part 1 warrant, or the date of provisional arrest (*subsection (2)*). The High Court must begin to hear the appeal before the end of the period (*subsection (3)*). The relevant period for these purposes is intended to be 40 days.

92. The High Court may extend the relevant period, under *subsection (4)*, where it is in the interests of justice to do so, and may do so after the period has expired (*subsection (5)*).

93. *Subsection (6)* sets out what happens if the appeal is against a decision to order extradition (under section 26) 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 must be discharged and the order for the person's extradition quashed. If the appeal is by an authority of the requesting state (under section 28) and the High Court does not begin to hear the case within the set time period, the appeal will be considered to have been dismissed (*subsection (7)*).

Section 32: Appeal to House of Lords

94. This section provides a right of appeal to the House of Lords

95. An appeal can be made to the House of Lords from a decision of the High Court on an appeal brought under section 26 or 28 (*subsection (1)*). It can be made by either the person who has been arrested under the Part 1 warrant or the authority that issued the warrant (*subsection (2)*). But it can be made only with the leave of the High Court or the House of Lords (*subsection (3)*). Under *subsection (4)*, leave may be granted only if:

- the High Court has certified that there is a point of law of general importance; and
- the court granting leave considers the point to be one which should be considered by the House of Lords.

96. An application for leave to the High Court must be made within 14 days of the date that the court makes its decision (*subsection (5)*); an application for leave to the House of Lords must be made within 14 days of a High Court decision to refuse leave (*subsection (6)*). An appeal to the House of Lords must be brought within 28 days of leave being granted (*subsection (7)*). If it is not, 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 has the power to grant bail to a person appealing or seeking leave to appeal 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.

97. *Subsection (13)* states that this section does not apply to Scotland. This is because the High Court of Justiciary (see section 216 below) is the final court of criminal appeal in Scotland and so the House of Lords has no jurisdiction in Scottish criminal matters.

*These notes refer to the Extradition Act 2003 (c.41)
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Section 33: Powers of House of Lords on appeal under section 32

98. This section sets out the powers available to the House of Lords on an appeal by the person who is the subject of the request or by the authority of the requesting state.

99. *Subsections (1) to (3)* allow the House of Lords to allow or dismiss an appeal under section 32 made by a person who is the subject of an extradition order. If the appeal is allowed an order for the person's discharge must be made and the order for his extradition quashed.

100. *Subsections (4) and (5)* provide that if the House of Lords allows an appeal by the authority of the requesting state against a decision of the High Court to discharge a person, the House of Lords is required to quash the order discharging the person and order his extradition.

101. *Subsections (6) to (9)* apply where the authority of the requesting state appeals successfully to the House of Lords against a decision of the High Court to dismiss its earlier appeal against the discharge of a person at the extradition hearing. Where the judge would have been required to order the person's extradition if he had reached a different decision on the question which led to the order for the person's discharge (in other words, if it was the final matter on which the judge was required to take a view), then the House of Lords must quash the discharge order and order the person to be extradited. Otherwise, the House of Lords must remit the case to the judge and require him to proceed as he would have been required to do if he had reached a different decision on the question which resulted in the person's discharge.

Section 34: Appeals: general

102. This section provides that a decision of a judge under this Part can be questioned only by means of the appeals procedure set out in this Part of the Act.

Section 35: Extradition where no appeal

103. This section gives the time limit for a person's extradition where he does not appeal against the extradition order.

104. *Subsection (1)* states that this section applies where the judge has ordered extradition and no appeal has been lodged within 7 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 (6)*). It does not apply where a person's extradition is ordered with his consent, under the provisions of section 46 or 48 (*subsection (2)*). *Subsections (3) to (5)* provide that the person must be extradited within 10 days of the date the judge makes the order, or if the judge and the requesting state agree a later date, 10 days starting from the later date. If the deadlines are not complied with the judge must, on the person's application, order his discharge, unless reasonable cause is shown for the delay.

Section 36: Extradition following appeal

105. 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.

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106. *Subsection (1)* states that this section applies where an appeal to the High Court under section 26 has been brought and the result of the final decision on the appeal is that the person is to be extradited. *Subsections (2) and (3)* require the person to be extradited within 10 days of the date on which the appeal decision becomes final or proceedings are discontinued. However, if the relevant court which made the appeal decision and the requesting state agree a later date, it must be 10 days starting from the later date. If the deadlines are not complied with the judge must, on the person's application, order his discharge, unless reasonable cause is shown for the delay (*subsection (8)*). *Subsection (4)* 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 (5)* 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.

107. 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 (6)*).

108. The decision of the House of Lords is immediately final (*subsection (7)*).

109. *Subsection (9)* 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 37: Undertaking in relation to person serving sentence in United Kingdom

110. This section allows the appropriate judge 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 1 territory that submitted the extradition request. This section applies if the person is serving a custodial sentence in the United Kingdom (*subsection (1)*). However, this section does not apply if the extradition order was made under section 46 or 48 after the person has consented to his extradition (*subsection (2)*).

111. The judge can specify the terms of any such undertaking. The terms include terms that the person is kept in custody during the entire proceedings in the category 1 territory. He may also require the person to be returned to the United Kingdom to serve his domestic sentence, on conclusion of those proceedings or after serving any sentence(s) imposed in the category 1 territory (*subsections (3) to (5)*).

112. *Subsections (6) to (8)* apply where the judge makes an order subject to the receipt of an undertaking. Where the undertaking is not received within 21 days, and

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the person applies to the judge, the judge must order the person's discharge (*subsection (7)*).

113. Where the judge imposes a condition on an extradition order under the power given by this section, and section 35 (extradition where no appeal) applies, the 10-day period described in section 35 begins on the day the judge receives the undertaking. Where a condition is imposed and section 36 (extradition following appeal) applies, the 10 days start from the day that the appeal decision becomes final or, if later, the day the judge receives the undertaking (*subsection (8)*).

Section 38: Extradition following deferral for competing claim

114. This section applies where a person's extradition has been ordered under Part 1 but deferred, in the event of a competing Part 1 warrant or category 2 extradition request, and the judge subsequently orders that extradition to go ahead under section 181 (*subsection (1)*). However, this does not apply if the original order for the person's extradition was made under section 46 or 48 after he had consented to his extradition (*subsection (2)*).

115. Where these circumstances occur and no appeal is made (see section 35, extradition where no appeal), the 10-day period described in section 35 begins on the day the judge makes the order under section 181 (*subsection (3)*). Where this situation occurs and there is an appeal (see section 36, extradition following appeal), the 10 days start from the day that the appeal decision becomes final or, if later, the day the judge makes the order under section 181 (*subsection (4)*).

Section 39: Position where asylum claimed

116. 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 Part 1 warrant under section 2 and the person's extradition in pursuance of that warrant (*subsections (1) and (2)*).

117. *Subsection (3)* states that the person in question must not be extradited until his asylum claim is finally determined. (Sections 35, 36, 47 and 49 set out the procedure for a person's extradition and take effect subject to this subsection.) *Subsection (4)* explains that this is also subject to section 40.

118. Under *subsection (5)* 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 (6)*). An appeal has been finally determined when a final decision on it has been made, it has been withdrawn or abandoned and 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 (7) and (8)*). Under *subsection (9)* the possibility of leave to appeal out of time against the Secretary of State's decision on an asylum claim must be ignored.

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Section 40: Certificate in respect of asylum claimant

119. *Subsection (1)* provides that a person's extradition is not prevented (under section 39) before his asylum claim is finally determined where the Secretary of State has certified that certain conditions apply.

120. The conditions set out in *subsection (2)* are that the requesting category 1 territory has accepted responsibility for considering the person's asylum claim and that the person is not a citizen of that country.

121. Alternatively, under *subsection (3)*, the conditions are that the Secretary of State believes that the person is not a citizen of the requesting territory, that he will not face persecution if returned to that territory and that he would not be removed from that territory other than in accordance with the Refugee Convention. *Subsection (4)* provides definitions to the terms used in this section.

Section 41: Withdrawal of warrant before extradition

122. This section applies where the judge is informed that a Part 1 warrant is withdrawn before the person is extradited or discharged.

123. In these circumstances the judge is required to order the person's discharge (*subsection (3)*). *Subsection (4)* requires the judge to inform the person of his discharge as soon as practicable if the person is not present when it is ordered.

Section 42: Withdrawal of warrant while appeal to High Court pending

124. This section applies if the High Court is informed that a Part 1 warrant is withdrawn before the end of the appeal hearing.

125. Where these circumstances occur and the appeal is brought by the person (under section 26), the court is required to order his discharge and quash the extradition order. If the appeal has been brought by the issuing authority (under section 28), the court must dismiss the appeal (*subsection (3)*). *Subsection (4)* requires the court to inform the person of his discharge as soon as practicable if he is not present when it is ordered.

Section 43: Withdrawal of warrant while appeal to House of Lords pending

126. This section applies if the House of Lords is informed that a Part 1 warrant is withdrawn before the House of Lords has given its decision on the case.

127. 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 by the issuing authority the House of Lords must dismiss the appeal under *subsection (4)*. *Subsection (7)* 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 44: Competing Part 1 warrants

128. This section relates to the situation where two Part 1 warrants are issued in respect of the same person.

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129. Under *subsections (1) to (3)* this section applies if, at any time during proceedings on a Part 1 warrant before the person is extradited or discharged, the judge is informed that:

- another Part 1 warrant has been issued in respect of the same person;
- the judge (or another judge in the United Kingdom) is required to deal with the other warrant; and
- the competing warrant has not yet been disposed of.

130. The judge may order proceedings on the warrant under consideration to be deferred pending disposal of the other warrant. Where an order has already been made for the person's extradition on the basis of the first warrant the judge may order that extradition be deferred pending disposal of the other warrant (*subsection (4)*). *Subsection (5)* means that the judge, if he makes such an order, is required to remand the person in custody or on bail, if the person is not already in custody or on bail. If the person is remanded in custody he may later be granted bail (*subsection (6)*).

131. In deciding whether to make an order under subsection (4) the judge must take account of the following issues in particular (*subsection (7)*):

- the relative seriousness of the offences;
- the place each offence was committed or is alleged to have been committed;
- the date each warrant was issued; and
- whether the person is accused of the offences or unlawfully at large after conviction of an offence.

Section 45: Consent to extradition

132. *Subsections (1) and (2)* allow a person arrested under Part 1 of the Act to consent to extradition to the category 1 territory issuing the warrant. A person who consents is considered to have waived his right to speciality protection (as to which, see paragraph 53 above) and can therefore be proceeded against in the category 1 territory for any offences committed before his extradition (*subsection (3)*). Consent must be given to the appropriate judge and recorded in writing; once given, consent cannot be revoked (*subsection (4)*).

133. *Subsections (5) and (6)* 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 (7) and (8)* provide definitions for the purposes of this section.

Section 46: Extradition order following consent

134. This section provides for the extradition of a person who consents to his extradition.

135. If a person consents under section 45 the judge must remand the person in custody or on bail, although he may later grant bail if he initially remands the person in custody (*subsections (1) to (3)*). The judge does not have to set a date for the

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extradition hearing if he has not already done so (*subsection (4)*). If the extradition hearing has started, the judge is no longer required to proceed with it (*subsection (5)*). He must order the person's extradition within 10 days of consent, subject to sections 48 and 51 below. If this is not done the judge must, on the person's application, discharge him (*subsections (6) to (8)*).

Section 47: Extradition to category 1 territory following consent

136. This section applies when a judge has ordered a person's extradition under section 46, following that person's consent to extradition (*subsection (1)*). Extradition must, under *subsection (2)*, take place within the required period. This is 10 days from the date the order is made or, if the judge and the category 1 territory agree a later date, 10 days from the agreed date (*subsection (3)*).

137. If the person has not been extradited within the 10-day period, the judge must, on the person's application, order his discharge, unless reasonable cause is shown for the delay (*subsection (4)*).

138. *Subsection (5)* explains what is to happen when, after the judge has ordered a person's extradition following their consent, the relevant Part 1 warrant is withdrawn. Where the judge is informed of the withdrawal and the person has not yet been extradited, the requirement in *subsection (2)* for the person to be extradited within the required period no longer applies and the judge must order the person's discharge.

Section 48: Other warrant issued following consent

139. This section provides for the situation where the person has consented to his extradition under section 45 and a second Part 1 warrant is issued in respect of him before the judge orders his extradition (*subsections (1) and (2)*).

140. The judge is not required to order the person's extradition, but he may do so or he may postpone the proceedings until the other warrant has been disposed of (*subsection (3)*). This is subject to section 51 below (*subsection (4)*). In deciding whether or not to order extradition he must also take into account (*subsection (5)*) the following issues in particular:

- the relative seriousness of the offences;
- the place where each offence was committed or is alleged to have been committed;
- the date each warrant was issued; and
- whether the person is accused of having committed the offences or of being unlawfully at large after conviction.

Section 49: Other warrant issued: extradition to category 1 territory

141. This section applies when a judge is informed that another Part 1 warrant has been issued and has ordered a person's extradition under section 48(3)(a), following that person's consent to extradition on the basis of the first warrant (*subsection (1)*). Extradition must, under *subsection (2)*, take place within the required period. This is 10 days from the date the order is made or, if the judge and the category 1 territory agree a later date, 10 days from the agreed date (*subsection (3)*).

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142. If the person has not been extradited within the relevant 10-day period, the judge must, on the person's application, order his discharge, unless reasonable cause is shown for the delay (*subsection (4)*).

143. *Subsection (5)* explains what is to happen when, after the judge has ordered a person's extradition following his consent, the first Part 1 warrant is withdrawn. Where the judge is informed of the withdrawal and the person has not yet been extradited, the requirement in subsection (2) for the person to be extradited within the required period no longer applies. Furthermore, the judge must order the person's discharge.

Section 50: Other warrant issued: proceedings deferred

144. The context of this section is that a person has consented to his extradition under a Part 1 warrant but has not yet been extradited. This section applies if the judge is then informed that a competing Part 1 warrant has been issued and he orders, under section 48(3)(b), that further proceedings on the first warrant be deferred until the competing warrant has been disposed of (*subsection (1)*).

145. In these circumstances the judge must remand the person in custody or on bail. If he remands the person in custody he may later grant bail (*subsections (2) and (3)*).

146. If an order is subsequently made under section 180 for the deferred proceedings on the first warrant to be resumed, the judge then has 10 days from the time that order is made to order the person's extradition, under *subsection (4)*.

Section 51: Extradition request following consent

147. This section applies if the person consents to his extradition under a Part 1 warrant but, before the judge orders his extradition, the judge is informed that an extradition request in respect of that person has been made by a category 2 territory (*subsections (1) and (2)*).

148. If the judge has been so informed he must not make an order for extradition to the category 1 territory on the basis of consent, until he is informed what order has been made under section 179(2) (*subsection (3)*). (Section 179(2) provides for the Secretary of State to order which of the Part 1 warrant and the Part 2 request is to proceed first.)

149. If the order made under section 179(2) is for proceedings on the Part 1 warrant to be deferred until the Part 2 request has been disposed of, the judge must remand the person in custody or on bail (*subsection (4)*). If he remands the person in custody he may later grant bail (*subsection (5)*). If an order is subsequently made under section 180 for the resumption of deferred proceedings on the Part 1 warrant, the judge then has 10 days from the time that order is made to order the person's extradition, under *subsection (6)*.

150. If, however, the order made under section 179(2) is for proceedings on the competing request to be deferred until the Part 1 warrant has been disposed of, the judge must, under *subsection (6)*, order the person's extradition to the category 1 territory within 10 days of being informed of the order.

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Section 52: Undertaking in relation to person serving sentence

151. This section applies where an extradition order is made under section 46(6) or 48(3)(a) after a person has consented to his extradition, and that person is serving a custodial sentence in the United Kingdom. (*subsection (1)*). It allows the judge 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 1 territory that submitted the extradition request (*subsection (2)*).

152. The judge can specify the terms of any such undertaking, including a requirement that the person is kept in custody during the entire proceedings in the category 1 territory. The judge may also require the person to be returned to the United Kingdom to serve his domestic sentence. This would apply on conclusion of the proceedings in the category 1 territory in respect of which the extradition order was made, or after serving any sentence(s) imposed in the category 1 territory in respect of either the extradition offence or any other offence in respect of which he is permitted to be dealt with in the category 1 territory (*subsections (3) and (4)*).

153. Where the judge imposes a condition on an extradition order under the power given by this section, the 10-day period in which the person is to be extradited (under section 47(2) or 49(2)) begins on the day the judge receives the undertaking (*subsection (5)*).

Section 53: Extradition following deferral for competing claim

154. This section applies where a person has consented to his extradition, which has then been deferred because 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)*).

155. Where these circumstances occur the 10-day period in which the person is to be extradited (under section 47(2) or 49(2)) begins on the day the judge makes the order under section 181(2) (*subsection (2)*).

Section 54: Request for consent to other offence being dealt with

156. *Subsection (1)* states that this section applies if, after a person has been extradited under this Part of the Act, a judge receives a certified request from a category 1 territory asking for his consent to the person being prosecuted for an offence other than that for which the person was extradited. The relevant designated authority in the United Kingdom may, under *subsection (2)*, certify such a request if it is satisfied that it has come from the proper judicial authority for making such requests in that country.

157. The judge must then serve notice on the person that a request for consent has been received, unless it would not be practicable to do so (*subsection (4)*).

158. The consent hearing is required to begin within 21 days of the designated authority receiving the request (*subsection (5)*). The judge has the power to extend this time if he considers it to be in the interests of justice and he may do so more than once (*subsection (6)*), and even after the 21 days has passed (*subsection (7)*).

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159. The judge is required to refuse consent under *subsection (8)* if the hearing has not started by the end of the given time and no extension has been granted. *Subsection (9)* allows the judge to adjourn the hearing at any time and *subsection (10)* defines the consent hearing as being that at which the judge is to consider the request for consent.

Section 55: Questions for decision at consent hearing

160. This section specifies the questions that the judge is required to decide at a consent hearing under section 54.

161. The judge must first decide whether his consent is necessary (*subsection (1)*). If he decides it is not, the judge must inform the requesting authority of this decision (*subsection (2)*). If the judge decides that consent is necessary, he must then consider whether the offence to which the request relates is an extradition offence (*subsection (3)*). If he decides that it is not an extradition offence, consent must be refused (*subsection (4)*). If, however, the judge concludes that the offence is an extradition offence, then he must decide, in accordance with *subsection (5)*, whether he would have ordered the person's extradition under sections 11 to 25 if the person were in the United Kingdom. If the judge decides that he would have done so, he must give consent (*subsection (6)*). If he decides that he would not have done so, consent must be refused (*subsection (7)*).

162. *Subsections (8) and (9)* provide that consent is not required where the person has been given the opportunity to leave the territory in question and has not done so within 45 days, or has done so and then returned to that country. Subject to this exception, the judge must decide whether he is required to give consent by reference to what he believes to be the applicable law in the territory in question or the extradition arrangements between that country and the United Kingdom (*subsection (10)*).

Section 56: Request for consent to further extradition to category 1 territory

163. This section applies if a person has been extradited to a category 1 territory and a judge receives a certified request for his consent to the person's extradition to another category 1 territory (*subsection (1)*). The relevant designated authority in the United Kingdom may, under *subsection (2)*, certify such a request if it is satisfied that it has come from the proper judicial authority for making such requests in that country.

164. The judge must then serve notice on the person that a request for consent has been received, unless it would not be practicable to do so (*subsection (4)*).

165. The consent hearing is required to begin within 21 days of the designated authority receiving the request (*subsection (5)*). The judge has the power to extend this time if he considers it to be in the interests of justice and he may do so more than once (*subsection (6)*), and even after the 21 days has passed (*subsection (7)*).

166. The judge is required to refuse consent under *subsection (8)* if the hearing has not started by the end of the given time and no extension has been granted. *Subsection (9)* provides for the judge to adjourn the hearing at any time and *subsection (10)* defines the consent hearing as being that at which the judge is to consider the request for consent.

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Section 57: Questions for decision at consent hearing

167. This section specifies the questions that the judge is required to decide at a consent hearing under section 56.

168. The judge must first decide whether his consent is necessary (*subsection (1)*). If he decides it is not, he must inform the requesting authority of this decision (*subsection (2)*). If the judge decides that consent is necessary, he must then consider whether the offence to which the request relates is an extradition offence in relation to the further category 1 territory (*subsection (3)*). If he decides that it is not an extradition offence, consent must be refused (*subsection (4)*). If, however, the judge decides that the offence is an extradition offence, he must then decide, in accordance with *subsection (5)*, whether he would have ordered the person's extradition under sections 11 to 25 if the person were in the United Kingdom. If the judge decides that he would have done so, he must give consent (*subsection (6)*). If he decides that he would not have done so, consent must be refused (*subsection (7)*).

169. *Subsections (8) and (9)* provide that consent is not required where the person has been given the opportunity to leave the territory in question and has not done so within 45 days, or has done so and then returned to that country. Subject to this exception in the given circumstances, the judge must decide whether he is required to give consent by reference to what he believes to be the applicable law in the territory in question or the extradition arrangements between that country and the United Kingdom (*subsection (10)*).

Section 58: Consent to further extradition to category 2 territory

170. *Subsection (1)* states that the section applies if a person has been extradited to a category 1 territory and the Secretary of State receives a certified request for consent to extradite the person from the category 1 territory to a category 2 territory. The relevant designated authority in the United Kingdom may, under *subsection (2)*, certify such a request if it is satisfied that it has come from the proper judicial authority for making such requests in the requesting territory.

171. The Secretary of State must then serve notice on the person that a request for consent has been received, unless it would not be practicable to do so (*subsection (4)*).

172. *Subsection (5)* requires the Secretary of State to decide whether the offence is an extradition offence, as defined in section 137, in relation to the category 2 territory. If he decides that it is not, he must refuse consent (*subsection (6)*).

173. If the Secretary of State decides that the offence is an extradition offence, then he must decide whether the appropriate judge would send the case to him under sections 79 to 91 if the person were in the United Kingdom (*subsection (7)*). If he decides that the judge would not, he must refuse consent (*subsection (8)*).

174. If he decides that the judge would send him the case, the Secretary of State must then decide whether the person's extradition would have been barred, if the person were in the United Kingdom (*subsection (9)*). He must consider reasons relating to the death penalty, speciality or his earlier extradition from another territory (see sections 94 to 96). If it would not have been barred, the Secretary of State may then give his consent under *subsection (10)*. If it would have been barred, the

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Secretary of State must refuse consent to re-extradition to the category 2 territory (*subsection (11)*).

175. For the purposes of this section, where any of these functions are exercised solely in relation to cases in Scotland, references to the Secretary of State are to be read as references to the Scottish Ministers (*subsection (12)*).

Section 59: Return of person to serve remainder of sentence

176. 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 domestic 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 regarded as being unlawfully at large (*subsections (2) and (3)*).

177. 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 offence or any other offence for 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 purposes of the United Kingdom sentence.

Section 60: Costs where extradition ordered

178. 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.

179. *Subsection (1)* states that this section applies when any of these occur:

- a person's extradition is ordered in pursuance of a Part 1 warrant;
- the High Court dismisses a person's appeal against an order for his extradition (brought under section 26);
- the High Court or House of Lords refuses a person leave to appeal a decision of the High Court under section 32;
- the House of Lords dismisses a person's appeal under section 32.

180. 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) and (3)*). Such an order for costs must specify the amount to be paid and may name of the person to whom the costs are to be paid (*subsection (4)*).

Section 61: Costs where discharge ordered

181. 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.

182. *Subsection (1)* states that this section applies when any of these occur:

- a person's discharge is ordered under Part 1;
- a person is taken to be discharged under this Part;

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- the High Court dismisses an appeal against an order for a person's discharge (brought under section 28);
- the High Court or House of Lords refuses the authority which issued a Part 1 warrant leave to appeal a decision of the High Court under section 32;
- the House of Lords dismisses the appeal of the authority which issued a Part 1 warrant under section 32.

183. 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 think is reasonably sufficient to compensate the person in question for any expenses incurred as a result of extradition proceedings under this Part of the Act (*subsection (6)*).

184. *Subsection (7)* allows the relevant judge or court to come to a different decision where it is considered 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. In other circumstances, according to *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, failing which the amount must be calculated in accordance with regulations made by the Lord Chancellor.

Section 62: Costs where discharge ordered: supplementary

185. *Subsections (1) and (2)* of this section mean that section 20(1) and (3) of the Prosecution of Offences Act 1985 apply to section 61 in the same way that 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 61 as it does to sections 2 to 5 of that Act.

Section 63: Persons serving sentences outside territory where convicted

186. This section applies when a Part 1 warrant is issued 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)*).

187. *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 warrant is issued by the relevant authority in either the convicting territory or the imprisoning territory.

Section 64: Extradition offences: person not sentenced for offence

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

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189. *Subsection (2)* states that conduct constitutes an extradition offence if the following conditions are satisfied. These are that:

- the conduct occurs in the category 1 territory and no part of it occurs in the United Kingdom;
- a certificate issued by the category 1 territory confirms that the offence falls within the European framework list (see section 215);
- the certificate confirms that the offence is punishable in the law of the category 1 territory with detention for a period of three years or more.

190. Under *subsection (3)* conduct also constitutes an extradition offence if:

- the conduct occurs in the category 1 territory;
- the conduct would constitute an offence under the law of the United Kingdom if it occurred in the United Kingdom;
- the conduct is punishable under the law of the category 1 territory with imprisonment for a period of 12 months or more.

191. *Subsections (4) to (6)* relate to extra-territorial conduct. This is conduct in respect of which a category 1 territory claims jurisdiction (and therefore the right to prosecute) even though the conduct did not take place on its soil. Extra-territorial conduct constitutes an extradition offence if (*subsection (4)*):

- the conduct occurs outside the category 1 territory;
- the offence is punishable in the law of the category 1 territory with detention for a period of 12 months or more;
- in corresponding circumstances the equivalent conduct would constitute an extra-territorial offence against the law of the United Kingdom which is punishable with imprisonment for a period of 12 months or more.

192. Under *subsection (5)* conduct constitutes an extradition offence where:

- the conduct occurs outside the category 1 territory and no part of it occurs in the United Kingdom;
- the conduct would constitute an offence under the law of the United Kingdom punishable with imprisonment for a period of 12 months or more if it had occurred here;
- the conduct is similarly punishable under the law of the category 1 territory.

193. Under *subsection (6)* conduct also constitutes an extradition offence if:

- the conduct occurs outside the category 1 territory and no part of it occurs in the United Kingdom;
- the offence is punishable in the law of the category 1 territory with detention for a period of 12 months or more;
- the conduct would constitute an offence referred to in *subsection (7)*.

194. The offences in *subsection (7)* 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.

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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.

195. *Subsection (8)* applies where equivalent circumstances in the United Kingdom are mentioned under subsections (3)(b), (4)(c) and (5)(b). Where the applicable conduct relates to a tax, duty, customs or exchange, subsection (8) explains that it is immaterial that United Kingdom law does not contain rules of the same kind as those of the category 1 territory.

Section 65: Extradition offences: person sentenced for offence

196. This section defines the different types of conduct that constitute an extradition offence in respect of category 1 territories in cases where the person is unlawfully at large, having been convicted and sentenced for the offence (*subsection (1)*).

197. In these cases conduct constitutes an extradition offence (*subsection (2)*) if:

- the conduct occurs in the category 1 territory and no part of it occurs in the United Kingdom;
- a certificate is issued by a category 1 territory which shows that the conduct falls within the European framework list; and
- the certificate confirms that a sentence of detention for a term of 12 months or more has been imposed.

198. *Subsection (3)* states that conduct also constitutes an extradition offence if:

- the conduct occurs in the category 1 territory;
- the conduct would constitute an offence in the United Kingdom;
- a sentence of detention for a period of 4 months or more has been imposed.

199. Conduct also constitutes an extradition offence if (*subsection (4)*):

- the conduct occurs outside the category 1 territory;
- a sentence of detention for a period of 4 months or more has been imposed in the category 1 territory for the conduct,
- the equivalent conduct would constitute an extra-territorial offence under the law of the United Kingdom in the corresponding circumstances, punishable with imprisonment for a period of 12 months or more.

200. Conduct also constitutes an extradition offence if (*subsection (5)*):

- the conduct occurs outside the category 1 territory and no part of it occurs in the United Kingdom;
- it would constitute an offence in the United Kingdom punishable with imprisonment for a period of 12 months or more if it occurred in this country;
- a custodial sentence of 4 months or more has been imposed in the category 1 territory for the conduct.

201. Under *subsection (6)* conduct also constitutes an extradition offence if:

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- the conduct occurs outside the category 1 territory and no part of it occurs in the United Kingdom;
- a custodial sentence of 4 months or more has been imposed in the category 1 territory for the conduct;
- the conduct constitutes, or would do if it occurred in the United Kingdom, an offence referred to in *subsection (7)*.

202. The offences in subsection (7) 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.

203. *Subsection (8)* applies where equivalent circumstances in the United Kingdom are mentioned under subsections (3)(b), (4)(c) and (5)(b). Where the applicable conduct relates to a tax, duty, customs or exchange, subsection (8) explains that it is immaterial that United Kingdom law does not contain rules of the same kind as those of the category 1 territory.

Section 66: Extradition offences: supplementary

204. This section provides definitions of the terms used in sections 64 and 65 relating to extradition offences for this Part of the Act. The appropriate authority of the category 1 territory is a judicial authority which the judge believes has the function of issuing arrest warrants (*subsection (2)*).

205. *Subsection (3)* provides that the law of a territory relates only to the general criminal law of that territory. Where there is reference in either section 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 (4) and (5)*).

Section 67: The appropriate judge

206. This section defines who is the appropriate judge for hearing extradition cases under this Part of the Act.

207. *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 68: Other interpretative provisions

208. This section defines the extradition hearing for the purposes of this Part of the Act.

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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

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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

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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.

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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.

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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.

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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

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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;

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- 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)*).

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which received Royal Assent on 20th November 2003*

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

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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

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place (*subsection (1)*). This does not apply if a person has consented to his extradition under section 127 (*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)*).

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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

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- 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.

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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

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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 (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.

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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);

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- 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).

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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

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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)*).

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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

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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

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(*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)*).

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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

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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;
- 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*

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(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

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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;

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- 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
 - 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.

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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).

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

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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

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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

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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:

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- 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

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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.

PART 4

POLICE POWERS

Section 156: Search and seizure warrants

439. This section sets out the procedure for the application for and issue of a search and seizure warrant in an extradition case.

440. *Subsection (1)* gives a justice of the peace power to issue such a warrant, on the application of a police constable, if he is satisfied that the necessary conditions are met. These conditions are described below.

441. Under *subsection (2)* the application for a search and seizure warrant is required to state that the warrant is sought in connection with the extradition of a person under this Act. It must also specify the premises (see section 174(5) below), the material for which the warrant is sought and that the specified material is believed to be on the premises. In addition, the application must state that the person is accused of a specified extradition offence in a specified category 1 or category 2 territory (*subsections (3) and (4)*).

442. *Subsections (5) to (7)* explain what is meant by a search and seizure warrant. The warrant authorises a constable to enter and search the specified premises in question and to confiscate any relevant material that is found there. Material is relevant if it could be used as evidence in a trial in the United Kingdom for the specified offence in question. However, the material must not include anything that is subject to legal privilege, excluded material or special procedure material. These terms are defined in section 174 below.

443. For a search and seizure warrant to be issued there must be reasonable grounds to believe (*subsection (8)*) that:

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- the offence in question has been committed by the person named;
- that person is in or on his way to the United Kingdom;
- the offence in question is an extradition offence, in accordance with the definition given in section 64 (for Part 1) or section 137 (for Part 2); and
- there is relevant material on the premises.

444. In addition, there must be reasonable grounds for believing that one of the conditions laid down in *subsection (9)* applies. The conditions are:

- that it is not practicable to communicate with someone who is entitled to allow entry to the premises;
- that it is not practicable to communicate with a person entitled to give access to the material in question;
- that permission to enter the premises will not be given without a warrant; or
- that the purpose of a search may be jeopardised unless immediate entry to the premises can be assured.

445. *Subsection (10)* sets out the necessary adaptations for this section to apply in Scotland.

Section 157: Production orders

446. This section outlines the procedure for applying for a production order in an extradition case.

447. *Subsection (1)* gives a judge (see *subsection (8)*) the power to make such an order, on the application of a police constable, if he is satisfied that the necessary conditions are met. These conditions are described below.

448. Under *subsection (2)* the application is required to state that the production order is sought in connection with the extradition of a person under this Act. It must also specify the premises and the material for which the order is sought. It must state that this is special procedure material or excluded material. It must also state that the person specified in the application appears to have control of the material in question. In addition, the application must state that the person is accused of a specified extradition offence in a specified category 1 or category 2 territory (*subsections (3)* and *(4)*).

449. *Subsections (5)* and *(6)* define a production order as an order requiring the person named in the application to hand over the material for a police constable to take away, or requiring him to allow the constable access to the material, within a specified period. This is required to be 7 days unless the judge making the order considers that a longer period is appropriate.

450. *Subsection (7)* provides that production orders have effect as court orders. *Subsection (8)* explains that, for the purposes of this section, "judge" refers to a circuit judge in England and Wales and a Crown Court judge in Northern Ireland.

Section 158: Requirements for making of production order

451. This section specifies the conditions to be met for a production order to be made.

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452. For a production order to be made there must be reasonable grounds to believe (*subsection (2)*) that:

- the offence in question has been committed by the person named;
- that person is in or on his way to the United Kingdom;
- the offence in question is an extradition offence, in accordance with the definition given in section 64 (for Part 1) or section 137 (for Part 2);
- there is material which is special procedure material or excluded material on the premises involved; and
- the material could be used as evidence in a trial in the United Kingdom for the specified offence in question.

453. In addition, it must appear to the judge (*subsection (4)*) that:

- other ways of obtaining the material have already failed; or
- other ways of obtaining the material have not been tried because they would have failed.

454. Finally, (*subsection (5)*) it must be in the public interest for the material to be produced or for access to it to be given.

Section 159: Computer information

455. This section applies if material specified in an application for a production order is held in electronic form. In such circumstances the material must be produced (or a constable given access to it) in a form in which it can be seen and read.

Section 160: Warrants: special procedure material and excluded material

456. This section sets out the procedure for the application for and issue of a search and seizure warrant relating to special procedure material or excluded material in an extradition case.

457. *Subsection (1)* gives a judge (see *subsection (9)*) the power to issue such a warrant, on the application of a police constable, if he is satisfied that the conditions for issuing a production order and the necessary additional conditions are met. These additional conditions are described below.

458. Under *subsection (2)* the application is required to state that the warrant is sought in connection with the extradition of a person under this Act. It must also specify the premises and the special procedure material or excluded material for which the warrant is sought. In addition, the application must state that the person is accused of a specified extradition offence in a specified category 1 or category 2 territory (*subsections (3) and (4)*).

459. *Subsection (5)* states that a warrant under this section authorises a constable to enter and search the specified premises in question. He may seize and retain any relevant special procedure material and/or excluded material if the application states that the warrant is sought in relation to such material. Material is relevant if it could be used as evidence in a trial in the United Kingdom for the specified offence in question (*subsections (6) and (7)*).

460. In addition, one of the conditions in *subsection (8)* must apply. These are:

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- that it is not practicable to communicate with someone who is entitled to allow entry to the premises;
- that it is not practicable to communicate with a person entitled to give access to the material in question; or
- that the material includes information classified as restricted or secret by statute and that it is likely to be disclosed in breach of that classification.

461. Subsection (9) explains that, for the purposes of this section, "judge" refers to a circuit judge in England and Wales and a Crown Court judge in Northern Ireland.

Section 161: Entry and search of premises for purposes of arrest

462. This section gives a police constable power to enter and search premises, with a view to arresting a person under an extradition arrest power. The term "extradition arrest power" is defined for the purposes of this Part in section 174 below.

463. If a police constable has the power to arrest a person in connection with an extradition matter (*subsection (1)*), he may enter and search any premises to exercise this power, subject to certain conditions. He must have reasonable grounds for believing that the person in question is on the premises (*subsection (2)*). The power to search is allowed only insofar as it is reasonably necessary to effect arrest (*subsection (3)*).

464. Under *subsection (4)* a police constable may then seize and retain anything which is on the premises where he has reasonable grounds to believe:

- that it has been obtained as the result of an offence or is evidence of an offence (including offences committed outside the United Kingdom); and
- that it is necessary to seize it to avoid the evidence being lost or interfered with in any way.

465. *Subsection (6)* covers the situation where the premises in question include multiple dwellings (for example, a block of flats). A police constable is allowed, in this situation, to enter and search only the communal areas of the premises and any dwelling where he has reasonable grounds to believe the person in question might be.

Section 162: Entry and search of premises on arrest

466. This section gives a police constable power to enter and search premises where a person is arrested under an extradition arrest power, unless arrest takes place at a police station (*subsection (1)*).

467. *Subsection (2)* provides for a police constable to enter and search premises where the person is arrested, or in which he was immediately before arrest. This power applies where there are reasonable grounds to believe that there is evidence on the premises of the relevant offence (in accusation cases) or of the person's identity (in all cases). "Evidence" in this context does not include items subject to legal privilege. The relevant offence (*subsection (3)*) is one on the basis of which a Part 1 warrant has been or will be issued (Part 1), or on the basis of which extradition has been or will be formally requested (Part 2).

468. A police constable may search premises only for evidence (which does not include items subject to legal privilege) relating to the relevant offence and the

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person's identity, as appropriate, and only so far as is reasonably necessary to find such evidence (*subsections (4) and (5)*). *Subsection (6)* allows a police constable to seize and retain anything discovered in exercise of this power.

469. In addition to the powers described above a police constable may (*subsection (7)*), having entered premises in exercise of this power, confiscate anything he finds there where he has reasonable grounds to believe:

- that it has been obtained as the result of an offence or is evidence of an offence (including offences committed outside the United Kingdom); and
- that it is necessary to seize it to avoid the evidence being lost or interfered with in any way.

470. *Subsection (9)* covers the situation where the premises in question include multiple dwellings. A police constable is allowed, in this situation, to enter and search only the communal areas of the premises and any dwelling where the arrest took place, or in which the person was immediately before arrest.

Section 163: Search of person on arrest

471. This section gives a police constable power to search a person on arrest under an extradition arrest power, unless the arrest takes place at a police station (*subsection (1)*).

472. A police constable is allowed to search the person if he reasonably believes that the person could be a danger to himself or anyone else (*subsection (2)*). The constable may also seize and retain anything he finds as a result of this search, in accordance with *subsection (6)*, if he reasonably believes that the person might use it to cause physical harm to himself or another person.

473. A police constable, under *subsection (3)*, is also allowed to search the person if he reasonably believes that the person may have something concealed on him that:

- might be used to enable escape from custody; or
- might be evidence of an offence or of the person's identity.

474. A police constable may use the power to search a person under *subsection (3)* only for anything described in that subsection and only so far as is reasonably necessary to find any such thing (*subsection 4*). The police constable has power under *subsection (7)* to seize and retain anything found during such a search. The constable must have reasonable grounds for believing the person might use the item to assist in an escape from custody, that the item is evidence of an offence or of the person's identity, or that it has been obtained as the result of an offence.

475. *Subsection (5)* sets out the limits of the search powers under *subsections (2) and (3)*. The constable may not require a person to remove in public any clothes other than an outer coat, jacket or gloves. However, the constable is allowed to conduct a search of the person's mouth under these powers.

476. The provisions of this section do not affect the powers of a police constable to search a person suspected of terrorist offences under section 43 of the Terrorism Act 2000 (*subsection (9)*).

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Section 164: Entry and search of premises after arrest

477. This section gives a police constable power to enter and search premises after a person has been arrested under an extradition arrest power (*subsection (1)*).

478. *Subsection (2)* provides for a police constable to enter and search premises occupied or controlled by the arrested person. This power applies where there are reasonable grounds to believe that there is evidence on the premises of the relevant offence (in accusation cases) or of the person's identity (in all cases). The relevant offence (*subsection (3)*) is one on the basis of which a Part 1 warrant has been or will be issued (Part 1), or on the basis of which extradition has been or will be formally requested (Part 2).

479. A police constable may use the power to search premises only for evidence relating to the relevant offence and the person's identity, as appropriate, and only so far as is reasonably necessary to find such evidence (*subsections (4) and (5)*). This evidence may not include any items subject to legal privilege. *Subsection (6)* allows a police constable to seize and retain anything relevant that is discovered in exercise of this power.

480. In addition to the powers described above a police constable may (*subsection (7)*), having entered premises in exercise of the power in *subsection (2)*, seize and retain anything he finds there if he has reasonable grounds to believe:

- that it has been obtained as the result of an offence or is evidence of an offence; and
- that it is necessary to confiscate it to avoid the evidence being lost or interfered with in any way.

481. Under *subsection (9)* the powers to search premises and seize and retain evidence given in this section may only be used with the written authorisation of a police officer of inspector level or higher. *Subsection (10)* gives the exception to this rule. The power to search in *subsection (2)* may be carried out without this authorisation before the arrested person is taken to a police station if the holding of the person somewhere other than a police station is necessary for an effective search to occur.

482. *Subsection (11)* states that *subsections (9) and (10)* do not apply to Scotland. This means that the powers in *subsections (2) and (6)*, to enter and search premises and to retain any evidence found as a result, may be exercised in Scotland without written authority.

Section 165: Additional seizure powers

483. This section amends the Criminal Justice and Police Act 2001 so that the additional powers given in sections 50 and 51 of that Act will be available in extradition cases. These powers supplement other seizure powers in cases where it is not reasonably practicable to determine whether something found on premises or a person can be seized in exercise of the other power, or it is not reasonably practicable to separate something which a constable has power to seize from something which he does not have power to seize.

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Section 166: Fingerprints and samples

484. This section applies if a person is arrested under an extradition arrest power and detained at a police station.

485. *Subsections (2) and (3)* give a police constable power to take fingerprints and non-intimate samples only if the person has given his written consent or if they have the appropriate authorisation. Under *subsection (4)* authorisation must come from a police officer of at least inspector level.

Section 167: Searches and examination

486. This section applies if a person is arrested under an extradition arrest power and detained at a police station. The person may be searched or examined for the purpose of ascertaining his identity with the authorisation of a police officer of the rank of inspector or above. Ascertaining his identity includes establishing that he is not a particular person. (*subsection (7)*).

487. If, during the course of a search or examination, an identifying mark is found, it may be photographed with the person's consent. It may still be photographed without that consent if consent is withheld or it is not practicable to obtain consent (*subsection (3)*). Under *subsection (4)* the only people allowed to conduct a search or examination or take a photograph under this section are police constables or persons given this responsibility by the appropriate police officer. The appropriate officer is the chief police officer in the area in question for England and Wales. In Northern Ireland it is the Chief Constable of the Police Service of Northern Ireland (*subsection (10)*).

488. *Subsections (5) and (6)* explain that no one is allowed to conduct a search or examination or photograph any part (except the face) of a person of the opposite sex. Furthermore, this section does not allow an intimate search to be conducted.

Section 168: Photographs

489. This section applies if a person is arrested under an extradition arrest power and detained at a police station. The person may be photographed with the appropriate consent; he may still be photographed without that consent if it is withheld or it is impractical to obtain consent, under *subsection (2)*.

490. A person proposing to take a photograph under this section can, under *subsection (3)*, require the person arrested to remove anything worn on the head or face. If the person arrested refuses, the person taking the photograph is allowed to remove such items from the head or face of the person arrested. Under *subsection (4)* the only people allowed to take a photograph under this section are police constables or persons given this responsibility by the appropriate police officer. The appropriate officer is the chief police officer in the area in question for England and Wales. In Northern Ireland it is the Chief Constable of the Police Service of Northern Ireland (*subsection (6)*).

Section 169: Evidence of identity: England and Wales

491. This section amends the Police and Criminal Evidence Act 1984 (PACE). The PACE provisions that cover the identity issues outlined in sections 166 to 168 above

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will no longer apply to a person arrested under an "extradition arrest power" (as defined below in section 174) since in future the provisions in the Act will apply. This relates to England and Wales only.

Section 170: Evidence of identity: Northern Ireland

492. This section amends the Police and Criminal Evidence (Northern Ireland) Order 1989. The provisions in that Order that cover the identity issues outlined in sections 166 to 168 above will no longer apply to a person arrested under an "extradition arrest power" (as defined below in section 174) since in future the provisions of the Act will apply. This relates to Northern Ireland only.

Section 171: Other treatment and rights

493. This section applies if a person has been arrested at a police station, taken to a police station after arrest or detained after arrest in an extradition case. For such cases the Secretary of State can apply by order the four specified sections of PACE or, as appropriate, the corresponding Northern Ireland provisions (*subsection (2)*). These are listed in *subsections (3) and (4)* and determine the rights of an arrested person at a police station in relation to searches, the right to inform someone of the arrest and the right to have access to legal advice.

Section 172: Delivery of seized property

494. This section relates to the handing over of seized property to an authority of a category 1 or category 2 territory. This applies to anything seized or produced under this Part of the Act or anything seized under section 50 or 51 of the Criminal Justice and Police Act 2001 where a constable was relying on a power of seizure conferred by this Part of the Act (*subsection (1)*).

495. *Subsection (2)* allows a police constable to hand over any such items to a person acting on behalf of the relevant authority. A constable may do so if he has reasonable grounds to believe that the authority's functions make it appropriate to hand the items over to it.

496. Where anything has been seized under a warrant or order produced under this Part of the Act, the relevant territory is the one that is specified in the application for the warrant or order (*subsection (3)*). Where anything is seized without a specific search warrant (see sections 161 to 164), *subsections (4) to (6)* apply to determine the relevant territory. The relevant territory is the one in which the Part 1 warrant was issued, or in a provisional arrest case, the one in which a constable has reasonable grounds to believe such a warrant has been or will be issued. For category 2 the relevant territory is the one which has requested the person's extradition, or in a provisional arrest case, the one in which the person is accused or has been convicted of an offence.

497. *Subsections (7) to (9)* set out the necessary modifications in the application of this section to Scotland.

Section 173: Codes of practice

498. This section requires the Secretary of State to issue codes of practice to cover the use of powers given in this Part of the Act. These codes of practice must cover the

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use of police powers under Part 4 of the Act, the use, return, access to and copying of anything seized during a search or produced under a production order, and the retention, use and destruction of any fingerprints, samples or photographs taken under this Part (*subsection (1)*).

499. *Subsections (2) and (3)* explain the process by which the Secretary of State issues a code of practice under this section. He is required to publish the code in draft form, consider any representations made on the draft and, if considered appropriate, amend the code accordingly. The Secretary of State can then bring the code into effect by order (*subsection (4)*).

500. The Secretary of State may revise or replace any such code, using the same procedures as described above (*subsection (5)*). Failure by a police constable to adhere to any code issued under this section will not of itself make him liable under either criminal or civil law (*subsection (6)*). A code of practice made under this section can be admitted in court as evidence in an extradition case. Under *subsection (7)* a judge or court must take account of the code where it appears that it is relevant.

501. *Subsection (8)* provides for the publication of a draft code and the consultation process outlined above to be carried out before these provisions of the Act come into force. In these circumstances, the process is as valid as if it were conducted after the provisions have come into force. This subsection enabled the publication of a draft code and consultation process to take place before this Act received Royal Assent.

Section 174: Interpretation

502. This section contains definitions of certain terms used in this Part of the Act. *Subsection (2)* explains that an "extradition arrest power" is the power of arrest or provisional arrest given in Parts 1 and 2 of this Act.

503. *Subsection (3)* gives "excluded material" the meaning given in section 11 of PACE in England and Wales, and the corresponding provisions in Northern Ireland. This covers material, records or substances that are held in confidence (for example, personal records, medical samples or journalistic material).

504. *Subsection (4)* gives "items subject to legal privilege" the meaning given by section 10 of PACE in England and Wales, and the corresponding provisions in Scotland and Northern Ireland. This covers any communication between a lawyer and his client (or a person representing either party) that is in whole or part concerned with legal advice or proceedings. However, anything held with the intention of furthering a criminal cause is not covered.

505. *Subsection (5)* gives "premises" the meaning given in section 23 of PACE in England and Wales, and the corresponding provisions in Scotland and Northern Ireland. This covers any place, including any vehicle, vessel, aircraft, hovercraft, offshore installation, tent or movable structure.

506. *Subsection (6)* gives "special procedure material" the meaning given in section 14 of PACE in England and Wales, and the corresponding provisions in Northern Ireland. This is material which is neither "excluded material" nor "items subject to legal privilege", but which is held in a professional or official capacity. The material

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must also be held subject to an implied or express undertaking to hold it in confidence or subject to an obligation of secrecy.

507. *Subsections (7) and (8)* give other terms used in Part 4 the meanings given by section 65 of PACE in England and Wales, and the corresponding provisions in Northern Ireland. "Appropriate consent" is:

- the person's own consent (if he has reached the age of 17 years);
- the person's consent and his parent or guardian's consent (if he has reached 14 but is not yet 17);
- the consent of the person's parent or guardian (if he is not yet 14).

508. The term "fingerprints" includes palm prints. An "intimate search" is a search consisting of the physical examination of a person's body orifices other than the mouth. A "non-intimate sample" means a sample of hair other than pubic hair, a sample taken from a nail or under a nail, a swab taken from the body (but not an orifice), a footprint or other such impression (but not of the hand).

Section 175: Customs officers

509. This section allows the Treasury to make an order authorising customs officers to perform the functions of police officers given in this Part of the Act, with any necessary modifications specified in the order.

Section 176: Service policemen

510. This section allows the Secretary of State to make an order authorising members of the services' police forces to perform the functions of police officers given in this Part of the Act, with any necessary modifications specified in the order.

PART 5

MISCELLANEOUS AND GENERAL PROVISIONS

Section 177: Extradition from British overseas territories

511. This section provides for the extension of provisions of this Act to apply to extradition from a British overseas territory to the United Kingdom, category 1 or 2 territories, the Channel Islands and the Isle of Man.

512. This can be done by Order in Council, with certain restrictions and appropriate modifications (*subsections (2) to (4)*). Extradition from a British overseas territory to the United Kingdom or any of the United Kingdom's extradition partners designated in category 1 can be subject to any provisions of the Act, including any provisions which apply to category 1 territories in the United Kingdom. However, extradition from a British overseas territory to any of the United Kingdom's extradition partners designated in category 2 or any of the Channel Islands or the Isle of Man can be subject to any provisions, except those which apply only to category 1 territories.

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Section 178: Extradition to British overseas territories

513. This section provides for the extension of provisions of this Act to apply to extradition to a British overseas territory from the United Kingdom, category 1 or 2 territories, the Channel Islands and the Isle of Man.

514. This can be done by Order in Council, with certain restrictions and appropriate modifications (*subsections (2) to (4)*). Extradition to a British overseas territory from the United Kingdom or any of the United Kingdom's extradition partners designated in category 1 can be subject to any provisions of the Act, including any provisions which apply to category 1 territories in the United Kingdom. However, extradition to a British overseas territory from any of the United Kingdom's extradition partners designated in category 2 or any of the Channel Islands or the Isle of Man can be subject to any provisions, except those which apply only to category 1 territories.

Section 179: Competing claims to extradition

515. *Subsection (1)* applies if, at the same time, there is a Part 1 warrant in respect of a person and a request for the person's extradition under Part 2. Where the person has not yet been extradited or discharged under either category, the Secretary of State may order proceedings on either the Part 1 warrant or the Part 2 request to be deferred until the other one has been disposed of (*subsection (2)*), taking into account in particular (*subsection (3)*):

- the relative seriousness of the offences;
- the place where the offence occurred/was alleged to have occurred;
- the dates the warrant and request were issued; and
- whether the person is accused of the offences or is alleged to be unlawfully at large after conviction of them.

516. Under subsection (2), if an order for the person's extradition has already been made (either on the warrant or the request), the Secretary of State may order the extradition itself to be deferred pending the disposal of the competing extradition proceedings.

517. *Subsection (4)* provides for the situation where both of the competing extradition claims were certified in Scotland. In these circumstances the references in this section to the Secretary of State are to be read as references to the Scottish Ministers.

Section 180: Proceedings on deferred warrant or request

518. This section applies when an order has been made under this Act on competing extradition claims (a claim being a Part 1 warrant or a request from a category 2 territory – *subsection (9)*) and proceedings on one of them are deferred until the other has been disposed of. This section sets out what is to happen with the deferred claim once the other claim has been disposed of (*subsection (1)*). The judge may order that proceedings on the deferred claim be resumed, but only before the required period (explained below) has expired (*subsections (2) and (3)*).

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519. Under *subsection (4)* the judge may, if the person applies to him at any time, order the person's discharge. However, the judge must order the person's discharge if the person applies to him, the required period has expired and the judge has not already ordered that the deferred proceedings be resumed or that the person be discharged (*subsection (5)*). For the purposes of this section, under *subsection (6)*, the required period is 21 days from the day on which the competing claim is disposed of (see section 213).

520. *Subsections (7) and (8)* define who is the appropriate judge for the purposes of this section, depending on whether the deferred proceedings were under Part 1 or Part 2 of the Act.

Section 181: Proceedings where extradition deferred

521. This section applies when an order has been made under this Act on competing extradition claims and a person's extradition under one of the claims is deferred until the other has been disposed of. This section sets out what is to happen with the deferred extradition once the other claim has been disposed of (*subsection (1)*). The judge may order that the deferred extradition be resumed, but only before the required period (explained below) has expired (*subsections (2) and (3)*).

522. Under *subsection (4)* the judge may, if the person applies to him at any time, order the person's discharge. However, the judge must order the person's discharge if the person applies to him, the required period has expired and the judge has not already ordered that the deferred extradition be resumed or that the person be discharged (*subsection (5)*). For the purposes of this section, under *subsection (6)*, the required period is 21 days from the day on which the competing claim is disposed of (see section 213).

523. *Subsections (7) and (8)* define who is the appropriate judge for the purposes of this section, depending on whether the deferred proceedings were under Part 1 or Part 2 of the Act.

Section 182: Legal advice, assistance and representation: England and Wales

524. This section provides that the provisions of Part 1 of the Access to Justice Act 1999 apply to extradition proceedings (including any subsequent appeal), under this Act, in the same way that they apply to criminal proceedings in England and Wales.

Section 183: Legal aid: Scotland

525. This section provides that the provisions of the Legal Aid (Scotland) Act 1986 apply to extradition proceedings (including any subsequent appeal) in Scotland, under Part 1, 2 or 5 of this Act, in the same way that they apply to summary proceedings in Scotland.

Section 184: Grant of free legal aid: Northern Ireland

526. This section gives an appropriate judge and the High Court the power to grant free legal aid to a person in connection with proceedings under Part 1 or 2 of the Act in Northern Ireland (see section 226).

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527. *Subsection (1)* provides for the appropriate judge to grant free legal aid to a person in connection with extradition proceedings before the judge or the High Court. Similarly, a judge of the High Court can grant a person free legal aid in connection with extradition proceedings before that court or the House of Lords (*subsection (2)*). Where a judge refuses to grant free legal aid in connection with proceedings before the High Court, the person can appeal this decision to the High Court. The High Court may itself then grant free legal aid (*subsection (3)*). A judge of the High Court may grant free legal aid in connection with proceedings on such an appeal (*subsection (4)*). On such an appeal the High Court may either allow or dismiss the appeal. If it allows the appeal it must then grant the person free legal aid in connection with the relevant proceedings under Part 1 or 2 of this Act (*subsections (6) and (8)*).

528. *Subsections (5) and (7)* set out the criteria on which the judge or court is to decide whether free legal aid is to be granted. The judge or court may grant free legal aid, or allow an appeal against refusal of free legal aid, only where it appears that:

- the person's means are insufficient to enable him to obtain legal aid, and
- it is desirable in the interests of justice that free legal aid be granted.

529. If, in deciding this question, there is any doubt as to whether either test is satisfied, the decision must be made in the person's favour (*subsection (9)*).

530. Where this section refers to "free legal aid" it means appointing for the person a solicitor and/or counsel to represent him (*subsection (10)*).

Section 185: Free legal aid: supplementary

531. This section sets out supplementary provisions regarding the provision of free legal aid in Northern Ireland in connection with extradition proceedings under Part 1 or 2 of this Act.

532. *Subsections (1) to (3)* apply the existing legislation in Northern Ireland about legal aid in criminal cases to legal aid under section 184 in proceedings before the judge or High Court, so that existing rules operate in relation to legal aid in extradition cases. The provisions relate to (*subsection (2)*):

- the person's statement of means in connection with a grant of legal aid;
- the payment of legal aid coming from money provided by Parliament;
- the Lord Chancellor's power to make rules regarding the practical arrangements for legal aid;
- the exclusion of certain solicitors from legal aid work;
- the amounts payable to solicitors and counsel for legal aid work;
- the exemption of legal aid certificates from stamp duty.

533. *Subsection (3)* applies the relevant provisions described above as if section 184 formed part of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.

534. Any expenses or fees of counsel or a solicitor assigned to a person under section 184 in proceedings before the House of Lords must be paid by the Lord Chancellor (*subsection (4)*). Under *subsection (5)* such fees or expenses must not

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exceed the amount allowed by the House of Lords or an officer(s) of the House designated by order.

535. *Subsection (6)* makes clear that, as section 184 applies only to Northern Ireland, the appropriate judge in this context is any county court judge or resident magistrate designated for proceedings under either Part 1 or 2, as appropriate.

Section 186: Re-extradition: preliminary

536. This section sets out the circumstances in which section 187 applies, concerning re-extradition. Each of the following conditions must be met for a re-extradition hearing to occur.

537. The first condition is that the person was extradited under either Part 1 or Part 2 of the Act (*subsection (2)*). The second is that, prior to his extradition, the person was serving a custodial sentence in the United Kingdom (*subsection (3)*).

538. The third condition, provided in *subsection (4)*, is that the person was extradited for the purpose of being prosecuted for the offence (i.e. it was an accusation case). The fourth condition is that the person has been given a custodial sentence of four months or more, in the country to which he was extradited, in respect of the extradition offence or another offence for which permission was given for him to be dealt with (*subsection (5)*). The fifth and final condition is that, before the person serves the custodial sentence in the country to which he was extradited, he was returned to the United Kingdom to serve the original sentence here (*subsection (6)*).

Section 187: Re-extradition hearing

539. Where this section applies, the conditions in section 186 having all been met, the person must be brought before the appropriate judge (see section 139) for a re-extradition hearing. This is to happen as soon as practicable after the point at which the person would otherwise be released from detention, having served his domestic sentence in the United Kingdom (*subsections (1) and (2)*).

540. If the person is not brought before the judge in accordance with these provisions, and he applies to the judge, the judge must order his discharge, under *subsection (3)*. The person must be treated as being in legal custody until he is either brought before the judge or discharged (*subsection (4)*).

541. At the re-extradition hearing the judge is to decide whether the person is to be extradited again to the requesting territory. The judge must first decide whether the territory is a category 1 or a category 2 territory, or neither. If it is a category 1 or 2 territory, section 188 or 189 applies respectively. If it is neither, the judge must order the person's discharge (*subsections (5) to (8)*). If the judge does order a person's discharge under section 187, 188 or 189, this does not affect any condition on which he is released from custody in this country (*subsection (9)*).

Section 188: Re-extradition to category 1 territories

542. Where this section applies by virtue of section 187(6), the provisions of this Act apply to the proceedings as if it were a Part 1 case. The Act is to be applied in the same way as if a valid Part 1 warrant has been issued in respect of the person, having been convicted of a specified offence, and as if the re-extradition hearing was the

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extradition hearing under Part 1. In these circumstances some modification of the Part 1 provisions are required, which are set out in Part 1 of Schedule 1 to the Act.

Section 189: Re-extradition to category 2 territories

543. Where this section applies by virtue of section 187(7), the provisions of this Act apply to the proceedings as if it were a Part 2 case. The Act is to be applied in the same way as if a valid extradition request has been made in respect of the person, having been convicted of a specified offence, and as if the re-extradition hearing was the extradition hearing under Part 2. In these circumstances some modification of the Part 2 provisions are required, which are set out in Part 2 of Schedule 1 to the Act.

Section 190: Crown Prosecution Service: role in extradition proceedings

544. This section amends provisions of the Prosecution of Offences Act 1985. The effect of the amendments is that the Crown Prosecution Service is required to act and advise as appropriate, on behalf of the requesting territory, in extradition proceedings under this Act (*subsections (1) and (2)*).

545. *Subsection (3)* provides that the Crown Prosecution Service is not required to act where the relevant authority in the requesting territory specifically requests that it does not do so.

Section 191: Lord Advocate: role in extradition proceedings

546. This section provides that the Lord Advocate is required to act and advise as appropriate, on behalf of the requesting territory, in extradition proceedings in Scotland under this Act (*subsection (1)*).

547. *Subsection (2)* provides that the Lord Advocate is not required to act where the relevant authority in the requesting territory specifically requests that he does not do so.

Section 192: Northern Ireland DPP and Crown Solicitor: role in extradition proceedings

548. This section amends provisions of the Prosecution of Offences (Northern Ireland) Order 1972 and the Justice (Northern Ireland) Act 2002 (*subsections (1) to (8)*). The effect of the amendments is that the Northern Ireland Director of Public Prosecutions has the power to act and advise as appropriate, on behalf of the requesting territory, in extradition proceedings under this Act.

549. *Subsection (9)* provides that the Crown Solicitor for Northern Ireland also has the power to act and advise as appropriate, on behalf of the requesting territory, in extradition proceedings

Section 193: Parties to international Conventions

550. This section provides for extradition arrangements in specific circumstances between the United Kingdom and other countries which are not category 1 or category 2 territories. This applies where the United Kingdom is a party to an international Convention, as is another country which is not otherwise an extradition partner with the United Kingdom. In these circumstances, a country will be designated by order made by the Secretary of State (*subsection (1)*).

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551. *Subsection (2)* provides that, in this situation, Part 2 procedures would apply in respect of a request made by the relevant country. *Subsection (3)* provides that the following provisions of Part 2 do not apply in respect of such a request:

- sections 71(4), 73(5), 84(7) and 86(7) – possibility of being designated with the effect of providing "information" in place of "evidence";
- section 74(11)(b) – possibility of the 45-day period, within which a full extradition request is required following arrest under a provisional warrant, being extended;
- sections 137 and 138 – the definition of "extradition offences".

552. In place of sections 137 and 138, the extradition offences which apply in relation to a specific country, by virtue of the applicable international Convention, will be specified in the appropriate designation order made under subsection (1) (*subsections (4) and (5)*).

Section 194: Special extradition arrangements

553. This section provides for special extradition arrangements to be made with a country which is not an extradition partner with the United Kingdom. Where the Secretary of State believes that such arrangements have been made and that the country is neither a category 1 nor a category 2 territory, he may issue a certificate to that effect, in relation to the extradition of a person (*subsections (1) and (2)*).

554. *Subsection (3)* provides that, in this situation, Part 2 procedures would apply in respect of a request made by the relevant country. *Subsection (4)* provides that the following provisions of Part 2 do not apply in respect of such a request:

- sections 71(4), 73(5), 84(7) and 86(7) – possibility of being designated with the effect of providing "information" in place of "evidence";
- section 74(11)(b) – possibility of the 45-day period, within which a full extradition request is required following arrest under a provisional warrant, being extended.

555. In addition, any further modifications may be specified in the certificate issued by the Secretary of State. Such a certificate is to be treated as conclusive evidence of the fact that the appropriate conditions, set out in subsection (1), are met.

Section 195: Human rights: appropriate tribunal

556. Section 7(1)(a) of the Human Rights Act 1998 allows a person who claims that a public authority has acted in a way that is incompatible with the European Convention on Human Rights to bring proceedings against the authority. This section establishes that the only appropriate court or tribunal for hearing human rights claims arising out of the extradition process will be the appropriate judge dealing with the extradition proceedings under Parts 1 or 2 of this Act (*subsection (1)*). For a case under Part 1 of the Act the appropriate judge is as defined in section 67 and, for Part 2, is as defined in section 139 (*subsections (2) and (3)*).

Section 196: Genocide, crimes against humanity and war crimes

557. This section ensures that genocide, crimes against humanity, war crimes and related offences are included as extradition offences. Conduct that would be

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punishable in the United Kingdom under any of the provisions listed in *subsection (2)* amounts to an extradition offence even if it would not have been an offence at the time when and the place where it occurred.

Section 197: Custody

558. This section applies to any person being held in custody under a power given in this Act.

559. *Subsection (1)* provides that, where a judge remands a person in custody, the person must be taken into custody in the same way as if he had been charged with an offence and the judge had remanded him in custody. In addition, if a person escapes from custody following arrest under this Act, he can be retaken into custody lawfully in any part of the country, in the same way as if he had been in custody following arrest on a domestic warrant (*subsections (2) and (3)*).

560. Under *subsections (4) and (5)* where a person held in custody is required to be transferred to another part of the country (other than over land), after being remanded in custody under this Act, he must be treated as being in continuous legal custody until the transfer is complete.

561. *Subsection (6)* provides for an order for a person's extradition made under this Act to be sufficient authority for an appropriate person to receive him, hold him in custody pending extradition and then convey him to the relevant territory. This power is available to a constable or to the person to whom the order is directed (*subsection (7)*).

Section 198: Bail: England and Wales

562. This section amends the Bail Act 1976 so that extradition proceedings under this Act are governed by the bail provisions that apply in other criminal justice proceedings (*subsections (1) to (3)*).

563. The amendments to section 4 of the Bail Act contained in *subsections (4) and (5)* extend the presumption in favour of bail to proceedings in extradition cases where a person is accused of an offence. Currently the presumption in favour of bail does not apply to extradition cases and these amendments remove this anomaly, to bring extradition proceedings into line with other criminal proceedings. In conviction cases the presumption in favour of bail does not apply.

564. The amendments in *subsection (6)* relate to the situation where a person has been granted bail in the course of extradition proceedings. A court is given power to withhold bail or vary or impose conditions of bail, on the application by the person representing the requesting state in extradition proceedings.

565. *Subsections (7) to (11)* apply when a person has been granted bail in the course of extradition proceedings. Their effect is that the person is subject to the same liability to arrest as if he was granted bail and is under a duty to surrender into custody in the course of a criminal case. Therefore, where the person fails to surrender as required, a magistrates' court has the power to issue a warrant for his arrest. In addition, where there is reason to believe that the person is likely to break his bail conditions or fail to surrender, the person may be arrested without warrant by a

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constable. A constable also has this power if, where applicable, a person's surety gives notice in writing that the person is unlikely to surrender and so the surety requests to be relieved of his associated obligations. If a person is arrested in this manner without a warrant he must be brought before a justice of the peace within 24 hours (this is calculated to except Sundays and certain public holidays). The justice of the peace will decide whether the person is then to be granted bail again or committed to custody.

566. The amendments in *subsections (12) to (14)* are to Part 1 of Schedule 1 of the Bail Act. Their effect is that this Part of the Schedule, which governs the decision-making process for granting bail in criminal law cases involving imprisonable offences, also applies in extradition cases.

Section 199: Bail: Scotland

567. This section amends the Criminal Procedure (Scotland) Act 1995. A new section 24A is inserted into Part 3 of that Act, modifying the Act's provisions on bail in relation to extradition proceedings. The effect of the new provisions is that the existing Scots law of bail applies to persons facing extradition, in so far as this is consistent with the Act. This is to reflect the situation in England and Wales.

568. In Scotland, unlike in England and Wales, the police have no power to grant bail. However, the Lord Advocate has the power to grant bail to any person charged with any crime or offence. The new section 24A(1)(b) makes it clear that the Lord Advocate can exercise this power in relation to a person subject to extradition proceedings.

569. The new section 24A also includes an order-making power to enable the Scottish Ministers to amend the bail provisions in the Criminal Procedure (Scotland) Act 1995, in so far as is necessary or expedient, for the purposes of extradition.

Section 200: Appeal against grant of bail

570. This section amends the Bail (Amendment) Act 1993 in order to give the person acting on behalf of the requesting territory the right to appeal against a judge's decision to grant a person bail in the course of extradition proceedings. This would confer a right of appeal in the same way that the prosecution has a right of appeal against a decision to grant bail in the course of certain criminal proceedings in this country.

571. There are certain conditions attached to this right of appeal. For example, the effect of *subsection (3)* is that an appeal can only be brought if representations were made against bail before it was granted. Similarly, the consequence of *subsection (4)* is that, where such an appeal is to be brought, oral notice of this must be given at the end of the proceedings in which bail was given and before the person has been released from custody.

572. Written notice of the appeal must then be given within two hours of the conclusion of the relevant proceedings, or the appeal will be treated as having been disposed of. Any appeal brought under this section must start within two working days of the date on which oral notice was given.

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Section 201: Remand to local authority accommodation

573. This section amends section 23 of the Children and Young Persons Act 1969 (and, consequently, section 98(1) of the Crime and Disorder Act 1998) in relation to the detention on remand of a child or young person in connection with extradition proceedings.

574. The effect of *subsection (3)* is that, where a child or young person who is the subject of extradition proceedings is not granted bail, remand is to be to local authority accommodation. That accommodation may be required to be secure accommodation only when all of the three conditions are met, as set out in *subsections (4) to (7)*.

575. The first condition is that the person is 12 years of age (or older) and of a description prescribed by reference to age or sex or both by an order of the Secretary of State. The second condition is that:

- the offence for which extradition is sought would, if committed in the United Kingdom by an adult, attract imprisonment for 14 years or more; and/or
- the person has previously absconded from proceedings connected with the offence or from the extradition proceedings in question (whether in the United Kingdom or the requesting territory).

576. The third condition is that the court is of the opinion, after considering all the options, that only remanding the person to secure local authority accommodation would be adequate:

- to protect the public from serious harm from him; or
- to prevent the commission by him of imprisonable offences.

Section 202: Receivable documents

577. This section provides that documentation may be received in evidence, under proceedings in Part 1 and Part 2 cases, when certain conditions are met.

578. A Part 1 warrant is receivable (*subsection (1)*). Any other documentation issued in a category 1 territory or a category 2 territory is receivable if it is duly authenticated (*subsections (2) and (3)*).

579. *Subsection (4)* provides that a document is duly authenticated only if:

- it purports to be signed by a judge, magistrate or other judicial authority of the relevant territory; or
- it purports to be authenticated by the oath or affirmation of a witness.

580. However, a document that is not duly authenticated is not prevented from being received in proceedings under this Act (*subsection (5)*).

Section 203: Documents sent by facsimile

581. This section provides for the transmission of any document connected to proceedings under this Act to be sent by facsimile. Where such a document is received by facsimile, the provisions of the Act have effect in relation to the document as if it were the original which was used to make the facsimile.

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Section 204: Part 1 warrant: transmission by other electronic means

582. This section provides for the information contained in a Part 1 warrant to be transmitted to the United Kingdom electronically (other than by facsimile). Where the designated authority in this country receives this information by these means, in a form which is intelligible and capable of subsequent use, the information is to be treated as if it were the original Part 1 warrant (*subsections (1) and (2)*). A copy of the information may also be received in evidence in proceedings under this Act, as if it were the Part 1 warrant (*subsection (3)*).

Section 205: Written statements and admissions

583. This section provides for amendments to provisions of the Criminal Justice Act 1967 and the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968, concerning the use of written statements and formal admissions. The effect is that the relevant provisions apply in relation to extradition proceedings under this Act in the same way that they apply in criminal proceedings (*subsections (1) and (2)*). This allows for written statements to be adduced where there is no objection, and for formal admissions to be made.

584. *Subsection (3)* provides the appropriate modifications concerning the terminology used in criminal proceedings, so that the provisions are taken to make the appropriate references in extradition proceedings.

Section 206: Burden and standard of proof

585. This section provides that, where a question arises concerning the burden or standard of proof during extradition proceedings under this Act, it must be decided through the application of existing law in criminal procedures (*subsections (1) and (2)*). Where this situation arises, the law is to be applied as if the person were accused of a criminal offence and the requesting territory were the prosecution (*subsection (3)*).

586. However, *subsection (4)* provides that this rule is subject to any express provisions of this Act. (See, for example, section 7(3).)

Section 207: Extradition for more than one offence

587. This section allows the Secretary of State to apply this Act with modifications, by order, to take account of a particular case where a Part 1 warrant or a request for extradition to a category 2 territory is made in respect of more than one offence.

Section 208: National security

588. This section enables the Secretary of State to prevent a person's extradition where it would be against the interests of national security.

589. *Subsection (1)* provides for the section to apply if the Secretary of State believes that the conditions in *subsections (2) to (4)* apply. The condition in *subsection (2)* is that the person's extradition is sought, or likely to be sought, under either Part 1 or Part 2 of this Act. *Subsection (3)* gives two conditions, either of which must be met. The first is that the person was acting for the purpose of assisting in the exercise of a statutory power of this country in engaging in the conduct amounting to,

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or alleged to amount to the offence. The second is that the person is not liable under the criminal law of any part of the United Kingdom for the conduct amounting to, or alleged to amount to the offence as a result of an authorisation given by the Secretary of State. The third condition that must be met is that the person's extradition for the offence in question would be against the interests of national security (subsection (4)).

590. If satisfied that the necessary conditions are met the Secretary of State can issue a certificate to this effect (*subsection (5)*). *Subsection (6)* allows the Secretary of State, having issued such a certificate, to direct that the relevant Part 1 warrant or extradition request (Part 2) is not to be proceeded with for the offence in question. He may also, in addition to or in place of a direction to that effect, order the person's discharge (*subsection (7)*).

591. *Subsection (8)* sets out what is to happen in the event of the Secretary of State giving a direction under subsection (6)(a) (a Part 1 warrant):

- the designated authority must not issue a certificate if it has not already done so (see section 2);
- the person is not required to appear before a judge and must be discharged if he has already been arrested (see sections 3 to 6);
- the judge is not required to proceed with the case if the person has already been brought before him (see sections 7 and 8);
- the judge is not required to continue proceedings if they have already begun (see sections 10 to 25);
- if the person has consented to his extradition the judge is not required to order his extradition;
- the court is not required to deal with an appeal if one has been brought to the High Court or the House of Lords;
- the person is not required to be extradited if his extradition has been ordered.

592. *Subsection (9)* sets out what is to happen in the event of the Secretary of State giving a direction under subsection (6)(b) (a Part 2 request):

- the Secretary of State is not required to issue a certificate if he has not already done so (see section 70);
- the person is not required to be brought before a judge and must be discharged if he has already been arrested (see section 71);
- the judge is not required to proceed with the case if the person has already been brought before him (see sections 72, 74, 75 and 76);
- the judge is not required to continue proceedings if they have already begun (see sections 78 to 91);
- if the person has consented to his extradition the judge is not required to send his case to the Secretary of State;
- the court is not required to deal with an appeal if one has been brought to the High Court or the House of Lords;
- the person is not required to be extradited if his extradition has been ordered.

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593. *Subsection (10)* stipulates that the Secretary of State is required to sign in person any certificate, direction or order issued under this section.

594. *Subsections (11) and (12)* contain the appropriate modifications for this section to apply to Scotland.

Section 209: Reasonable force

595. Reasonable force can be used when necessary in the use of any power described in the Act.

Section 210: Rules of court

596. This section allows rules of court to be made to govern court practice and procedure regarding proceedings under this Act.

Section 211: Service of notices

597. This section provides for the manner in which specified notices are to be served on a person, in a Part 1 or a Part 2 case. The first type of notice is one informing the person that a request has been received for permission to deal with him for an offence other than the offence for which he was extradited (see sections 54 and 129). The second type of notice is one informing the person that a request has been received for permission to re-extradite the person on to another Part 1 or Part 2 territory (see sections 56, 58, 130 and 131).

Section 212: Article 95 alerts: transitional provisions

598. This section provides transitional provisions concerning the use of an article 95 alert, issued prior to 1 January 2004, as a Part 1 warrant. An article 95 alert, as defined in *subsection (4)*, is an alert issued pursuant to article 95 of the Convention implementing the Schengen agreement of 14 June 1985.

599. Where such an alert is issued by an authority of a category 1 territory, the provisions of this Act apply as if the alert were a Part 1 warrant and that the information sent in connection with the alert were contained in the warrant (*subsections (1) and (2)*).

600. *Subsection (3)* provides the modifications which are required, in these circumstances, for the provisions of Part 1 to be applied to an article 95 alert. References to the authority which issued a Part 1 warrant are to be read as references to the authority at the request of which the alert was issued. There is also no provision for a Part 1 provisional arrest in these circumstances.

Section 213: Disposal of Part 1 warrant and extradition request

601. This section defines what is meant by the disposal of a Part 1 warrant and an extradition request. *Subsection (1)* provides that a Part 1 warrant is disposed of when an order is made for the person's discharge or extradition and there is no further possibility of appeal (see below), or when the person is taken to be discharged under this Act. Similarly *subsection (2)* provides that an extradition request is also disposed of when such an order is made and there is no possible route of appeal open, or when the person is taken to be discharged.

602. *Subsection (3)* provides that there is no further possibility of an appeal:

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- when no notice of appeal has been given and the period permitted for doing so has ended;
- when the decision of the High Court on the appeal becomes final (see below), if no appeal is made against that decision;
- when the decision of the House of Lords is made, if an appeal is made against the decision of the High Court.

603. The decision of the High Court on the appeal is final (*subsection (4)*):

- when no application has been made to the High Court for leave to appeal to the House of Lords and the period permitted for doing so has ended;
- when the High Court has refused leave to appeal to the House of Lords, no application has been made to the House of Lords for leave to appeal and the period permitted for doing so has ended;
- when the House of Lords refuses leave to appeal;
- if, after 28 days of leave being granted to appeal to the House of Lords, no such appeal has been brought.

604. *Subsection (5)* prevents a court's power to extend a permitted period or give leave to take a step out of time from being taken into account for the purposes of subsections (3) and (4).

605. *Subsection (6)* states that subsections (3) to (5) do not apply to Scotland (see section 32 above).

Section 214: Disposal of charge

606. This section defines what is meant by the disposal of a charge against a person. *Subsection (1)* provides that a charge is disposed of when the person is acquitted or when he is convicted and there is no further possibility of an appeal against the conviction.

607. *Subsection (2)* provides that there is no further possibility of an appeal:

- when the period permitted for applying for leave to appeal to the Court of Appeal ends, if leave is required and no notice of application for leave is given;
- when leave to appeal to the Court of Appeal is refused, if leave is required and notice of application for leave is given in time;
- when the period permitted for giving notice of appeal against conviction to the Court of Appeal ends, if no such notice is given;
- when the decision of the Court of Appeal on such an appeal becomes final (see below), if there is no appeal against that decision;
- when the decision of the House of Lords is made, if an appeal is made against the decision of the court of Appeal.

608. The decision of the Court of Appeal on an appeal is final (*subsection (3)*):

- when the period permitted for applying to the Court of Appeal for leave to appeal to the House of Lords ends, if no such application is made;

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- when the period permitted for applying to the House of Lords for leave to appeal to it ends, if the Court of Appeal has refused leave to appeal to the House of Lords and no application has been made to the House of Lords;
- when the House of Lords refuses leave to appeal;
- if, after 28 days of leave being granted to appeal to the House of Lords, no such appeal has been brought.

609. *Subsection (4)* prevents a court's power to extend a permitted period or give leave to take a step out of time from being taken into account for the purposes of subsections (2) and (3).

610. *Subsection (5)* states that subsections (2) to (4) do not apply to Scotland (see section 32 above).

Section 215: European framework list

611. The European framework list is the list of conduct set out in article 2.2 of the framework decision of the Council of the European Union made on 13 June 2002 on the European arrest warrant and surrender procedures between member states (2002/584/JHA). This list is reproduced in Schedule 2 to the Act.

612. *Subsection (2)* provides for Schedule 2 to be amended, by order made by the Secretary of State. This may be done for the purposes of ensuring that the list in the Schedule corresponds to any changes subsequently made to the European framework list. Such an order would be subject to the affirmative resolution procedure, by virtue of section 223.

Section 216: Other interpretative provisions

613. This section defines various terms used in the Act, as follows:

- category 1 territory must be read in accordance with section 1;
- category 2 territory must be read in accordance with section 69;
- designated authority must be read in accordance with section 2(9);
- Part 1 warrant must be read in accordance with section 2;
- Part 3 warrant must be read in accordance with section 142;
- valid request for a person's extradition must be read in accordance with section 70;
- asylum claim has the meaning given by section 113 of the Nationality, Immigration and Asylum Act 2002: a claim made by a person to the Secretary of State that to remove the person or require him to leave the United Kingdom would breach the United Kingdom's obligations under the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and its protocol;
- a customs officer is a person commissioned by the Commissioners of Customs and Excise;
- for Scotland "High Court" means the High Court of the Justiciary;
- for Scotland references to an appeal being discontinued are to be taken as references to an appeal being abandoned;
- for Northern Ireland "police officer" has the meaning given in the Police (Northern Ireland) Act 2000;

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- provisional warrant is one issued under the power in section 73(3);
- a service policeman is a member of one of the four services' police forces, including, in the Royal Air Force Police, the Provost Marshal of the Royal Air Force and any officer appointed to exercise the functions of a provost officer.

Section 217: Form of documents

614. This section allows the Secretary of State to prescribe the form of any document required under this Act. This must be done by statutory instrument, subject to the negative resolution procedure in both Houses of Parliament.

Section 218: Existing legislation on extradition

615. This section has the effect of repealing the existing legislation on extradition, namely the Backing of Warrants (Republic of Ireland) Act 1965 and the Extradition Act 1989.

Section 219: Amendments

616. Miscellaneous and consequential amendments to existing legislation, as a result of this Act, are contained in Schedule 3 to the Act.

617. This section also provides a power for the Secretary of State to make any additional amendments by order which he considers necessary or expedient to give effect to, or in consequence of, this Act (*subsection (2)*). Any such order may amend, repeal or revoke any existing legislative provision, but not one that is passed in any subsequent session of Parliament (*subsection (3)*). Where an order does amend or repeal any legislative provision in this way, it is subject to the affirmative resolution order by virtue of section 223(6)(b).

Section 220: Repeals

618. Repeals can be found in Schedule 4 to the Act.

Section 221: Commencement

619. This section allows the preceding provisions of the Act to be brought into force by order made by the Secretary of State.

Section 222: Channel Islands and Isle of Man

620. This section enables the Act to be extended, with specified modifications where appropriate, to the Channel Islands and the Isle of Man, by Order in Council.

Section 223: Orders and regulations

621. This section describes the procedures to be used for making certain secondary legislation under this Act. This applies to any orders made by the Secretary of State (other than an order described in *subsection (2)*), any order of the Treasury and any regulations made under this Act (*subsection (1)*). Subsection (2) sets out the orders made under this Act that are not covered by this section. These are any order for a person's extradition or discharge and any order deferring proceedings or deferring a person's extradition.

622. The power to make this secondary legislation is exercisable by statutory instrument and the secondary legislation may make different provision for different

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purposes and may include supplementary, incidental, saving or transitional provisions (*subsections (3) and (4)*).

623. *Subsections (5) and (6)* provides that certain orders cannot be made unless a draft is laid before Parliament and approved by both Houses (the affirmative resolution procedure). These are:

- an order to designate category 1 or category 2 territories – under section 1(1) or 69(1);
- an order designating a category 2 territory with the effect that it need provide "information" in place of "evidence" – under sections 71(4), 73 (5), 84(7) and 86(7);
- an order designating a category 2 territory which permits a period longer than 45 days for the receipt of full documents after arrest under provisional warrant – under section 74(11)(b);
- an order designating an "appropriate person" who may apply for a Part 3 warrant – under section 142(9);
- an order bringing a code of practice into operation, in connection with the powers conferred by Part 4 of the Act – under section 173(4);
- an order amending the European framework list in Schedule 2 to the Act – under section 215(2);
- an order amending or repealing any existing legislative provision, to give effect to or in consequence of this Act – under section 219(2).

624. All other orders are subject to the negative resolution procedure (annulment in pursuance of a resolution of either House of Parliament), with the exception of a commencement order made under section 221 (*subsection (7)*).

625. Where a territory is designated by any order for the purposes of this Act, the territory may be identified by name or may fall within the description given in the order (*subsection (8)*). *Subsection (9)* provides that any order to designate a category 1 or 2 territory may provide that for the Act to be applied in relation to that territory with specified modifications.

Section 224: Orders in Council

626. This section provides for an Order in Council made under section 17 or 178 (in relation to extradition to or from British overseas territories) to be subject to the negative resolution procedure. Orders in Council made under this Act may also include supplementary, incidental, saving or transitional provisions.

Section 225: Finance

627. This section provides for the following expenditure to be paid out of money provided by Parliament, if it arises as a result of the Act:

- any expenditure incurred by the Lord Chancellor;
- any increase in the sums payable out of money provided by Parliament under another enactment.

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Section 226: Extent

628. *Subsection (1)* states that sections 157 to 160, 166 to 168, 171 and 173 do not apply in Scotland. This is because PACE powers (on which these police powers sections are based) do not extend to Scotland. Comparable powers are to be found in Scottish common law and statute. Section 205 does not apply in Scotland as it includes provisions to amend legislative provisions relating only to England and Wales and Northern Ireland.

629. In connection with the remand and bail provisions, sections 154, 198, 200 and 201 apply only to England and Wales, as the Acts which they amend only have such extent (*subsection (2)*).

630. On legal aid, sections 183 and 199 apply only to Scotland and sections 184 and 185 apply only to Northern Ireland (*subsections (3) and (4)*).

Section 227: Short title

631. The Act may be cited as the Extradition Act 2003.

SCHEDULES

Schedule 1: Re-extradition: Modifications

632. This Schedule contains the modifications required when the Act is being applied in the context of re-extradition to a category 1 or category 2 territory, as provided for in sections 188 and 189.

Schedule 2: European framework list

633. This Schedule contains the European framework list, which is reproduced from article 2.2 of the European framework decision, as defined in section 215. Reference to the list is made in the definition of an extradition offence under Part 1 of the Act (sections 64 and 65) and the issue of a Part 3 warrant (section 142)

634. Section 215 also provides for Schedule 2 to be amended, by order made by the Secretary of State, subject to the affirmative resolution procedure, for the purposes of ensuring that the list in the Schedule corresponds to any changes subsequently made to the European framework list.

Schedule 3: Amendments

635. This Schedule contains miscellaneous and consequential amendments to existing legislation, as a result of this Act, as provided for in section 219.

Schedule 4: Repeals

636. This Schedule contains repeals, as provided for in section 220. The existing primary legislation on extradition, the Backing of Warrants (Republic of Ireland) Act 1965 and the Extradition Act 1989, are repealed in their entirety. In addition, various provisions contained in existing related legislation are repealed as a result of this Act.

COMMENCEMENT

637. Section 207 provides for the Act to come into force on such date as the Secretary of State directs by order.

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HANSARD REFERENCES

The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Commons		
Introduction	14 th November 2002	Vol 394; Cols 163-164
Second Reading	9 th December 2002	Vol 396; Cols 39-127
Committee	9 sittings: 7 th January 2003 to 21 st January 2003	Standing Committee D
	7 th January	1 st sitting; Cols 1-30
	9 th January (Morning)	2 nd sitting; Cols 31-60
	9 th January (Afternoon)	3 rd sitting; Cols 61-104
	14 th January (Morning)	4 th sitting; Cols 105-136
	14 th January (Afternoon)	5 th sitting; Cols 137-156
	16 th January (Morning)	6 th sitting; Cols 157-170
	16 th January (Afternoon)	7 th sitting; Cols 171-200
	21 st January (Morning)	8 th sitting; Cols 201-236
	21 st January (Afternoon)	9 th sitting; Cols 237-266
Report and Third Reading	25 th March 2003	Vol 402; Cols 161-262
House of Lords		
Introduction	26 th March 2003	Vol 646; Col 814
Second reading	1 st May 2003	Vol 647; Cols 853-918
Grand Committee	9 sittings: 3 rd June 2003 to 10 th September 2003	
	3 rd June	Vol 648; Cols GC117-180
	9 th June	Vol 649; Cols GC 1-46
	18 th June	Vol 649; Cols GC 287-352
	19 th June	Vol 649; Cols GC 353-408
	26 th June	Vol 650; Cols GC 113-172
	1 st July	Vol 650; Cols GC 173-232
	8 th July	Vol 651; Cols GC 53-104
	10 th July	Vol 651; Cols GC 105-166
	10 th September	Vol 652; Cols GC 1-54
Report	22 nd October 2003	Vol 653; Cols 1626-1681 and 1697-1723
	27 th October 2003	Vol 654; Cols 21-84 and 101-126
	30 th October 2003	Vol 654; Cols 375-419
Third Reading	12 th November 2003	Vol 654; Cols 1410-1437

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House of Commons		
Commons Consideration of Lords Amendments	13 th November 2003	Vol 413; Cols 430-455
House of Lords		
Lords Consideration of Commons Amendments	18 th November 2003	Vol 654; Cols 1904-1910

Royal Assent – 20th November 2003 House of Lords – Vol 654; Col 2114
House of Commons – Vol 413; Col 1037

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