



# Extradition Act 2003

## 2003 CHAPTER 41

### PART 5

#### MISCELLANEOUS AND GENERAL

##### *Custody and bail*

#### **Commencement Information**

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

#### **197 Custody**

- (1) If a judge remands a person in custody under this Act, the person must be committed to the institution to which he would have been committed if charged with an offence before the judge.<sup>[F1]</sup> This is subject to the power to order the temporary transfer of a person under section 21B.]
- (2) If a person in custody following his arrest under Part 1 or Part 2 <sup>[F2]</sup>, or kept in custody by virtue of a power under Part 3,] escapes from custody, he may be retaken in any part of the United Kingdom in the same way as he could have been if he had been in custody following his arrest or apprehension under a relevant domestic warrant.
- (3) A relevant domestic warrant is a warrant for his arrest or apprehension issued in the part of the United Kingdom in question in respect of an offence committed there.
- (4) Subsection (5) applies if—
  - (a) a person is in custody in one part of the United Kingdom (whether under this Act or otherwise);
  - (b) he is required to be removed to another part of the United Kingdom after being remanded in custody under this Act;
  - (c) he is so removed by sea or air.

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

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- (5) The person must be treated as continuing in legal custody until he reaches the place to which he is required to be removed.
- (6) An order for a person's extradition under this Act is sufficient authority for an appropriate person—
- (a) to receive him;
  - (b) to keep him in custody until he is extradited under this Act;
  - (c) to convey him to the territory to which he is to be extradited under this Act.
- [<sup>F3</sup>(6A) An order for a person's temporary transfer under section 21B is sufficient authority for an appropriate person—
- (a) to receive him;
  - (b) to keep him in custody until he is transferred in accordance with the order;
  - (c) to convey him to and from the territory to which he is to be transferred;
  - (d) on his return from that territory, to keep him in custody until he is brought back to the institution to which he was committed.]

(7) An appropriate person is—

    - (a) a person to whom the order is directed;
    - (b) a constable.

#### Textual Amendments

- F1** Words in s. 197(1) inserted (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 11 para. 119\(2\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 2(t)
- F2** Words in s. 197(2) inserted (25.1.2010) by [Policing and Crime Act 2009 \(c. 26\)](#), [ss. 74\(5\)](#), 116; S.I. 2009/3096, [art. 3\(q\)](#)
- F3** S. 197(6A) inserted (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 11 para. 119\(3\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 2(t)

#### Commencement Information

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

### [<sup>F4</sup>197A Extradition of serving prisoner

If an order is made under Part 1 or 2 for the extradition of a person who is [<sup>F5</sup>in custody]<sup>F5</sup> serving a sentence of imprisonment or another form of detention in the United Kingdom, the order is sufficient authority for the person to be removed from the prison or other institution where he is detained.]

#### Textual Amendments

- F4** S. 197A inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 25](#); S.I. 2006/3364, [art. 2\(d\)\(e\)](#)
- F5** Words in s. 197A inserted (25.1.2010) by [Policing and Crime Act 2009 \(c. 26\)](#), [ss. 71\(9\)](#), 116; S.I. 2009/3096, [art. 3\(n\)](#) (with [art. 4](#))

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

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## 198 Bail: England and Wales

- (1) The Bail Act 1976 (c. 63) is amended as follows.
- (2) In section 1(1) (meaning of “bail in criminal proceedings”) after paragraph (b) insert—
  - “, or
  - (c) bail grantable in connection with extradition proceedings in respect of an offence.”
- (3) In section 2(2) (other definitions) omit the definition of “proceedings against a fugitive offender” and in the appropriate places insert—
  - ““extradition proceedings” means proceedings under the Extradition Act 2003;”;
  - ““prosecutor”, in relation to extradition proceedings, means the person acting on behalf of the territory to which extradition is sought;”.
- (4) In section 4 (general right to bail) in subsection (2) omit the words “or proceedings against a fugitive offender for the offence”.
- (5) In section 4 after subsection (2) insert—
  - “(2A) This section also applies to a person whose extradition is sought in respect of an offence, when—
    - (a) he appears or is brought before a court in the course of or in connection with extradition proceedings in respect of the offence, or
    - (b) he applies to a court for bail or for a variation of the conditions of bail in connection with the proceedings.
  - (2B) But subsection (2A) above does not apply if the person is alleged to be unlawfully at large after conviction of the offence.”
- (6) In section 5B (reconsideration of decisions granting bail) for subsection (1) substitute—
  - “(A1) This section applies in any of these cases—
    - (a) a magistrates' court has granted bail in criminal proceedings in connection with an offence to which this section applies or proceedings for such an offence;
    - (b) a constable has granted bail in criminal proceedings in connection with proceedings for such an offence;
    - (c) a magistrates' court or a constable has granted bail in connection with extradition proceedings.
  - (1) The court or the appropriate court in relation to the constable may, on application by the prosecutor for the decision to be reconsidered—
    - (a) vary the conditions of bail,
    - (b) impose conditions in respect of bail which has been granted unconditionally, or
    - (c) withhold bail.”
- (7) In section 7 (liability to arrest for absconding or breaking conditions of bail) after subsection (1) insert—

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“(1A) Subsection (1B) applies if—

- (a) a person has been released on bail in connection with extradition proceedings,
- (b) the person is under a duty to surrender into the custody of a constable, and
- (c) the person fails to surrender to custody at the time appointed for him to do so.

(1B) A magistrates' court may issue a warrant for the person's arrest.”

(8) In section 7(4) omit the words from “In reckoning” to “Sunday”.

(9) In section 7 after subsection (4) insert—

“(4A) A person who has been released on bail in connection with extradition proceedings and is under a duty to surrender into the custody of a constable may be arrested without warrant by a constable on any of the grounds set out in paragraphs (a) to (c) of subsection (3).

(4B) A person arrested in pursuance of subsection (4A) above shall be brought as soon as practicable and in any event within 24 hours after his arrest before a justice of the peace for the petty sessions area in which he was arrested.”

(10) In section 7(5) after “subsection (4)” insert “ or (4B) ”.

(11) In section 7 after subsection (6) insert—

“(7) In reckoning for the purposes of this section any period of 24 hours, no account shall be taken of Christmas Day, Good Friday or any Sunday.”

(12) In Part 1 of Schedule 1 (defendants accused or convicted of imprisonable offences) for paragraph 1 substitute—

“1 The following provisions of this Part of this Schedule apply to the defendant if—

- (a) the offence or one of the offences of which he is accused or convicted in the proceedings is punishable with imprisonment, or
- (b) his extradition is sought in respect of an offence.”

(13) In Part 1 of Schedule 1 after paragraph 2A insert—

“2B The defendant need not be granted bail in connection with extradition proceedings if—

- (a) the conduct constituting the offence would, if carried out by the defendant in England and Wales, constitute an indictable offence or an offence triable either way; and
- (b) it appears to the court that the defendant was on bail on the date of the offence.”

(14) In Part 1 of Schedule 1 in paragraph 6 after “the offence” insert “ or the extradition proceedings ”.

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#### Commencement Information

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

### 199 Bail: Scotland

After section 24 of the Criminal Procedure (Scotland) Act 1995 (c. 46) (bail and bail conditions) insert—

#### “24A Bail: extradition proceedings

- (1) In the application of the provisions of this Part by virtue of section 9(2) or 77(2) of the Extradition Act 2003 (judge’s powers at extradition hearing), those provisions apply with the modifications that—
- (a) references to the prosecutor are to be read as references to a person acting on behalf of the territory to which extradition is sought;
  - (b) the right of the Lord Advocate mentioned in section 24(2) of this Act applies to a person subject to extradition proceedings as it applies to a person charged with any crime or offence;
  - (c) the following do not apply—
    - (i) paragraph (b) of section 24(3); and
    - (ii) subsection (3) of section 30; and
  - (d) sections 28(1) and 33 apply to a person subject to extradition proceedings as they apply to an accused.
- (2) Section 32 of this Act applies in relation to a refusal of bail, the amount of bail or a decision to allow bail or ordain appearance in proceedings under this Part as the Part applies by virtue of the sections of that Act of 2003 mentioned in subsection (1) above.
- (3) The Scottish Ministers may, by order, for the purposes of section 9(2) or 77(2) of the Extradition Act 2003 make such amendments to this Part as they consider necessary or expedient.
- (4) The order making power in subsection (3) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.”

#### Commencement Information

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

### 200 Appeal against grant of bail

- (1) Section 1 of the Bail (Amendment) Act 1993 (c. 26) (prosecution right of appeal against grant of bail) is amended as follows.
- (2) After subsection (1) insert—

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“(1A) Where a magistrates' court grants bail to a person in connection with extradition proceedings, the prosecution may appeal to a judge of the Crown Court against the granting of bail.”

(3) In subsection (3) for “Such an appeal” substitute “ An appeal under subsection (1) or (1A) ”.

(4) In subsection (4)—

- <sup>F6</sup>(a) .....
- (b) for “magistrates' court” substitute “ court which has granted bail ”;
- (c) omit “such”.

(5) In subsection (5) for “magistrates' court” substitute “ court which has granted bail ”.

(6) In subsection (6) for “magistrates' court” substitute “ court which has granted bail ”.

(7) In subsection (8)—

- <sup>F7</sup>(a) .....
- (b) omit “magistrates”.

(8) In subsection (10)(b) for “reference in subsection (5) above to remand in custody is” substitute “ references in subsections (6) and (9) above to remand in custody are ”.

(9) After subsection (11) insert—

“(12) In this section—

“extradition proceedings” means proceedings under the Extradition Act 2003;

“magistrates' court” and “court” in relation to extradition proceedings means a District Judge (Magistrates' Courts) designated for the purposes of Part 1 or Part 2 of the Extradition Act 2003 by the Lord Chancellor;

“prosecution” in relation to extradition proceedings means the person acting on behalf of the territory to which extradition is sought.”

**Textual Amendments**

**F6** S. 200(4)(a) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 11 para. 35](#); S.I. 2012/2906, art. 2(i)

**F7** S. 200(7)(a) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 11 para. 35](#); S.I. 2012/2906, art. 2(i)

**Commencement Information**

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

**<sup>F8</sup>201 Remand to local authority accommodation**

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

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**Textual Amendments**

**F8** S. 201 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) (c. 10), s. 151(1), [Sch. 12 para. 49](#); S.I. 2012/2906, art. 2(j) (with art. 7(2)(h)(3))

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**Commencement Information**

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

**Changes to legislation:**

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