

SCHEDULE 9

Regulation 2

AMENDMENTS TO THE EXTRADITION ACT 1989

1. The Act is amended as follows.
2. In section 24 (suppression of terrorism) in subsection (3)(a) after “1977” insert “, other than a country that is a party to the 1996 Convention”.
3. After section 34 insert—

“1995 and 1996 Convention cases

Application of Act in 1995 and 1996 Convention cases

34A Schedule 1A provides for the application of this Act as between—

- (a) the United Kingdom and states other than the Republic of Ireland that are parties to the 1995 Convention;
- (b) the United Kingdom and states other than the Republic of Ireland that are parties to the 1996 Convention.”.

4. In section 35(1) (interpretation)(1)after the definition of “Hong Kong Special Administrative Region” insert—

““the 1995 Convention” means the Convention drawn up on the basis of Article K.3 of the Treaty on European Union on Simplified Extradition Procedure between the Member States of the European Union;

“the 1996 Convention” means the Convention drawn up on the basis of Article K.3 of the Treaty on European Union relating to Extradition between the Member States of the European Union;

“party to the 1995 Convention” means a state in respect of which the 1995 Convention is in force either generally or between it and the United Kingdom;

“party to the 1996 Convention” means a state in respect of which the 1996 Convention is in force either generally or between it and the United Kingdom;”.

5. After Schedule 1 insert—

“SCHEDULE 1A

THE 1995 CONVENTION AND THE 1996 CONVENTION

PART 1

THE 1995 CONVENTION

Application of Act

1. This Act applies as if the terms of the 1995 Convention were general extradition arrangements made between the United Kingdom and the states other than the Republic of Ireland that are parties to it.

(1) The definition of “Hong Kong Administrative Region” was inserted by S.I.1997/1178.

Adaptations of Act

2. As applied by paragraph 1 above, this Act has effect as between the United Kingdom and the states other than the Republic of Ireland that are parties to the 1995 Convention with the following adaptations.

3. In section 6 after subsection (6) insert—

“(6A) Subsection (4) above does not apply if the person has consented to his return to the relevant foreign state under section 14A below.”.

4. In section 9 after subsection (3) insert—

“(3A) The Court of committal shall, as soon as practicable and in any event before committing the person arrested under subsection (8) below—

- (a) inform him that he may consent to his return to the foreign state that made the extradition request; and
- (b) explain the effect of any such consent and the procedure that will apply if he gives any such consent.

(3B) The court of committal shall also inform the person arrested that—

- (a) any such consent is to be given in writing and is irrevocable;
- (b) any such consent is to be given to the court, if it is given before an order for committal under subsection (8) below has been made;
- (c) any such consent is to be given to the Secretary of State or the Scottish Ministers, if it is given after an order for committal under subsection (8) below has been made.”.

5. After section 14 insert—

“14A Consent to return

(1) A person arrested in pursuance of a warrant under section 8 above may consent to his return to the foreign state that made the extradition request.

(2) Any consent under this section is irrevocable.

(3) If the person has not been committed under section 9 above, any consent under this section must be given by notice in writing to the court of committal.

(4) In England and Wales, the notice is to be given in the manner prescribed by rules under section 144 of the Magistrates' Courts Act 1980⁽²⁾.

(5) Without prejudice to the generality of section 144(1) of that Act, the power to make rules under that section includes power to make provision for a magistrate to order the committal for return of a person if he gives consent under this section before he is committed under section 9 above.

(6) In Scotland, the notice is to be given in the manner prescribed by the High Court of Justiciary by Act of Adjournal and the sheriff may order the committal for return of a person if he gives consent under this section before he is committed under section 9 above.

(7) Where an order is made by virtue of subsection (5) or (6) above, this Act shall cease to apply to the person in respect of whom the order is made, subject to subsection (8) below.

(8) If the person is not returned within 20 days after the order is made, the High Court or in Scotland the High Court of Justiciary may, on application by him or on his behalf, order him to be discharged unless reasonable cause is shown for the delay.

(2) 1980 c. 43.

(9) If the person has been committed under section 9 above, any consent under this section must be given to the Secretary of State or the Scottish Ministers.

(10) The Secretary of State or the Scottish Ministers may, by warrant, order his return at any time under this section.”.

6. In section 18 after subsection (1) insert—

“(1A) In a case where the foreign state by which the person is returned has made a declaration under Article 9(a) of the 1995 Convention, subsection (1) above does not apply if—

- (a) the person has consented to his return, and
- (b) where the state has made a declaration under Article 7(4) of that Convention, he has not revoked his consent.

(1B) In a case where the foreign state by which the person is returned has made a declaration under Article 9(b) of the 1995 Convention, subsection (1) above does not apply if—

- (a) the person has consented to his return and has renounced the benefit of subsection (1) above, and
- (b) where the state has made a declaration under Article 7(4) of that Convention, he has not revoked his consent or renunciation.”.

PART 2

THE 1996 CONVENTION

Application of Act

7. This Act applies as if the terms of the 1996 Convention were general extradition arrangements made between the United Kingdom and the other states other than the Republic of Ireland that are parties to it.

Adaptations of Act

8. As applied by paragraph 7 above, this Act has effect as between the United Kingdom and the states other than the Republic of Ireland that are parties to the 1996 Convention with the following adaptations.

9.—(1) Section 2(3) is amended as follows.

(2) In subsection (1)(a)—

- (a) for “12 months” substitute “6 months”;
- (b) for “so punishable under that law” substitute “punishable under that law with imprisonment, or any form of detention wherever served, for a term of 12 months, or any greater punishment”.

(3) In subsection (1)(b) after “imprisonment” insert “, or any form of detention wherever served,”.

(4) In subsections (2) and (3) for “12 months” substitute “6 months”.

10.—(1) Section 6(4) is amended as follows.

(2) In subsection (1), omit paragraph (a).

(3) Section 2 has been amended, but the amendments are not relevant to the subject matter of these Regulations.

(4) Section 6 has been amended, but the amendments are not relevant to the subject matter of these Regulations.

(3) In subsection (4) after paragraph (a) insert—

- “(aa) an offence which is not punishable with imprisonment or any other form of detention;
- (ab) an offence in respect of which he will not be detained in connection with his trial, sentence or appeal;
- (ac) an offence in respect of which an appropriate authority is satisfied that a sentence of imprisonment or any other form of detention will be imposed only if he has specifically waived the right which (but for this paragraph) he would have not to be dealt with for the offence;”.

(4) After subsection (4) insert—

“(4A) Where the relevant foreign state has made a declaration under Article 6(3) of the 1996 Convention fiscal offences, other than those connected with excise, valued-added tax or customs, are excluded from paragraphs (aa) to (ac) of subsection (4) above.”.

(5) After subsection (6) insert—

“(6A) Subsection (4) above does not apply if

- (a) the relevant foreign state has made a declaration under Article 11 of the 1996 Convention, and
- (b) no indication has been given by the Secretary of State or the Scottish Ministers that consent should not be deemed to have been given in the person’s case.”.

11.—(1) Section 18 is amended as follows.

(2) In subsection (1) after paragraph (b) insert—

- “(ba) an offence which is not punishable with imprisonment; or
- (bb) an offence in respect of which no custodial sentence will be imposed; or
- (bc) an offence in connection with which the person returned will not be detained in custody; or
- (bd) an offence in respect of which he has notified the court in writing that he waives the right which (but for this paragraph) he would have not to be tried for the offence; or”.

(3) After subsection (1) insert—

“(1A) Subsection (1) above does not apply if—

- (a) the foreign state has made a declaration under Article 11 of the 1996 Convention, and
- (b) no indication has been given by the foreign state that consent should not be deemed to have been given in the person’s case.”.

12.—(1) Section 26(5) is amended as follows.

(2) For subsection (1) substitute—

“(1) In extradition proceedings in relation to a person whose return has been requested by a foreign state, a copy of an arrest warrant or certificate of conviction issued in the foreign state shall be deemed duly authenticated if it purports to be certified as a true copy of the original by a judicial or other authority of the state.”.

(3) In subsection (2) for “(1)(b)” substitute “(1)”.

(5) Section 26 has been amended, but the amendments are not relevant to the subject matter of these Regulations.