

Draft Order laid before Parliament under section 223(5) of the Extradition Act 2003 and section 182(2) of the Anti-social Behaviour, Crime and Policing Act 2014, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2015 No.

EXTRADITION

The Extradition Act 2003 (Amendment to Designations and Appeals) Order 2015

Made

Coming into force in accordance with article 1

The Secretary of State makes this Order in exercise of the powers conferred by sections 69(1), 71(4), 73(5), 74(11)(b), 84(7), 86(7) and 223(3)(b) and (8) of the Extradition Act 2003^(a) and section 181(2) and 182(6) of the Anti-social Behaviour, Crime and Policing Act 2014^(b).

In accordance with section 223(5) of the Extradition Act 2003 and section 182(2) of the Anti-social Behaviour, Crime and Policing Act 2014, a draft of this Order has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement, interpretation and transitional provision

1.—(1) This Order may be cited as the Extradition Act 2003 (Amendment to Designations and Appeals) Order 2015 and comes into force at the end of the period of 21 days beginning on the day on which it is made.

(2) In this Order, “the 2003 Act” means the Extradition Act 2003.

(3) Article 2 of this Order does not apply in a case where—

- (a) the Secretary of State issued a certificate under section 70 of the 2003 Act^(c), or
- (b) a justice of the peace or sheriff issued a warrant under section 73 of that Act^(d),

before the coming into force of this Order.

(4) Article 3 of this Order shall not apply in a case where notice of appeal was given under section 26, 28, 103, 105, 108 or 110 of the 2003 Act^(e) before the coming into force of this Order.

(a) 2003 c.41.

(b) 2014 c.12.

(c) Section 70 was amended by the Police and Justice Act 2006 (c.48), Schedule 13. There is another amendment to section 70 which is not relevant to this Order.

(d) There are amendments to section 73 which are not relevant to this Order.

(e) Sections 26, 28, 103, 105, 108 and 110 were amended by the Anti-social Behaviour, Crime and Policing Act 2014, section 160 and Schedule 11. Section 108 was also amended by the Crime and Courts Act 2013 (c.22), Schedule 20.

Amendment of the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003

2.—(1) The Extradition Act 2003 (Designation of Part 2 Territories) Order 2003(a) is amended as follows.

(2) In article 2(2)—

- (a) after “Andorra,” insert “Anguilla,”;
- (b) after “Armenia,” insert “Aruba,”;
- (c) after “Belize,” insert “Bermuda,”;
- (d) after “Bolivia,” insert “Bonaire,”;
- (e) after “Brazil,” insert “British Antarctic Territory,” and “British Indian Ocean Territory,”;
- (f) after “Canada,” insert “Cayman Islands,”;
- (g) after “Cuba,” insert “Curaçao,”;
- (h) after “El Salvador,” insert “Falkland Islands,” and “Faroe Islands,”;
- (i) after “Ghana,” insert “Greenland,”;
- (j) after “Kiribati,” insert “Kosovo,”;
- (k) after “Montenegro,”(b) insert “Montserrat,”;
- (l) after “Peru,” insert “Philippines,” and “Pitcairn, Henderson, Ducie and Oeno Islands,”;
- (m) after “Russian Federation,” insert “Saba,”;
- (n) after “Saint Christopher and Nevis,” insert “Saint Helena, Ascension and Tristan da Cunha,”;
- (o) after “Singapore,” insert “Sint Eustatius,” and “Sint Maarten,”;
- (p) after “South Africa,” insert “South Georgia and the South Sandwich Islands,” and “The Sovereign Base Areas of Akrotiri and Dhekalia (that is to say the areas mentioned in section 2(1) of the Cyprus Act 1960(c)),”;
- (q) after “Turkey,” insert “Turks and Caicos Islands,”; and
- (r) after “Vanuatu,” insert “Virgin Islands,”.

(3) In article 3(2)—

- (a) after “Armenia,” insert “Aruba,”;
- (b) after “Azerbaijan,” insert “Bonaire,”;
- (c) after “Canada,” insert “Curaçao,” and “Faroe Islands,”;
- (d) after “Georgia,” insert “Greenland,”;
- (e) after “Moldova,” insert “Monaco,” and “Montenegro,”;
- (f) after “Russian Federation,” insert “Saba,” and “San Marino,”;
- (g) omit “and Montenegro”; and
- (h) after “Serbia,” insert “Sint Eustatius,” and “Sint Maarten,”.

(4) In article 4(2)—

- (a) after “Peru (95 days)” insert “Saint Helena, Ascension and Tristan da Cunha (65 days)”;
and
- (b) omit “Monaco (65 days)” and “San Marino (65 days)”.

(a) S.I. 2003/3334, amended by S.I. 2004/1898, 2005/365, 2036, 2006/3451, 2007/2238, 2008/1589, 2010/861 and 2013/1583 and section 43(1) of the Police and Justice Act 2006.

(b) “Montenegro” was inserted by S.I. 2006/3451.

(c) 1960 c.52.

Consequential amendment of the 2003 Act in relation to appeals

3.—(1) The 2003 Act is amended as follows.

(2) In section 30A (detention pending conclusion of appeal under section 28: Scotland)(a)—

(a) in subsection (3), after paragraph (a) insert—

“(aa) when the decision of the High Court refusing leave to appeal to it becomes final;”; and

(b) after subsection (3), insert—

“(3A) The decision of the High Court refusing leave to appeal to it becomes final when, in accordance with rules of court, there is no further step that can be taken in relation to the application for leave to appeal (ignoring any power of a court to grant leave to take a step out of time).”.

(3) In section 35 (extradition where no appeal)—

(a) for subsection (1), substitute—

“(1) This section applies if the appropriate judge orders a person’s extradition to a category 1 territory under this Part and either—

(a) no notice of application for leave to appeal under section 26 is given before the end of the period permitted under that section, or

(b) notice is given during that period but the High Court refuses leave to appeal to it.”;

(b) in subsection (4)(b), for paragraph (a) substitute—

“(a) 10 days starting with—

(i) the first day after the period permitted under section 26 for giving notice of application for leave to appeal against the judge’s order (where subsection (1)(a) applies), or

(ii) the day on which the decision of the High Court refusing leave to appeal to it becomes final (where subsection (1)(b) applies), or”;

(c) after subsection (4), insert—

“(4ZA) The decision of the High Court refusing leave to appeal to it becomes final when, in accordance with rules of court, there is no further step that can be taken in relation to the application for leave to appeal.”;

(d) in subsection (4A)(c)—

(i) for “paragraph (a) of subsection (4)” substitute “subsection (4)(a)(i) or (ii)”; and

(ii) for “that paragraph has effect as if it referred instead to the postponed date” substitute “subsection (4)(a) has effect as if it referred to the period of 10 days starting with the postponed date”;

(e) in subsection (6)—

(i) for “subsection (1)(b)” substitute “subsections (1) to (4A)”; and

(ii) for “notice of appeal” substitute “notice of application for leave to appeal”; and

(f) after subsection (6) insert—

“(7) If leave to appeal to the High Court is granted on an application notice of which was given after the end of the period permitted under section 26, this section ceases to apply (but section 36 applies instead).”

(4) In section 37 (undertaking in relation to person serving sentence in United Kingdom), in subsection (8)(d), for “section 35(4)(a)” substitute “section 35(4)(a)(i) or (ii)”.

(a) Section 30A was inserted by the Crime and Courts Act 2013, Schedule 20.

(b) Subsection (4) was amended by the Police and Justice Act 2006, Schedule 13.

(c) Subsection (4A) was inserted by the Anti-social Behaviour, Crime and Policing Act 2014, Schedule 11.

(d) Subsection (8) was amended by the Police and Justice Act 2006, Schedule 13.

(5) In section 38 (extradition following deferral for competing claim), in subsection (3)(a), for “section 35(4)(a)” substitute “section 35(4)(a)(i) or (ii)”.

(6) In section 42 (withdrawal of warrant while appeal to High Court pending)—

- (a) in the heading, after “while” insert “application or”;
- (b) in subsection (2)—
 - (i) in paragraph (a), for “notice of an appeal to the court” substitute “notice of application for leave to appeal to the High Court”; and
 - (ii) in paragraph (b), for “when proceedings on the appeal are discontinued or the court makes its decision on the appeal” substitute “with the relevant day”;

(c) after subsection (2), insert—

“(2A) “The relevant day” is—

- (a) if the High Court refuses leave to appeal to it, the day on which the decision to refuse leave becomes final;
- (b) if leave to appeal is given but proceedings on the appeal are discontinued, the day of discontinuance;
- (c) if leave to appeal is given and proceedings on the appeal are not discontinued, the day on which the court makes its decision on the appeal.

For the purposes of paragraph (a), the decision to refuse leave becomes final when, in accordance with rules of court, there is no further step that can be taken in relation to the application for leave to appeal (ignoring any power of a court to grant leave to take a step out of time).”; and

(d) in subsection (3)—

- (i) in paragraph (a), for “if the appeal is” substitute “in the case of an application or appeal”; and
- (ii) for paragraph (b) substitute—

“(b) in the case of an application or appeal under section 28, dismiss the application or appeal.”.

(7) In section 60 (costs where extradition ordered)—

(a) in subsection (1)(b), after paragraph (a) insert—

“(aa) the High Court dismisses an application for leave to appeal to it under section 26;”; and

(b) in subsection (3), for “(1)(b)” substitute “(1)(aa), (b)”.

(8) In section 61 (costs where discharge ordered)—

(a) in subsection (1)(c), after paragraph (b) insert—

“(ba) the High Court dismisses an application for leave to appeal to it under section 28;”; and

(b) in subsection (4), for “(1)(c)” substitute “(1)(ba), (c)”.

(9) In section 107A (detention pending conclusion of appeal under section 105: Scotland)(d)—

(a) in subsection (3), after paragraph (a) insert —

“(aa) when the decision of the High Court refusing leave to appeal to it becomes final;”; and

(b) after subsection (3), insert—

(a) Subsection (3) was amended by the Police and Justice Act 2006, Schedule 13.
(b) There are amendments to subsection (1) which are not relevant to this Order.
(c) There are amendments to subsection (1) which are not relevant to this Order.
(d) Section 107A was inserted by the Crime and Courts Act 2013, Schedule 20.

“(3A) The decision of the High Court refusing leave to appeal to it becomes final when, in accordance with rules of court, there is no further step that can be taken in relation to the application for leave to appeal (ignoring any power of a court to grant leave to take a step out of time).”.

(10) In section 117 (extradition where no appeal)—

(a) for subsection (1), substitute—

“(1) This section applies if the Secretary of State orders a person’s extradition to a category 2 territory under this Part and either—

(a) no notice of application for leave to appeal under section 103 or 108 is given before the end of the permitted period, or

(b) notice is given during that period but the High Court refuses leave to appeal to it.”;

(b) in subsection (2)(a), for paragraphs (b) and (c) substitute—

“(a) the day on which the Secretary of State makes the extradition order (where subsection (1)(a) applies and no order is made under section 118A or 118B),

(b) the day on which the decision of the High Court refusing leave to appeal to it becomes final (where subsection (1)(b) applies and no order is made under section 118A or 118B), or

(c) the earliest day on which the extradition order may be carried out (where an order is made under section 118A or 118B).”;

(c) after subsection (2), insert—

“(2A) The decision of the High Court refusing leave to appeal to it becomes final when, in accordance with rules of court, there is no further step that can be taken in relation to the application for leave to appeal.”;

(d) in subsection (4)—

(i) for “subsection (1)(b)” substitute “subsections (1) to (2A)”, and

(ii) for “notice of appeal” substitute “notice of application for leave to appeal”;

(e) in subsection (5)(b), for “If a person brings an appeal under section 108 by virtue of subsection (5) of that section” substitute “If leave to appeal to the High Court is granted on an application notice of which was given after the end of the permitted period”; and

(f) after subsection (5), insert—

“(6) In this section, “permitted period” means 14 days starting with the day on which the Secretary of State informs the person under section 100(1) that he has ordered his extradition.”

(11) In section 124 (withdrawal of request while appeal to High Court pending)—

(a) in the heading, after “while” insert “application or”;

(b) in subsection (2)—

(i) in paragraph (a), for “notice of an appeal to the court” substitute “notice of application for leave to appeal to the High Court”; and

(ii) in paragraph (b), for “when proceedings on the appeal are discontinued or the court makes its decision on the appeal” substitute “with the relevant day”;

(c) after subsection (2), insert—

“(2A) “The relevant day” is—

(a) if the High Court refuses leave to appeal to it, the day on which the decision to refuse leave becomes final;

(a) Subsection (2) was amended by the Anti-social Behaviour, Crime and Policing Act 2014, Schedule 11.

(b) Subsection (5) was inserted by the Crime and Courts Act 2013, Schedule 20.

- (b) if leave to appeal is given but proceedings on the appeal are discontinued, the day of discontinuance;
- (c) if leave to appeal is given and proceedings on the appeal are not discontinued, the day on which the court makes its decision on the appeal.

For the purposes of paragraph (a), the decision to refuse leave becomes final when, in accordance with rules of court, there is no further step that can be taken in relation to the application for leave to appeal (ignoring any power of a court to grant leave to take a step out of time).”;

- (d) in subsection (3), after “If the” insert “application or”; and
- (e) for subsection (4) substitute—
 - “(4) If the application or appeal is under section 105 or 110, the court must dismiss the application or appeal.”.

(12) In section 133 (costs where extradition ordered)—

- (a) in subsection (1)(a), after paragraph (a) insert—
 - “(aa) the High Court dismisses an application for leave to appeal to it under section 103 or 108;”;
- (b) after subsection (2), insert—
 - “(2A) In a case falling within subsection (1)(aa), the High Court may make such order as it considers just and reasonable with regard to the costs to be paid by the person.”.

(13) In section 134 (costs where discharge ordered)—

- (a) in subsection (1)(b), after paragraph (b) insert—
 - “(ba) the High Court dismisses an application for leave to appeal to it under section 105 or 110;”;
- (b) in subsection (4), for “(1)(c)” substitute “(1)(ba), (c)”.

(14) In section 208 (national security)(c), after subsection (12), insert—

“(13) In this section, “appeal” includes an application for leave to appeal.”.

(15) In section 213 (disposal of Part 1 warrant and extradition request)—

- (a) in subsection (3)—
 - (i) in paragraph (a), for “notice of an appeal” substitute “notice of application for leave to appeal”; and
 - (ii) after paragraph (a), insert—
 - “(aa) when the decision of the High Court refusing leave to appeal to it becomes final;”;
- (b) after subsection (3), insert—
 - “(3A) The decision of the High Court refusing leave to appeal to it becomes final when, in accordance with rules of court, there is no further step that can be taken in relation to the application for leave to appeal.”;
- (c) in subsection (5), for “and” substitute “to”.

Home Office
Date

Name
Minister of State

(a) There are amendments to subsection (1) which are not relevant to this Order.
 (b) There are amendments to subsection (1) which are not relevant to this Order.
 (c) There are amendments to section 208 which are not relevant to this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003 (S.I. 2003/3334) (“the Part 2 Order”) and the Extradition Act 2003 (c.41) (“the Act”).

Article 2(2) of this Order amends article 2 of the Part 2 Order by designating for the purposes of Part 2 of the Act the British Overseas Territories (except Gibraltar), the overseas territories of Denmark and the Netherlands, Kosovo and the Philippines. The latter designation follows ratification by the United Kingdom and the Philippines of the bilateral extradition treaty dated 18th September 2009.

Article 2(3) of this Order amends article 3 of the Part 2 Order by designating the Danish and Dutch overseas territories, Monaco and San Marino for the purposes of sections 71(4), 73(5), 84(7) and 86(7) of the Act. The effect is to set the evidential requirements made of these territories when they make an extradition request to the United Kingdom and the matters which a judge must take into account when deciding an extradition request from these territories.

Article 2(4) of this Order amends article 4 of the Part 2 Order by designating Saint Helena, Ascension and Tristan de Cunha for the purpose of section 74(11)(b) of the 2003 Act. The effect is to allow 65 days from the date on which someone is arrested under a provisional warrant for the documents required under section 70(9) of the Act to be provided to the appropriate judge. This reflects the fact Saint Helena, Ascension and Tristan da Cunha is only accessible by sea and, as such, more time is required to send the original papers.

Article 2(4) also amends article 4 of the Part 2 Order by removing Monaco and San Marino from the list of territories designated for the purpose of section 74(11)(b) of the 2003 Act. This reflects the fact these territories now operate the 1957 Council of Europe Convention on Extradition.

Article 3 makes a number of minor, technical amendments to the Act which are necessary as a result of section 160 (appeals) of the Anti-social Behaviour, Crime and Policing Act 2014 (c.12).

An impact assessment has not been produced for this Order as no impact on business, charities, voluntary bodies or the public sector is foreseen.

© Crown copyright 2015

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

£6.00

UK2015011518 01/2015 19585

<http://www.legislation.gov.uk/id/ukdsi/2015/9780111127322>

ISBN 978-0-11-112732-2



9 780111 127322