

# EXTRADITION ACT 2003

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## EXPLANATORY NOTES

### TERRITORIAL APPLICATION: WALES

#### Part 1

#### Extradition to Category 1 Territories

##### *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)*).
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:

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

- 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. 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.