

EXTRADITION ACT 2003

EXPLANATORY NOTES

TERRITORIAL APPLICATION: WALES

Part 2

Extradition to Category 2 Territories

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;
 - 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

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

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.