



Extradition Act 2003

2003 CHAPTER 41

PART 2

EXTRADITION TO CATEGORY 2 TERRITORIES

Introduction

69 Extradition to category 2 territories

- (1) This Part deals with extradition from the United Kingdom to the territories designated for the purposes of this Part by order made by the Secretary of State.
- (2) In this Act references to category 2 territories are to the territories designated for the purposes of this Part.

70 Extradition request and certificate

- (1) The Secretary of State must issue a certificate under this section if he receives a valid request for the extradition to a category 2 territory of a person who is in the United Kingdom.
- (2) But subsection (1) does not apply if the Secretary of State decides under section 126 that the request is not to be proceeded with.
- (3) A request for a person's extradition is valid if—
 - (a) it contains the statement referred to in subsection (4), and
 - (b) it is made in the approved way.
- (4) The statement is one that the person—
 - (a) is accused in the category 2 territory of the commission of an offence specified in the request, or
 - (b) is alleged to be unlawfully at large after conviction by a court in the category 2 territory of an offence specified in the request.

Status: This is the original version (as it was originally enacted).

- (5) A request for extradition to a category 2 territory which is a British overseas territory is made in the approved way if it is made by or on behalf of the person administering the territory.
- (6) A request for extradition to a category 2 territory which is the Hong Kong Special Administrative Region of the People's Republic of China is made in the approved way if it is made by or on behalf of the government of the Region.
- (7) A request for extradition to any other category 2 territory is made in the approved way if it is made—
 - (a) by an authority of the territory which the Secretary of State believes has the function of making requests for extradition in that territory, or
 - (b) by a person recognised by the Secretary of State as a diplomatic or consular representative of the territory.
- (8) A certificate under this section must certify that the request is made in the approved way.
- (9) If a certificate is issued under this section the Secretary of State must send these documents to the appropriate judge—
 - (a) the request;
 - (b) the certificate;
 - (c) a copy of any relevant Order in Council.

Arrest

71 Arrest warrant following extradition request

- (1) This section applies if the Secretary of State sends documents to the appropriate judge under section 70.
- (2) The judge may issue a warrant for the arrest of the person whose extradition is requested if the judge has reasonable grounds for believing that—
 - (a) the offence in respect of which extradition is requested is an extradition offence, and
 - (b) there is evidence falling within subsection (3).
- (3) The evidence is—
 - (a) evidence that would justify the issue of a warrant for the arrest of a person accused of the offence within the judge's jurisdiction, if the person whose extradition is requested is accused of the commission of the offence;
 - (b) evidence that would justify the issue of a warrant for the arrest of a person unlawfully at large after conviction of the offence within the judge's jurisdiction, if the person whose extradition is requested is alleged to be unlawfully at large after conviction of the offence.
- (4) But if the category 2 territory to which extradition is requested is designated for the purposes of this section by order made by the Secretary of State, subsections (2) and (3) have effect as if "evidence" read "information".
- (5) A warrant issued under this section may—

- (a) be executed by any person to whom it is directed or by any constable or customs officer;
 - (b) be executed even if neither the warrant nor a copy of it is in the possession of the person executing it at the time of the arrest.
- (6) If a warrant issued under this section in respect of a person is directed to a service policeman, it may be executed in any place where the service policeman would have power to arrest the person under the appropriate service law if the person had committed an offence under that law.
- (7) In any other case, a warrant issued under this section may be executed in any part of the United Kingdom.
- (8) The appropriate service law is—
- (a) the Army Act 1955 (3 & 4 Eliz. 2 c. 18), if the person in respect of whom the warrant is issued is subject to military law;
 - (b) the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19), if that person is subject to air-force law;
 - (c) the Naval Discipline Act 1957 (c. 53), if that person is subject to that Act.

72 Person arrested under section 71

- (1) This section applies if a person is arrested under a warrant issued under section 71.
- (2) A copy of the warrant must be given to the person as soon as practicable after his arrest.
- (3) The person must be brought as soon as practicable before the appropriate judge.
- (4) But subsection (3) does not apply if—
- (a) the person is granted bail by a constable following his arrest, or
 - (b) the Secretary of State decides under section 126 that the request for the person's extradition is not to be proceeded with.
- (5) If subsection (2) is not complied with and the person applies to the judge to be discharged, the judge may order his discharge.
- (6) If subsection (3) is not complied with and the person applies to the judge to be discharged, the judge must order his discharge.
- (7) When the person first appears or is brought before the appropriate judge, the judge must—
- (a) inform him of the contents of the request for his extradition;
 - (b) give him the required information about consent;
 - (c) remand him in custody or on bail.
- (8) The required information about consent is—
- (a) that the person may consent to his extradition to the category 2 territory to which his extradition is requested;
 - (b) an explanation of the effect of consent and the procedure that will apply if he gives consent;
 - (c) that consent must be given in writing and is irrevocable.
- (9) If the judge remands the person in custody he may later grant bail.

Status: This is the original version (as it was originally enacted).

(10) Subsection (4)(a) applies to Scotland with the omission of the words “by a constable”.

73 Provisional warrant

- (1) This section applies if a justice of the peace is satisfied on information in writing and on oath that a person within subsection (2)—
 - (a) is or is believed to be in the United Kingdom, or
 - (b) is or is believed to be on his way to the United Kingdom.
- (2) A person is within this subsection if—
 - (a) he is accused in a category 2 territory of the commission of an offence, or
 - (b) he is alleged to be unlawfully at large after conviction of an offence by a court in a category 2 territory.
- (3) The justice may issue a warrant for the arrest of the person (a provisional warrant) if he has reasonable grounds for believing that—
 - (a) the offence of which the person is accused or has been convicted is an extradition offence, and
 - (b) there is written evidence falling within subsection (4).
- (4) The evidence is—
 - (a) evidence that would justify the issue of a warrant for the arrest of a person accused of the offence within the justice’s jurisdiction, if the person in respect of whom the warrant is sought is accused of the commission of the offence;
 - (b) evidence that would justify the issue of a warrant for the arrest of a person unlawfully at large after conviction of the offence within the justice’s jurisdiction, if the person in respect of whom the warrant is sought is alleged to be unlawfully at large after conviction of the offence.
- (5) But if the category 2 territory is designated for the purposes of this section by order made by the Secretary of State, subsections (3) and (4) have effect as if “evidence” read “information”.
- (6) A provisional warrant may—
 - (a) be executed by any person to whom it is directed or by any constable or customs officer;
 - (b) be executed even if neither the warrant nor a copy of it is in the possession of the person executing it at the time of the arrest.
- (7) If a warrant issued under this section in respect of a person is directed to a service policeman, it may be executed in any place where the service policeman would have power to arrest the person under the appropriate service law if the person had committed an offence under that law.
- (8) In any other case, a warrant issued under this section may be executed in any part of the United Kingdom.
- (9) The appropriate service law is—
 - (a) the Army Act 1955 (3 & 4 Eliz. 2 c. 18), if the person in respect of whom the warrant is issued is subject to military law;
 - (b) the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19), if that person is subject to air-force law;

- (c) the Naval Discipline Act 1957 (c. 53), if that person is subject to that Act.
- (10) The preceding provisions of this section apply to Scotland with these modifications—
- (a) in subsection (1) for “justice of the peace is satisfied on information in writing and on oath” substitute “sheriff is satisfied, on an application by a procurator fiscal,”;
 - (b) in subsection (3) for “justice” substitute “sheriff”;
 - (c) in subsection (4) for “justice’s”, in paragraphs (a) and (b), substitute “sheriffs”.
- (11) Subsection (1) applies to Northern Ireland with the substitution of “a complaint” for “information”.

74 Person arrested under provisional warrant

- (1) This section applies if a person is arrested under a provisional warrant.
- (2) A copy of the warrant must be given to the person as soon as practicable after his arrest.
- (3) The person must be brought as soon as practicable before the appropriate judge.
- (4) But subsection (3) does not apply if—
- (a) the person is granted bail by a constable following his arrest, or
 - (b) in a case where the Secretary of State has received a valid request for the person’s extradition, the Secretary of State decides under section 126 that the request is not to be proceeded with.
- (5) If subsection (2) is not complied with and the person applies to the judge to be discharged, the judge may order his discharge.
- (6) If subsection (3) is not complied with and the person applies to the judge to be discharged, the judge must order his discharge.
- (7) When the person first appears or is brought before the appropriate judge, the judge must—
- (a) inform him that he is accused of the commission of an offence in a category 2 territory or that he is alleged to be unlawfully at large after conviction of an offence by a court in a category 2 territory;
 - (b) give him the required information about consent;
 - (c) remand him in custody or on bail.
- (8) The required information about consent is—
- (a) that the person may consent to his extradition to the category 2 territory in which he is accused of the commission of an offence or is alleged to have been convicted of an offence;
 - (b) an explanation of the effect of consent and the procedure that will apply if he gives consent;
 - (c) that consent must be given in writing and is irrevocable.
- (9) If the judge remands the person in custody he may later grant bail.
- (10) The judge must order the person’s discharge if the documents referred to in section 70(9) are not received by the judge within the required period.
- (11) The required period is—

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- (a) 45 days starting with the day on which the person was arrested, or
- (b) if the category 2 territory is designated by order made by the Secretary of State for the purposes of this section, any longer period permitted by the order.

(12) Subsection (4)(a) applies to Scotland with the omission of the words “by a constable”.

The extradition hearing

75 Date of extradition hearing: arrest under section 71

- (1) When a person arrested under a warrant issued under section 71 first appears or is brought before the appropriate judge, the judge must fix a date on which the extradition hearing is to begin.
- (2) The date fixed under subsection (1) must not be later than the end of the permitted period, which is 2 months starting with the date on which the person first appears or is brought before the judge.
- (3) If before the date fixed under subsection (1) (or this subsection) a party to the proceedings applies to the judge for a later date to be fixed and the judge believes it to be in the interests of justice to do so, he may fix a later date; and this subsection may apply more than once.
- (4) If the extradition hearing does not begin on or before the date fixed under this section and the person applies to the judge to be discharged, the judge must order his discharge.

76 Date of extradition hearing: arrest under provisional warrant

- (1) Subsection (2) applies if—
 - (a) a person is arrested under a provisional warrant, and
 - (b) the documents referred to in section 70(9) are received by the appropriate judge within the period required under section 74(10).
- (2) The judge must fix a date on which the extradition hearing is to begin.
- (3) The date fixed under subsection (2) must not be later than the end of the permitted period, which is 2 months starting with the date on which the judge receives the documents.
- (4) If before the date fixed under subsection (2) (or this subsection) a party to the proceedings applies to the judge for a later date to be fixed and the judge believes it to be in the interests of justice to do so, he may fix a later date; and this subsection may apply more than once.
- (5) If the extradition hearing does not begin on or before the date fixed under this section and the person applies to the judge to be discharged, the judge must order his discharge.

77 Judge’s powers at extradition hearing

- (1) In England and Wales, at the extradition hearing the appropriate judge has the same powers (as nearly as may be) as a magistrates' court would have if the proceedings were the summary trial of an information against the person whose extradition is requested.
- (2) In Scotland—

- (a) at the extradition hearing the appropriate judge has the same powers (as nearly as may be) as if the proceedings were summary proceedings in respect of an offence alleged to have been committed by the person whose extradition is requested; but
 - (b) in his making any decision under section 78(4)(a) evidence from a single source shall be sufficient.
- (3) In Northern Ireland, at the extradition hearing the appropriate judge has the same powers (as nearly as may be) as a magistrates' court would have if the proceedings were the hearing and determination of a complaint against the person whose extradition is requested.
- (4) If the judge adjourns the extradition hearing he must remand the person in custody or on bail.
- (5) If the judge remands the person in custody he may later grant bail.

78 Initial stages of extradition hearing

- (1) This section applies if a person alleged to be the person whose extradition is requested appears or is brought before the appropriate judge for the extradition hearing.
- (2) The judge must decide whether the documents sent to him by the Secretary of State consist of (or include)—
- (a) the documents referred to in section 70(9);
 - (b) particulars of the person whose extradition is requested;
 - (c) particulars of the offence specified in the request;
 - (d) in the case of a person accused of an offence, a warrant for his arrest issued in the category 2 territory;
 - (e) in the case of a person alleged to be unlawfully at large after conviction of an offence, a certificate issued in the category 2 territory of the conviction and (if he has been sentenced) of the sentence.
- (3) If the judge decides the question in subsection (2) in the negative he must order the person's discharge.
- (4) If the judge decides that question in the affirmative he must decide whether—
- (a) the person appearing or brought before him is the person whose extradition is requested;
 - (b) the offence specified in the request is an extradition offence;
 - (c) copies of the documents sent to the judge by the Secretary of State have been served on the person.
- (5) The judge must decide the question in subsection (4)(a) on a balance of probabilities.
- (6) If the judge decides any of the questions in subsection (4) in the negative he must order the person's discharge.
- (7) If the judge decides those questions in the affirmative he must proceed under section 79.
- (8) The reference in subsection (2)(d) to a warrant for a person's arrest includes a reference to a judicial document authorising his arrest.

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79 Bars to extradition

- (1) If the judge is required to proceed under this section he must decide whether the person's extradition to the category 2 territory is barred by reason of—
 - (a) the rule against double jeopardy;
 - (b) extraneous considerations;
 - (c) the passage of time;
 - (d) hostage-taking considerations.
- (2) Sections 80 to 83 apply for the interpretation of subsection (1).
- (3) If the judge decides any of the questions in subsection (1) in the affirmative he must order the person's discharge.
- (4) If the judge decides those questions in the negative and the person is accused of the commission of the extradition offence but is not alleged to be unlawfully at large after conviction of it, the judge must proceed under section 84.
- (5) If the judge decides those questions in the negative and the person is alleged to be unlawfully at large after conviction of the extradition offence, the judge must proceed under section 85.

80 Rule against double jeopardy

A person's extradition to a category 2 territory is barred by reason of the rule against double jeopardy if (and only if) it appears that he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction if he were charged with the extradition offence in the part of the United Kingdom where the judge exercises his jurisdiction.

81 Extraneous considerations

A person's extradition to a category 2 territory is barred by reason of extraneous considerations if (and only if) it appears that—

- (a) the request for his extradition (though purporting to be made on account of the extradition offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality, gender, sexual orientation or political opinions, or
- (b) if extradited he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, gender, sexual orientation or political opinions.

82 Passage of time

A person's extradition to a category 2 territory is barred by reason of the passage of time if (and only if) it appears that it would be unjust or oppressive to extradite him by reason of the passage of time since he is alleged to have committed the extradition offence or since he is alleged to have become unlawfully at large (as the case may be).

83 Hostage-taking considerations

- (1) A person's extradition to a category 2 territory is barred by reason of hostage-taking considerations if (and only if) the territory is a party to the Hostage-taking Convention and it appears that—
 - (a) if extradited he might be prejudiced at his trial because communication between him and the appropriate authorities would not be possible, and
 - (b) the act or omission constituting the extradition offence also constitutes an offence under section 1 of the Taking of Hostages Act 1982 (c. 28) or an attempt to commit such an offence.
- (2) The appropriate authorities are the authorities of the territory which are entitled to exercise rights of protection in relation to him.
- (3) A certificate issued by the Secretary of State that a territory is a party to the Hostage-taking Convention is conclusive evidence of that fact for the purposes of subsection (1).
- (4) The Hostage-taking Convention is the International Convention against the Taking of Hostages opened for signature at New York on 18 December 1979.

84 Case where person has not been convicted

- (1) If the judge is required to proceed under this section he must decide whether there is evidence which would be sufficient to make a case requiring an answer by the person if the proceedings were the summary trial of an information against him.
- (2) In deciding the question in subsection (1) the judge may treat a statement made by a person in a document as admissible evidence of a fact if—
 - (a) the statement is made by the person to a police officer or another person charged with the duty of investigating offences or charging offenders, and
 - (b) direct oral evidence by the person of the fact would be admissible.
- (3) In deciding whether to treat a statement made by a person in a document as admissible evidence of a fact, the judge must in particular have regard—
 - (a) to the nature and source of the document;
 - (b) to whether or not, having regard to the nature and source of the document and to any other circumstances that appear to the judge to be relevant, it is likely that the document is authentic;
 - (c) to the extent to which the statement appears to supply evidence which would not be readily available if the statement were not treated as being admissible evidence of the fact;
 - (d) to the relevance of the evidence that the statement appears to supply to any issue likely to have to be determined by the judge in deciding the question in subsection (1);
 - (e) to any risk that the admission or exclusion of the statement will result in unfairness to the person whose extradition is sought, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings.
- (4) A summary in a document of a statement made by a person must be treated as a statement made by the person in the document for the purposes of subsection (2).

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- (5) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.
- (6) If the judge decides that question in the affirmative he must proceed under section 87.
- (7) If the judge is required to proceed under this section and the category 2 territory to which extradition is requested is designated for the purposes of this section by order made by the Secretary of State—
 - (a) the judge must not decide under subsection (1), and
 - (b) he must proceed under section 87.
- (8) Subsection (1) applies to Scotland with the substitution of “summary proceedings in respect of an offence alleged to have been committed by the person (except that for this purpose evidence from a single source shall be sufficient)” for “the summary trial of an information against him”.
- (9) Subsection (1) applies to Northern Ireland with the substitution of “the hearing and determination of a complaint” for “the summary trial of an information”.

85 Case where person has been convicted

- (1) If the judge is required to proceed under this section he must decide whether the person was convicted in his presence.
- (2) If the judge decides the question in subsection (1) in the affirmative he must proceed under section 87.
- (3) If the judge decides that question in the negative he must decide whether the person deliberately absented himself from his trial.
- (4) If the judge decides the question in subsection (3) in the affirmative he must proceed under section 87.
- (5) If the judge decides that question in the negative he must decide whether the person would be entitled to a retrial or (on appeal) to a review amounting to a retrial.
- (6) If the judge decides the question in subsection (5) in the affirmative he must proceed under section 86.
- (7) If the judge decides that question in the negative he must order the person's discharge.
- (8) The judge must not decide the question in subsection (5) in the affirmative unless, in any proceedings that it is alleged would constitute a retrial or a review amounting to a retrial, the person would have these rights—
 - (a) the right to defend himself in person or through legal assistance of his own choosing or, if he had not sufficient means to pay for legal assistance, to be given it free when the interests of justice so required;
 - (b) the right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

86 Conviction in person's absence

- (1) If the judge is required to proceed under this section he must decide whether there is evidence which would be sufficient to make a case requiring an answer by the person if the proceedings were the summary trial of an information against him.
- (2) In deciding the question in subsection (1) the judge may treat a statement made by a person in a document as admissible evidence of a fact if—
 - (a) the statement is made by the person to a police officer or another person charged with the duty of investigating offences or charging offenders, and
 - (b) direct oral evidence by the person of the fact would be admissible.
- (3) In deciding whether to treat a statement made by a person in a document as admissible evidence of a fact, the judge must in particular have regard—
 - (a) to the nature and source of the document;
 - (b) to whether or not, having regard to the nature and source of the document and to any other circumstances that appear to the judge to be relevant, it is likely that the document is authentic;
 - (c) to the extent to which the statement appears to supply evidence which would not be readily available if the statement were not treated as being admissible evidence of the fact;
 - (d) to the relevance of the evidence that the statement appears to supply to any issue likely to have to be determined by the judge in deciding the question in subsection (1);
 - (e) to any risk that the admission or exclusion of the statement will result in unfairness to the person whose extradition is sought, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings.
- (4) A summary in a document of a statement made by a person must be treated as a statement made by the person in the document for the purposes of subsection (2).
- (5) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.
- (6) If the judge decides that question in the affirmative he must proceed under section 87.
- (7) If the judge is required to proceed under this section and the category 2 territory to which extradition is requested is designated for the purposes of this section by order made by the Secretary of State—
 - (a) the judge must not decide under subsection (1), and
 - (b) he must proceed under section 87.
- (8) Subsection (1) applies to Scotland with the substitution of “summary proceedings in respect of an offence alleged to have been committed by the person (except that for this purpose evidence from a single source shall be sufficient)” for “the summary trial of an information against him”.
- (9) Subsection (1) applies to Northern Ireland with the substitution of “the hearing and determination of a complaint” for “the summary trial of an information”.

87 Human rights

- (1) If the judge is required to proceed under this section (by virtue of section 84, 85 or 86) he must decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998 (c. 42).
- (2) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.
- (3) If the judge decides that question in the affirmative he must send the case to the Secretary of State for his decision whether the person is to be extradited.

88 Person charged with offence in United Kingdom

- (1) This section applies if at any time in the extradition hearing the judge is informed that the person is charged with an offence in the United Kingdom.
- (2) The judge must adjourn the extradition hearing until one of these occurs—
 - (a) the charge is disposed of;
 - (b) the charge is withdrawn;
 - (c) proceedings in respect of the charge are discontinued;
 - (d) an order is made for the charge to lie on the file, or in relation to Scotland, the diet is deserted *pro loco et tempore*.
- (3) If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the judge may adjourn the extradition hearing until the sentence has been served.
- (4) If before he adjourns the extradition hearing under subsection (2) the judge has decided under section 79 whether the person's extradition is barred by reason of the rule against double jeopardy, the judge must decide that question again after the resumption of the hearing.

89 Person serving sentence in United Kingdom

- (1) This section applies if at any time in the extradition hearing the judge is informed that the person is serving a sentence of imprisonment or another form of detention in the United Kingdom.
- (2) The judge may adjourn the extradition hearing until the sentence has been served.

90 Competing extradition claim

- (1) This section applies if at any time in the extradition hearing the judge is informed that the conditions in subsection (2) or (3) are met.
- (2) The conditions are that—
 - (a) the Secretary of State has received another valid request for the person's extradition to a category 2 territory;
 - (b) the other request has not been disposed of;
 - (c) the Secretary of State has made an order under section 126(2) for further proceedings on the request under consideration to be deferred until the other request has been disposed of.

- (3) The conditions are that—
 - (a) a certificate has been issued under section 2 in respect of a Part 1 warrant issued in respect of the person;
 - (b) the warrant has not been disposed of;
 - (c) the Secretary of State has made an order under section 179(2) for further proceedings on the request to be deferred until the warrant has been disposed of.
- (4) The judge must remand the person in custody or on bail.
- (5) If the judge remands the person in custody he may later grant bail.

91 Physical or mental condition

- (1) This section applies if at any time in the extradition hearing it appears to the judge that the condition in subsection (2) is satisfied.
- (2) The condition is that the physical or mental condition of the person is such that it would be unjust or oppressive to extradite him.
- (3) The judge must—
 - (a) order the person's discharge, or
 - (b) adjourn the extradition hearing until it appears to him that the condition in subsection (2) is no longer satisfied.

92 Case sent to Secretary of State

- (1) This section applies if the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited.
- (2) The judge must inform the person in ordinary language that—
 - (a) he has a right to appeal to the High Court;
 - (b) if he exercises the right the appeal will not be heard until the Secretary of State has made his decision.
- (3) But subsection (2) does not apply if the person has consented to his extradition under section 127.
- (4) The judge must remand the person in custody or on bail—
 - (a) to wait for the Secretary of State's decision, and
 - (b) to wait for his extradition to the territory to which extradition is requested (if the Secretary of State orders him to be extradited).
- (5) If the judge remands the person in custody he may later grant bail.

Secretary of State's functions

93 Secretary of State's consideration of case

- (1) This section applies if the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited.

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- (2) The Secretary of State must decide whether he is prohibited from ordering the person's extradition under any of these sections—
 - (a) section 94 (death penalty);
 - (b) section 95 (speciality);
 - (c) section 96 (earlier extradition to United Kingdom from other territory).
- (3) If the Secretary of State decides any of the questions in subsection (2) in the affirmative he must order the person's discharge.
- (4) If the Secretary of State decides those questions in the negative he must order the person to be extradited to the territory to which his extradition is requested unless—
 - (a) he is informed that the request has been withdrawn,
 - (b) he makes an order under section 126(2) or 179(2) for further proceedings on the request to be deferred and the person is discharged under section 180, or
 - (c) he orders the person's discharge under section 208.
- (5) In deciding the questions in subsection (2), the Secretary of State is not required to consider any representations received by him after the end of the permitted period.
- (6) The permitted period is the period of 6 weeks starting with the appropriate day.

94 Death penalty

- (1) The Secretary of State must not order a person's extradition to a category 2 territory if he could be, will be or has been sentenced to death for the offence concerned in the category 2 territory.
- (2) Subsection (1) does not apply if the Secretary of State receives a written assurance which he considers adequate that a sentence of death—
 - (a) will not be imposed, or
 - (b) will not be carried out (if imposed).

95 Speciality

- (1) The Secretary of State must not order a person's extradition to a category 2 territory if there are no speciality arrangements with the category 2 territory.
- (2) But subsection (1) does not apply if the person consented to his extradition under section 127 before his case was sent to the Secretary of State.
- (3) There are speciality arrangements with a category 2 territory if (and only if) under the law of that territory or arrangements made between it and the United Kingdom a person who is extradited to the territory from the United Kingdom may be dealt with in the territory for an offence committed before his extradition only if—
 - (a) the offence is one falling within subsection (4), or
 - (b) he is first given an opportunity to leave the territory.
- (4) The offences are—
 - (a) the offence in respect of which the person is extradited;
 - (b) an extradition offence disclosed by the same facts as that offence, other than one in respect of which a sentence of death could be imposed;

- (c) an extradition offence in respect of which the Secretary of State consents to the person being dealt with;
 - (d) an offence in respect of which the person waives the right that he would have (but for this paragraph) not to be dealt with for the offence.
- (5) Arrangements made with a category 2 territory which is a Commonwealth country or a British overseas territory may be made for a particular case or more generally.
- (6) A certificate issued by or under the authority of the Secretary of State confirming the existence of arrangements with a category 2 territory which is a Commonwealth country or a British overseas territory and stating the terms of the arrangements is conclusive evidence of those matters.

96 Earlier extradition to United Kingdom from other territory

The Secretary of State must not order a person's extradition to a category 2 territory if—

- (a) the person was extradited to the United Kingdom from another territory (the extraditing territory);
- (b) under arrangements between the United Kingdom and the extraditing territory, that territory's consent is required to the person's extradition from the United Kingdom to the category 2 territory in respect of the extradition offence under consideration;
- (c) that consent has not been given on behalf of the extraditing territory.

97 Deferral: person charged with offence in United Kingdom

- (1) This section applies if—
- (a) the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited;
 - (b) the person is charged with an offence in the United Kingdom.
- (2) The Secretary of State must not make a decision with regard to the person's extradition until one of these occurs—
- (a) the charge is disposed of;
 - (b) the charge is withdrawn;
 - (c) proceedings in respect of the charge are discontinued;
 - (d) an order is made for the charge to lie on the file or, in relation to Scotland, the diet is deserted *pro loco et tempore*.
- (3) If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the Secretary of State may defer making a decision with regard to the person's extradition until the sentence has been served.

98 Deferral: person serving sentence in United Kingdom

- (1) This section applies if—
- (a) the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited;
 - (b) the person is serving a sentence of imprisonment or another form of detention in the United Kingdom.

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- (2) The Secretary of State may defer making a decision with regard to the person's extradition until the sentence has been served.

99 Time limit for order for extradition or discharge

- (1) This section applies if—
- (a) the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited;
 - (b) within the required period the Secretary of State does not make an order for the person's extradition or discharge.
- (2) If the person applies to the High Court to be discharged, the court must order his discharge.
- (3) The required period is the period of 2 months starting with the appropriate day.
- (4) If before the required period ends the Secretary of State applies to the High Court for it to be extended the High Court may make an order accordingly; and this subsection may apply more than once.

100 Information

- (1) If the Secretary of State orders a person's extradition under this Part he must—
- (a) inform the person of the order;
 - (b) inform him in ordinary language that he has a right of appeal to the High Court;
 - (c) inform a person acting on behalf of the category 2 territory of the order.
- (2) But subsection (1)(b) does not apply if the person has consented to his extradition under section 127.
- (3) If the Secretary of State orders a person's extradition under this Part and he has received an assurance such as is mentioned in section 94(2), he must give the person a copy of the assurance when he informs him under subsection (1) of the order.
- (4) If the Secretary of State orders a person's discharge under this Part he must—
- (a) inform him of the order;
 - (b) inform a person acting on behalf of the category 2 territory of the order.

101 Making of order for extradition or discharge

- (1) An order to which this section applies must be made under the hand of one of these—
- (a) the Secretary of State;
 - (b) a Minister of State;
 - (c) a Parliamentary Under-Secretary of State;
 - (d) a senior official.
- (2) But, in relation to Scotland, an order to which this section applies must be made under the hand of one of these—
- (a) a member of the Scottish Executive or a junior Scottish Minister;
 - (b) a senior official who is a member of the staff of the Scottish Administration.
- (3) This section applies to—

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- (a) an order under section 93 for a person's extradition;
 - (b) an order under section 93 or 123 for a person's discharge.
- (4) A senior official is—
- (a) a member of the Senior Civil Service;
 - (b) a member of the Senior Management Structure of Her Majesty's Diplomatic Service.
- (5) If it appears to the Secretary of State that it is necessary to do so in consequence of any changes to the structure or grading of the home civil service or diplomatic service, he may by order make such amendments to subsection (4) as appear to him appropriate to preserve (so far as practicable) the effect of that subsection.

102 The appropriate day

- (1) This section applies for the purposes of sections 93 and 99 if the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited.
- (2) If the person is charged with an offence in the United Kingdom, the appropriate day is the day on which one of these occurs—
- (a) the charge is disposed of;
 - (b) the charge is withdrawn;
 - (c) proceedings in respect of the charge are discontinued;
 - (d) an order is made for the charge to lie on the file, or in relation to Scotland, the diet is deserted *pro loco et tempore*.
- (3) If under section 97(3) or 98(2) the Secretary of State defers making a decision until the person has served a sentence, the appropriate day is the day on which the person finishes serving the sentence.
- (4) If section 126 applies in relation to the request for the person's extradition (the request concerned) the appropriate day is—
- (a) the day on which the Secretary of State makes an order under that section, if the order is for proceedings on the other request to be deferred;
 - (b) the day on which an order under section 180 is made, if the order under section 126 is for proceedings on the request concerned to be deferred and the order under section 180 is for the proceedings to be resumed.
- (5) If section 179 applies in relation to the request for the person's extradition, the appropriate day is—
- (a) the day on which the Secretary of State makes an order under that section, if the order is for proceedings on the warrant to be deferred;
 - (b) the day on which an order under section 180 is made, if the order under section 179 is for proceedings on the request to be deferred and the order under section 180 is for the proceedings to be resumed.
- (6) If more than one of subsections (2) to (5) applies, the appropriate day is the latest of the days found under the subsections which apply.
- (7) In any other case, the appropriate day is the day on which the judge sends the case to the Secretary of State for his decision whether the person is to be extradited.

Appeals

103 Appeal where case sent to Secretary of State

- (1) If the judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited, the person may appeal to the High Court against the relevant decision.
- (2) But subsection (1) does not apply if the person consented to his extradition under section 127 before his case was sent to the Secretary of State.
- (3) The relevant decision is the decision that resulted in the case being sent to the Secretary of State.
- (4) An appeal under this section may be brought on a question of law or fact.
- (5) If an appeal is brought under this section before the Secretary of State has decided whether the person is to be extradited the appeal must not be heard until after the Secretary of State has made his decision.
- (6) If the Secretary of State orders the person's discharge the appeal must not be proceeded with.
- (7) No appeal may be brought under this section if the Secretary of State has ordered the person's discharge.
- (8) If notice of an appeal under section 110 against the decision which resulted in the order for the person's discharge is given in accordance with subsection (5) of that section—
 - (a) subsections (6) and (7) do not apply;
 - (b) no appeal may be brought under this section if the High Court has made its decision on the appeal.
- (9) Notice of an appeal under this section must be given in accordance with rules of court before the end of the permitted period, which is 14 days starting with the day on which the Secretary of State informs the person under section 100(1) or (4) of the order he has made in respect of the person.

104 Court's powers on appeal under section 103

- (1) On an appeal under section 103 the High Court may—
 - (a) allow the appeal;
 - (b) direct the judge to decide again a question (or questions) which he decided at the extradition hearing;
 - (c) dismiss the appeal.
- (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.
- (3) The conditions are that—
 - (a) the judge ought to have decided a question before him at the extradition hearing differently;
 - (b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge.
- (4) The conditions are that—

- (a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;
 - (b) the issue or evidence would have resulted in the judge deciding a question before him at the extradition hearing differently;
 - (c) if he had decided the question in that way, he would have been required to order the person's discharge.
- (5) If the court allows the appeal it must—
- (a) order the person's discharge;
 - (b) quash the order for his extradition.
- (6) If the judge comes to a different decision on any question that is the subject of a direction under subsection (1)(b) he must order the person's discharge.
- (7) If the judge comes to the same decision as he did at the extradition hearing on the question that is (or all the questions that are) the subject of a direction under subsection (1)(b) the appeal must be taken to have been dismissed by a decision of the High Court.

105 Appeal against discharge at extradition hearing

- (1) If at the extradition hearing the judge orders a person's discharge, an appeal to the High Court may be brought on behalf of the category 2 territory against the relevant decision.
- (2) But subsection (1) does not apply if the order for the person's discharge was under section 122.
- (3) The relevant decision is the decision which resulted in the order for the person's discharge.
- (4) An appeal under this section may be brought on a question of law or fact.
- (5) Notice of an appeal under this section must be given in accordance with rules of court before the end of the permitted period, which is 14 days starting with the day on which the order for the person's discharge is made.

106 Court's powers on appeal under section 105

- (1) On an appeal under section 105 the High Court may—
- (a) allow the appeal;
 - (b) direct the judge to decide the relevant question again;
 - (c) dismiss the appeal.
- (2) A question is the relevant question if the judge's decision on it resulted in the order for the person's discharge.
- (3) The court may allow the appeal only if the conditions in subsection (4) or the conditions in subsection (5) are satisfied.
- (4) The conditions are that—
- (a) the judge ought to have decided the relevant question differently;
 - (b) if he had decided the question in the way he ought to have done, he would not have been required to order the person's discharge.

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- (5) The conditions are that—
 - (a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;
 - (b) the issue or evidence would have resulted in the judge deciding the relevant question differently;
 - (c) if he had decided the question in that way, he would not have been required to order the person’s discharge.
- (6) If the court allows the appeal it must—
 - (a) quash the order discharging the person;
 - (b) remit the case to the judge;
 - (c) direct him to proceed as he would have been required to do if he had decided the relevant question differently at the extradition hearing.
- (7) If the court makes a direction under subsection (1)(b) and the judge decides the relevant question differently he must proceed as he would have been required to do if he had decided that question differently at the extradition hearing.
- (8) If the court makes a direction under subsection (1)(b) and the judge does not decide the relevant question differently the appeal must be taken to have been dismissed by a decision of the High Court.

107 Detention pending conclusion of appeal under section 105

- (1) This section applies if immediately after the judge orders the person’s discharge the judge is informed on behalf of the category 2 territory of an intention to appeal under section 105.
- (2) The judge must remand the person in custody or on bail while the appeal is pending.
- (3) If the judge remands the person in custody he may later grant bail.
- (4) An appeal under section 105 ceases to be pending at the earliest of these times—
 - (a) when the proceedings on the appeal are discontinued;
 - (b) when the High Court dismisses the appeal, if the court is not immediately informed on behalf of the category 2 territory of an intention to apply for leave to appeal to the House of Lords;
 - (c) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the House of Lords against the decision of the High Court on the appeal is granted;
 - (d) when there is no further step that can be taken on behalf of the category 2 territory in relation to the appeal (ignoring any power of a court to grant leave to take a step out of time).
- (5) The preceding provisions of this section apply to Scotland with these modifications—
 - (a) in subsection (4)(b) omit the words from “if” to the end;
 - (b) omit subsection (4)(c).

108 Appeal against extradition order

- (1) If the Secretary of State orders a person’s extradition under this Part, the person may appeal to the High Court against the order.

- (2) But subsection (1) does not apply if the person has consented to his extradition under section 127.
- (3) An appeal under this section may be brought on a question of law or fact.
- (4) Notice of an appeal under this section must be given in accordance with rules of court before the end of the permitted period, which is 14 days starting with the day on which the Secretary of State informs the person of the order under section 100(1).

109 Court's powers on appeal under section 108

- (1) On an appeal under section 108 the High Court may—
 - (a) allow the appeal;
 - (b) dismiss the appeal.
- (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.
- (3) The conditions are that—
 - (a) the Secretary of State ought to have decided a question before him differently;
 - (b) if he had decided the question in the way he ought to have done, he would not have ordered the person's extradition.
- (4) The conditions are that—
 - (a) an issue is raised that was not raised when the case was being considered by the Secretary of State or information is available that was not available at that time;
 - (b) the issue or information would have resulted in the Secretary of State deciding a question before him differently;
 - (c) if he had decided the question in that way, he would not have ordered the person's extradition.
- (5) If the court allows the appeal it must—
 - (a) order the person's discharge;
 - (b) quash the order for his extradition.

110 Appeal against discharge by Secretary of State

- (1) If the Secretary of State makes an order for a person's discharge under this Part, an appeal to the High Court may be brought on behalf of the category 2 territory against the relevant decision.
- (2) But subsection (1) does not apply if the order for the person's discharge was under section 123.
- (3) The relevant decision is the decision which resulted in the order for the person's discharge.
- (4) An appeal under this section may be brought on a question of law or fact.
- (5) Notice of an appeal under this section must be given in accordance with rules of court before the end of the permitted period, which is 14 days starting with the day on which (under section 100(4)) the Secretary of State informs a person acting on behalf of the category 2 territory of the order.

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111 Court's powers on appeal under section 110

- (1) On an appeal under section 110 the High Court may—
 - (a) allow the appeal;
 - (b) dismiss the appeal.
- (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.
- (3) The conditions are that—
 - (a) the Secretary of State ought to have decided a question before him differently;
 - (b) if he had decided the question in the way he ought to have done, he would have ordered the person's extradition.
- (4) The conditions are that—
 - (a) an issue is raised that was not raised when the case was being considered by the Secretary of State or information is available that was not available at that time;
 - (b) the issue or information would have resulted in the Secretary of State deciding a question before him differently;
 - (c) if he had decided the question in that way, he would have ordered the person's extradition.
- (5) If the court allows the appeal it must—
 - (a) quash the order discharging the person;
 - (b) order the person's extradition.

112 Detention pending conclusion of appeal under section 110

- (1) This section applies if immediately after the Secretary of State orders the person's discharge under this Part the Secretary of State is informed on behalf of the category 2 territory of an intention to appeal under section 110.
- (2) The judge must remand the person in custody or on bail while the appeal is pending.
- (3) If the judge remands the person in custody he may later grant bail.
- (4) An appeal under section 110 ceases to be pending at the earliest of these times—
 - (a) when the proceedings on the appeal are discontinued;
 - (b) when the High Court dismisses the appeal, if the court is not immediately informed on behalf of the category 2 territory of an intention to apply for leave to appeal to the House of Lords;
 - (c) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the House of Lords against the decision of the High Court on the appeal is granted;
 - (d) when there is no further step that can be taken on behalf of the category 2 territory in relation to the appeal (ignoring any power of a court to grant leave to take a step out of time).
- (5) The preceding provisions of this section apply to Scotland with these modifications—
 - (a) in subsection (4)(b) omit the words from "if" to the end;
 - (b) omit subsection (4)(c).

113 Appeal to High Court: time limit for start of hearing

- (1) Rules of court must prescribe the period (the relevant period) within which the High Court must begin to hear an appeal under section 103, 105, 108 or 110.
- (2) The High Court must begin to hear the appeal before the end of the relevant period.
- (3) The High Court may extend the relevant period if it believes it to be in the interests of justice to do so; and this subsection may apply more than once.
- (4) The power in subsection (3) may be exercised even after the end of the relevant period.
- (5) If subsection (2) is not complied with and the appeal is under section 103 or 108—
 - (a) the appeal must be taken to have been allowed by a decision of the High Court;
 - (b) the person whose extradition has been ordered must be taken to have been discharged by the High Court;
 - (c) the order for the person's extradition must be taken to have been quashed by the High Court.
- (6) If subsection (2) is not complied with and the appeal is under section 105 or 110 the appeal must be taken to have been dismissed by a decision of the High Court.

114 Appeal to House of Lords

- (1) An appeal lies to the House of Lords from a decision of the High Court on an appeal under section 103, 105, 108 or 110.
- (2) An appeal under this section lies at the instance of—
 - (a) the person whose extradition is requested;
 - (b) a person acting on behalf of the category 2 territory.
- (3) An appeal under this section lies only with the leave of the High Court or the House of Lords.
- (4) Leave to appeal under this section must not be granted unless—
 - (a) the High Court has certified that there is a point of law of general public importance involved in the decision, and
 - (b) it appears to the court granting leave that the point is one which ought to be considered by the House of Lords.
- (5) An application to the High Court for leave to appeal under this section must be made before the end of the permitted period, which is 14 days starting with the day on which the court makes its decision on the appeal to it.
- (6) An application to the House of Lords for leave to appeal under this section must be made before the end of the permitted period, which is 14 days starting with the day on which the High Court refuses leave to appeal.
- (7) If leave to appeal under this section is granted, the appeal must be brought before the end of the permitted period, which is 28 days starting with the day on which leave is granted.
- (8) If subsection (7) is not complied with—
 - (a) the appeal must be taken to have been brought;

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- (b) the appeal must be taken to have been dismissed by the House of Lords immediately after the end of the period permitted under that subsection.
- (9) These must be ignored for the purposes of subsection (8)(b)—
 - (a) any power of a court to extend the period permitted for bringing the appeal;
 - (b) any power of a court to grant leave to take a step out of time.
- (10) The High Court may grant bail to a person appealing under this section or applying for leave to appeal under this section.
- (11) Section 5 of the Appellate Jurisdiction Act 1876 (c. 59) (composition of House of Lords for hearing and determination of appeals) applies in relation to an appeal under this section or an application for leave to appeal under this section as it applies in relation to an appeal under that Act.
- (12) An order of the House of Lords which provides for an application for leave to appeal under this section to be determined by a committee constituted in accordance with section 5 of the Appellate Jurisdiction Act 1876 may direct that the decision of the committee is taken on behalf of the House.
- (13) The preceding provisions of this section do not apply to Scotland.

115 Powers of House of Lords on appeal under section 114

- (1) On an appeal under section 114 the House of Lords may—
 - (a) allow the appeal;
 - (b) dismiss the appeal.
- (2) Subsection (3) applies if—
 - (a) the person whose extradition is requested brings an appeal under section 114, and
 - (b) the House of Lords allows the appeal.
- (3) The House of Lords must—
 - (a) order the person’s discharge;
 - (b) quash the order for his extradition, if the appeal was against a decision of the High Court to dismiss an appeal under section 103 or 108 or to allow an appeal under section 110.
- (4) Subsection (5) applies if—
 - (a) the High Court allows an appeal under section 103 or 108 by the person whose extradition is requested or dismisses an appeal under section 110 by a person acting on behalf of the category 2 territory,
 - (b) a person acting on behalf of the category 2 territory brings an appeal under section 114 against the decision of the High Court, and
 - (c) the House of Lords allows the appeal.
- (5) The House of Lords must—
 - (a) quash the order discharging the person made by the High Court under section 104(5) or 109(5) or by the Secretary of State under this Part;
 - (b) order the person to be extradited to the category 2 territory.
- (6) Subsection (7) applies if—

- (a) the High Court dismisses an appeal under section 105 against a decision made by the judge at the extradition hearing,
 - (b) a person acting on behalf of the category 2 territory brings an appeal under section 114 against the decision of the High Court, and
 - (c) the House of Lords allows the appeal.
- (7) The House of Lords must—
- (a) quash the order of the judge discharging the person whose extradition is requested;
 - (b) remit the case to the judge;
 - (c) direct him to proceed as he would have been required to do if he had decided the relevant question differently at the extradition hearing.
- (8) A question is the relevant question if the judge’s decision on it resulted in the order for the person’s discharge.

116 Appeals: general

A decision under this Part of the judge or the Secretary of State may be questioned in legal proceedings only by means of an appeal under this Part.

Time for extradition

117 Extradition where no appeal

- (1) This section applies if—
- (a) the Secretary of State orders a person’s extradition to a category 2 territory under this Part, and
 - (b) no notice of an appeal under section 103 or 108 is given before the end of the permitted period, which is 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.
- (2) The person must be extradited to the category 2 territory before the end of the required period, which is 28 days starting with the day on which the Secretary of State makes the order.
- (3) If subsection (2) is not complied with and the person applies to the appropriate judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay.
- (4) These must be ignored for the purposes of subsection (1)(b)—
- (a) any power of a court to extend the period permitted for giving notice of appeal;
 - (b) any power of a court to grant leave to take a step out of time.

118 Extradition following appeal

- (1) This section applies if—
- (a) there is an appeal to the High Court under section 103, 108 or 110 against a decision or order relating to a person’s extradition to a category 2 territory, and

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- (b) the effect of the decision of the relevant court on the appeal is that the person is to be extradited there.
- (2) The person must be extradited to the category 2 territory before the end of the required period, which is 28 days starting with—
 - (a) the day on which the decision of the relevant court on the appeal becomes final, or
 - (b) the day on which proceedings on the appeal are discontinued.
- (3) The relevant court is—
 - (a) the High Court, if there is no appeal to the House of Lords against the decision of the High Court on the appeal;
 - (b) the House of Lords, if there is such an appeal.
- (4) The decision of the High Court on the appeal becomes final—
 - (a) when the period permitted for applying to the High Court for leave to appeal to the House of Lords ends, if there is no such application;
 - (b) when the period permitted for applying to the House of Lords for leave to appeal to it ends, if the High Court refuses leave to appeal and there is no application to the House of Lords for leave to appeal;
 - (c) when the House of Lords refuses leave to appeal to it;
 - (d) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the House of Lords is granted, if no such appeal is brought before the end of that period.
- (5) These must be ignored for the purposes of subsection (4)—
 - (a) any power of a court to extend the period permitted for applying for leave to appeal;
 - (b) any power of a court to grant leave to take a step out of time.
- (6) The decision of the House of Lords on the appeal becomes final when it is made.
- (7) If subsection (2) is not complied with and the person applies to the appropriate judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay.
- (8) The preceding provisions of this section apply to Scotland with these modifications—
 - (a) in subsections (1) and (2) for “relevant court” substitute “High Court”;
 - (b) omit subsections (3) to (6).

119 Undertaking in relation to person serving sentence in United Kingdom

- (1) This section applies if—
 - (a) the Secretary of State orders a person’s extradition to a category 2 territory under this Part;
 - (b) the person is serving a sentence of imprisonment or another form of detention in the United Kingdom.
- (2) The Secretary of State may make the order for extradition subject to the condition that extradition is not to take place before he receives an undertaking given on behalf of the category 2 territory in terms specified by him.

- (3) The terms which may be specified by the Secretary of State in relation to a person accused in a category 2 territory of the commission of an offence include terms—
 - (a) that the person be kept in custody until the conclusion of the proceedings against him for the offence and any other offence in respect of which he is permitted to be dealt with in the category 2 territory;
 - (b) that the person be returned to the United Kingdom to serve the remainder of his sentence on the conclusion of those proceedings.
- (4) The terms which may be specified by the Secretary of State in relation to a person alleged to be unlawfully at large after conviction of an offence by a court in a category 2 territory include terms that the person be returned to the United Kingdom to serve the remainder of his sentence after serving any sentence imposed on him in the category 2 territory for—
 - (a) the offence, and
 - (b) any other offence in respect of which he is permitted to be dealt with in the category 2 territory.
- (5) Subsections (6) and (7) apply if the Secretary of State makes an order for extradition subject to a condition under subsection (2).
- (6) If the Secretary of State does not receive the undertaking before the end of the period of 21 days starting with the day on which he makes the order and the person applies to the High Court to be discharged, the court must order his discharge.
- (7) If the Secretary of State receives the undertaking before the end of that period—
 - (a) in a case where section 117 applies, the required period for the purposes of section 117(2) is 28 days starting with the day on which the Secretary of State receives the undertaking;
 - (b) in a case where section 118 applies, the required period for the purposes of section 118(2) is 28 days starting with the day on which the decision of the relevant court on the appeal becomes final (within the meaning of that section) or (if later) the day on which the Secretary of State receives the undertaking.

120 Extradition following deferral for competing claim

- (1) This section applies if—
 - (a) an order is made under this Part for a person to be extradited to a category 2 territory in pursuance of a request for his extradition;
 - (b) before the person is extradited to the territory an order is made under section 126(2) or 179(2) for the person's extradition in pursuance of the request to be deferred;
 - (c) the appropriate judge makes an order under section 181(2) for the person's extradition in pursuance of the request to cease to be deferred.
- (2) In a case where section 117 applies, the required period for the purposes of section 117(2) is 28 days starting with the day on which the order under section 181(2) is made.
- (3) In a case where section 118 applies, the required period for the purposes of section 118(2) is 28 days starting with the day on which the decision of the relevant court on the appeal becomes final (within the meaning of that section) or (if later) the day on which the order under section 181(2) is made.

Status: This is the original version (as it was originally enacted).

121 Asylum claim

- (1) This section applies if—
 - (a) a person whose extradition is requested makes an asylum claim at any time in the relevant period;
 - (b) an order is made under this Part for the person to be extradited in pursuance of the request.
- (2) The relevant period is the period—
 - (a) starting when a certificate is issued under section 70 in respect of the request;
 - (b) ending when the person is extradited in pursuance of the request.
- (3) The person must not be extradited in pursuance of the request before the asylum claim is finally determined; and sections 117 and 118 have effect subject to this.
- (4) If the Secretary of State allows the asylum claim, the claim is finally determined when he makes his decision on the claim.
- (5) If the Secretary of State rejects the asylum claim, the claim is finally determined—
 - (a) when the Secretary of State makes his decision on the claim, if there is no right to appeal against the Secretary of State's decision on the claim;
 - (b) when the period permitted for appealing against the Secretary of State's decision on the claim ends, if there is such a right but there is no such appeal;
 - (c) when the appeal against that decision is finally determined or is withdrawn or abandoned, if there is such an appeal.
- (6) An appeal against the Secretary of State's decision on an asylum claim is not finally determined for the purposes of subsection (5) at any time when a further appeal or an application for leave to bring a further appeal—
 - (a) has been instituted and has not been finally determined or withdrawn or abandoned, or
 - (b) may be brought.
- (7) The remittal of an appeal is not a final determination for the purposes of subsection (6).
- (8) The possibility of an appeal out of time with leave must be ignored for the purposes of subsections (5) and (6).

Withdrawal of extradition request

122 Withdrawal of request before end of extradition hearing

- (1) This section applies if at any time in the relevant period the appropriate judge is informed by the Secretary of State that a request for a person's extradition has been withdrawn.
- (2) The relevant period is the period—
 - (a) starting when the person first appears or is brought before the appropriate judge following his arrest under this Part;
 - (b) ending when the judge orders the person's discharge or sends the case to the Secretary of State for his decision whether the person is to be extradited.
- (3) The judge must order the person's discharge.

- (4) If the person is not before the judge at the time the judge orders his discharge, the judge must inform him of the order as soon as practicable.

123 Withdrawal of request after case sent to Secretary of State

- (1) This section applies if at any time in the relevant period the Secretary of State is informed that a request for a person's extradition has been withdrawn.
- (2) The relevant period is the period—
- (a) starting when the judge sends the case to the Secretary of State for his decision whether the person is to be extradited;
 - (b) ending when the person is extradited in pursuance of the request or discharged.
- (3) The Secretary of State must order the person's discharge.

124 Withdrawal of request while appeal to High Court pending

- (1) This section applies if at any time in the relevant period the High Court is informed by the Secretary of State that a request for a person's extradition has been withdrawn.
- (2) The relevant period is the period—
- (a) starting when notice of an appeal to the court is given by the person whose extradition is requested or by a person acting on behalf of the category 2 territory to which his extradition is requested;
 - (b) ending when proceedings on the appeal are discontinued or the court makes its decision on the appeal.
- (3) If the appeal is under section 103 or 108, the court must—
- (a) order the person's discharge;
 - (b) quash the order for his extradition, if the Secretary of State has ordered his extradition.
- (4) If the appeal is under section 105 or 110, the court must dismiss the appeal.
- (5) If the person is not before the court at the time the court orders his discharge, the court must inform him of the order as soon as practicable.

125 Withdrawal of request while appeal to House of Lords pending

- (1) This section applies if at any time in the relevant period the House of Lords is informed by the Secretary of State that a request for a person's extradition has been withdrawn.
- (2) The relevant period is the period—
- (a) starting when leave to appeal to the House of Lords is granted to the person whose extradition is requested or a person acting on behalf of the category 2 territory to which his extradition is requested;
 - (b) ending when proceedings on the appeal are discontinued or the House of Lords makes its decision on the appeal.
- (3) If the appeal is brought by the person whose extradition is requested the House of Lords must—
- (a) order the person's discharge;

Status: This is the original version (as it was originally enacted).

- (b) quash the order for his extradition, in a case where the appeal was against a decision of the High Court to dismiss an appeal under section 103 or 108.
- (4) If the appeal is brought by a person acting on behalf of the category 2 territory the House of Lords must dismiss the appeal.
- (5) If the person whose extradition is requested is not before the House of Lords at the time it orders his discharge, the House of Lords must inform him of the order as soon as practicable.

Competing extradition requests

126 Competing extradition requests

- (1) This section applies if—
 - (a) the Secretary of State receives a valid request for a person’s extradition to a category 2 territory;
 - (b) the person is in the United Kingdom;
 - (c) before the person is extradited in pursuance of the request or discharged, the Secretary of State receives another valid request for the person’s extradition.
- (2) The Secretary of State may—
 - (a) order proceedings (or further proceedings) on one of the requests to be deferred until the other one has been disposed of, if neither of the requests has been disposed of;
 - (b) order the person’s extradition in pursuance of the request under consideration to be deferred until the other request has been disposed of, if an order for his extradition in pursuance of the request under consideration has been made.
- (3) In applying subsection (2) the Secretary of State must take account in particular of these matters—
 - (a) the relative seriousness of the offences concerned;
 - (b) the place where each offence was committed (or was alleged to have been committed);
 - (c) the date when each request was received;
 - (d) whether, in the case of each offence, the person is accused of its commission (but not alleged to have been convicted) or is alleged to be unlawfully at large after conviction.

Consent to extradition

127 Consent to extradition: general

- (1) A person arrested under a warrant issued under section 71 may consent to his extradition to the category 2 territory to which his extradition is requested.
- (2) A person arrested under a provisional warrant may consent to his extradition to the category 2 territory in which he is accused of the commission of an offence or is alleged to have been convicted of an offence.
- (3) Consent under this section—
 - (a) must be given in writing;

- (b) is irrevocable.
- (4) Consent under this section which is given by a person before his case is sent to the Secretary of State for the Secretary of State's decision whether he is to be extradited must be given before the appropriate judge.
- (5) Consent under this section which is given in any other case must be given to the Secretary of State.
- (6) A person may not give his consent under this section before the appropriate judge unless—
 - (a) he is legally represented before the appropriate judge at the time he gives consent, or
 - (b) he is a person to whom subsection (7) applies.
- (7) This subsection applies to a person if—
 - (a) he has been informed of his right to apply for legal aid and has had the opportunity to apply for legal aid, but he has refused or failed to apply;
 - (b) he has applied for legal aid but his application has been refused;
 - (c) he was granted legal aid but the legal aid was withdrawn.
- (8) In subsection (7) “legal aid” means—
 - (a) in England and Wales, a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service;
 - (b) in Scotland, such legal aid as is available by virtue of section 183(a) of this Act;
 - (c) in Northern Ireland, such free legal aid as is available by virtue of sections 184 and 185 of this Act.
- (9) For the purposes of subsection (6) a person is to be treated as legally represented before the appropriate judge if (and only if) he has the assistance of counsel or a solicitor to represent him in the proceedings before the appropriate judge.

128 Consent to extradition before case sent to Secretary of State

- (1) This section applies if a person gives his consent under section 127 to the appropriate judge.
- (2) If the judge has not fixed a date under section 75 or 76 on which the extradition hearing is to begin he is not required to do so.
- (3) If the extradition hearing has begun the judge is no longer required to proceed or continue proceeding under sections 78 to 91.
- (4) The judge must send the case to the Secretary of State for his decision whether the person is to be extradited.
- (5) The person must be taken to have waived any right he would have (apart from the consent) not to be dealt with in the category 2 territory for an offence committed before his extradition.

Status: This is the original version (as it was originally enacted).

Post-extradition matters

129 Consent to other offence being dealt with

- (1) This section applies if—
 - (a) a person is extradited to a category 2 territory in accordance with this Part;
 - (b) the Secretary of State receives a valid request for his consent to the person being dealt with in the territory for an offence other than the offence in respect of which he was extradited.
- (2) A request for consent is valid if it is made by an authority which is an authority of the territory and which the Secretary of State believes has the function of making requests for the consent referred to in subsection (1)(b) in that territory.
- (3) The Secretary of State must serve notice on the person that he has received the request for consent, unless he is satisfied that it would not be practicable to do so.
- (4) The Secretary of State must decide whether the offence is an extradition offence.
- (5) If the Secretary of State decides the question in subsection (4) in the negative he must refuse his consent.
- (6) If the Secretary of State decides that question in the affirmative he must decide whether the appropriate judge would send the case to him (for his decision whether the person was to be extradited) under sections 79 to 91 if—
 - (a) the person were in the United Kingdom, and
 - (b) the judge were required to proceed under section 79 in respect of the offence for which the Secretary of State's consent is requested.
- (7) If the Secretary of State decides the question in subsection (6) in the negative he must refuse his consent.
- (8) If the Secretary of State decides that question in the affirmative he must decide whether, if the person were in the United Kingdom, his extradition in respect of the offence would be prohibited under section 94, 95 or 96.
- (9) If the Secretary of State decides the question in subsection (8) in the affirmative he must refuse his consent.
- (10) If the Secretary of State decides that question in the negative he may give his consent.

130 Consent to further extradition to category 2 territory

- (1) This section applies if—
 - (a) a person is extradited to a category 2 territory (the requesting territory) in accordance with this Part;
 - (b) the Secretary of State receives a valid request for his consent to the person's extradition to another category 2 territory for an offence other than the offence in respect of which he was extradited.
- (2) A request for consent is valid if it is made by an authority which is an authority of the requesting territory and which the Secretary of State believes has the function of making requests for the consent referred to in subsection (1)(b) in that territory.

Status: This is the original version (as it was originally enacted).

- (3) The Secretary of State must serve notice on the person that he has received the request for consent, unless he is satisfied that it would not be practicable to do so.
- (4) The Secretary of State must decide whether the offence is an extradition offence in relation to the category 2 territory referred to in subsection (1)(b).
- (5) If the Secretary of State decides the question in subsection (4) in the negative he must refuse his consent.
- (6) If the Secretary of State decides that question in the affirmative he must decide whether the appropriate judge would send the case to him (for his decision whether the person was to be extradited) under sections 79 to 91 if—
 - (a) the person were in the United Kingdom, and
 - (b) the judge were required to proceed under section 79 in respect of the offence for which the Secretary of State's consent is requested.
- (7) If the Secretary of State decides the question in subsection (6) in the negative he must refuse his consent.
- (8) If the Secretary of State decides that question in the affirmative he must decide whether, if the person were in the United Kingdom, his extradition in respect of the offence would be prohibited under section 94, 95 or 96.
- (9) If the Secretary of State decides the question in subsection (8) in the affirmative he must refuse his consent.
- (10) If the Secretary of State decides that question in the negative he may give his consent.

131 Consent to further extradition to category 1 territory

- (1) This section applies if—
 - (a) a person is extradited to a category 2 territory (the requesting territory) in accordance with this Part;
 - (b) the Secretary of State receives a valid request for his consent to the person's extradition to a category 1 territory for an offence other than the offence in respect of which he was extradited.
- (2) A request for consent is valid if it is made by an authority which is an authority of the requesting territory and which the Secretary of State believes has the function of making requests for the consent referred to in subsection (1)(b) in that territory.
- (3) The Secretary of State must serve notice on the person that he has received the request for consent, unless he is satisfied that it would not be practicable to do so.
- (4) The Secretary of State must decide whether the offence is an extradition offence within the meaning given by section 64 in relation to the category 1 territory.
- (5) If the Secretary of State decides the question in subsection (4) in the negative he must refuse his consent.
- (6) If the Secretary of State decides that question in the affirmative he must decide whether the appropriate judge would order the person's extradition under sections 11 to 25 if—
 - (a) the person were in the United Kingdom, and
 - (b) the judge were required to proceed under section 11 in respect of the offence for which the Secretary of State's consent is requested.

Status: This is the original version (as it was originally enacted).

- (7) If the Secretary of State decides the question in subsection (6) in the affirmative he must give his consent.
- (8) If the Secretary of State decides that question in the negative he must refuse his consent.

132 Return of person to serve remainder of sentence

- (1) This section applies if—
 - (a) a person who is serving a sentence of imprisonment or another form of detention in the United Kingdom is extradited to a category 2 territory in accordance with this Part;
 - (b) the person is returned to the United Kingdom to serve the remainder of his sentence.
- (2) The person is liable to be detained in pursuance of his sentence.
- (3) If he is at large he must be treated as being unlawfully at large.
- (4) Time during which the person was not in the United Kingdom as a result of his extradition does not count as time served by him as part of his sentence.
- (5) But subsection (4) does not apply if—
 - (a) the person was extradited for the purpose of being prosecuted for an offence, and
 - (b) the person has not been convicted of the offence or of any other offence in respect of which he was permitted to be dealt with in the category 2 territory.
- (6) In a case falling within subsection (5), time during which the person was not in the United Kingdom as a result of his extradition counts as time served by him as part of his sentence if (and only if) it was spent in custody in connection with the offence or any other offence in respect of which he was permitted to be dealt with in the territory.

Costs

133 Costs where extradition ordered

- (1) This section applies if any of the following occurs in relation to a person whose extradition is requested under this Part—
 - (a) an order for the person's extradition is made under this Part;
 - (b) the High Court dismisses an appeal under section 103 or 108;
 - (c) the High Court or the House of Lords dismisses an application for leave to appeal to the House of Lords under section 114, if the application is made by the person;
 - (d) the House of Lords dismisses an appeal under section 114, if the appeal is brought by the person.
- (2) In a case falling within subsection (1)(a), the appropriate judge may make such order as he considers just and reasonable with regard to the costs to be paid by the person.
- (3) In a case falling within subsection (1)(b) by virtue of section 104(7), the judge who decides the question that is (or all the questions that are) the subject of a direction

under section 104(1)(b) may make such order as he considers just and reasonable with regard to the costs to be paid by the person.

- (4) In any other case falling within subsection (1)(b), the High Court may make such order as it considers just and reasonable with regard to the costs to be paid by the person.
- (5) In a case falling within subsection (1)(c) or (d), the court by which the application or appeal is dismissed may make such order as it considers just and reasonable with regard to the costs to be paid by the person.
- (6) An order for costs under this section—
 - (a) must specify their amount;
 - (b) may name the person to whom they are to be paid.

134 Costs where discharge ordered

- (1) This section applies if any of the following occurs in relation to a person whose extradition to a category 2 territory is requested under this Part—
 - (a) an order for the person's discharge is made under this Part;
 - (b) the person is taken to be discharged under this Part;
 - (c) the High Court dismisses an appeal under section 105 or 110;
 - (d) the High Court or the House of Lords dismisses an application for leave to appeal to the House of Lords under section 114, if the application is made on behalf of the category 2 territory;
 - (e) the House of Lords dismisses an appeal under section 114, if the appeal is brought on behalf of the category 2 territory.
- (2) In a case falling within subsection (1)(a), an order under subsection (5) in favour of the person may be made by—
 - (a) the appropriate judge, if the order for the person's discharge is made by him or by the Secretary of State;
 - (b) the High Court, if the order for the person's discharge is made by it;
 - (c) the House of Lords, if the order for the person's discharge is made by it.
- (3) In a case falling within subsection (1)(b), the appropriate judge may make an order under subsection (5) in favour of the person.
- (4) In a case falling within subsection (1)(c), (d) or (e), the court by which the application or appeal is dismissed may make an order under subsection (5) in favour of the person.
- (5) An order under this subsection in favour of a person is an order for a payment of the appropriate amount to be made to the person out of money provided by Parliament.
- (6) The appropriate amount is such amount as the judge or court making the order under subsection (5) considers reasonably sufficient to compensate the person in whose favour the order is made for any expenses properly incurred by him in the proceedings under this Part.
- (7) But if the judge or court making an order under subsection (5) is of the opinion that there are circumstances which make it inappropriate that the person in whose favour the order is made should recover the full amount mentioned in subsection (6), the judge or court must—
 - (a) assess what amount would in his or its opinion be just and reasonable;
 - (b) specify that amount in the order as the appropriate amount.

Status: This is the original version (as it was originally enacted).

- (8) Unless subsection (7) applies, the appropriate amount—
- (a) must be specified in the order, if the court considers it appropriate for it to be so specified and the person in whose favour the order is made agrees the amount;
 - (b) must be determined in accordance with regulations made by the Lord Chancellor for the purposes of this section, in any other case.

135 Costs where discharge ordered: supplementary

- (1) In England and Wales, subsections (1) and (3) of section 20 of the Prosecution of Offences Act 1985 (c. 23) (regulations for carrying Part 2 of that Act into effect) apply in relation to section 134 as those subsections apply in relation to Part 2 of that Act.
- (2) As so applied those subsections have effect as if an order under section 134(5) were an order under Part 2 of that Act for a payment to be made out of central funds.
- (3) In Northern Ireland, section 7 of the Costs in Criminal Cases Act (Northern Ireland) 1968 (c. 10) (rules relating to costs) applies in relation to section 134 as that section applies in relation to sections 2 to 5 of that Act.

Repatriation cases

136 Persons serving sentences outside territory where convicted

- (1) This section applies if—
 - (a) a request is made for a person's extradition to a category 2 territory and the request contains the statement referred to in subsection (2), or
 - (b) a provisional warrant for a person's arrest is sought on behalf of a category 2 territory and the information laid before the justice contains the statement referred to in subsection (2).
- (2) The statement is one that the person—
 - (a) is alleged to be unlawfully at large from a prison in one territory (the imprisoning territory) in which he was serving a sentence after conviction of an offence specified in the request by a court in another territory (the convicting territory), and
 - (b) was serving the sentence in pursuance of international arrangements for prisoners sentenced in one territory to be repatriated to another territory in order to serve their sentence.
- (3) If the category 2 territory is either the imprisoning territory or the convicting territory—
 - (a) section 70(3) has effect as if the reference to the statement referred to in subsection (4) of that section were a reference to the statement referred to in subsection (2) of this section;
 - (b) section 73(1) has effect as if the reference to a person within subsection (2) of that section were a reference to the person referred to in subsection (1)(b) of this section.
- (4) If the category 2 territory is the imprisoning territory—

Status: This is the original version (as it was originally enacted).

- (a) sections 71(2)(a), 73(3)(a) and 78(4)(b) have effect as if “an extradition offence” read “an extradition offence in relation to the convicting territory”;
 - (b) sections 74(8)(a) and 127(2) have effect as if “the category 2 territory in which he is accused of the commission of an offence or is alleged to have been convicted of an offence” read “the imprisoning territory”;
 - (c) section 74(11)(b) has effect as if “the category 2 territory” read “the imprisoning territory”;
 - (d) section 78(2)(e) has effect as if “the category 2 territory” read “the convicting territory”;
 - (e) section 85(5) has effect as if after “entitled” there were inserted “in the convicting territory”;
 - (f) section 119(4) has effect as if “a category 2 territory” read “the convicting territory” and as if “the category 2 territory” in both places read “the convicting territory”;
 - (g) section 138(1) has effect as if “a category 2 territory” read “the convicting territory”;
 - (h) in section 138, subsections (2), (3), (4), (5) and (7) have effect as if “the category 2 territory” read “the convicting territory”.
- (5) Subsection (1)(b) applies to Scotland with the substitution of “application by the procurator fiscal sets out the matters referred to in paragraphs (a) and (b) of subsection (2)” for “information laid by the justice contains the statement referred to in subsection (2)”.
- (6) Subsection (1)(b) applies to Northern Ireland with the substitution of “the complaint made to” for “the information laid before”.

Interpretation

137 Extradition offences: person not sentenced for offence

- (1) This section applies in relation to conduct of a person if—
- (a) he is accused in a category 2 territory of the commission of an offence constituted by the conduct, or
 - (b) he is alleged to be unlawfully at large after conviction by a court in a category 2 territory of an offence constituted by the conduct and he has not been sentenced for the offence.
- (2) The conduct constitutes an extradition offence in relation to the category 2 territory if these conditions are satisfied—
- (a) the conduct occurs in the category 2 territory;
 - (b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom;
 - (c) the conduct is so punishable under the law of the category 2 territory (however it is described in that law).
- (3) The conduct also constitutes an extradition offence in relation to the category 2 territory if these conditions are satisfied—
- (a) the conduct occurs outside the category 2 territory;

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- (b) the conduct is punishable under the law of the category 2 territory with imprisonment or another form of detention for a term of 12 months or a greater punishment (however it is described in that law);
 - (c) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment.
- (4) The conduct also constitutes an extradition offence in relation to the category 2 territory if these conditions are satisfied—
 - (a) the conduct occurs outside the category 2 territory and no part of it occurs in the United Kingdom;
 - (b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom;
 - (c) the conduct is so punishable under the law of the category 2 territory (however it is described in that law).
- (5) The conduct also constitutes an extradition offence in relation to the category 2 territory if these conditions are satisfied—
 - (a) the conduct occurs outside the category 2 territory and no part of it occurs in the United Kingdom;
 - (b) the conduct is punishable under the law of the category 2 territory with imprisonment for a term of 12 months or another form of detention or a greater punishment (however it is described in that law);
 - (c) the conduct constitutes or if committed in the United Kingdom would constitute an offence mentioned in subsection (6).
- (6) The offences are—
 - (a) an offence under section 51 or 58 of the International Criminal Court Act 2001 (c. 17) (genocide, crimes against humanity and war crimes);
 - (b) an offence under section 52 or 59 of that Act (conduct ancillary to genocide etc. committed outside the jurisdiction);
 - (c) an ancillary offence, as defined in section 55 or 62 of that Act, in relation to an offence falling within paragraph (a) or (b);
 - (d) an offence under section 1 of the International Criminal Court (Scotland) Act 2001 (asp 13) (genocide, crimes against humanity and war crimes);
 - (e) an offence under section 2 of that Act (conduct ancillary to genocide etc. committed outside the jurisdiction);
 - (f) an ancillary offence, as defined in section 7 of that Act, in relation to an offence falling within paragraph (d) or (e).
- (7) If the conduct constitutes an offence under the military law of the category 2 territory but does not constitute an offence under the general criminal law of the relevant part of the United Kingdom it does not constitute an extradition offence; and subsections (1) to (6) have effect subject to this.
- (8) The relevant part of the United Kingdom is the part of the United Kingdom in which—
 - (a) the extradition hearing took place, if the question of whether conduct constitutes an extradition offence is to be decided by the Secretary of State;

- (b) proceedings in which it is necessary to decide that question are taking place, in any other case.

(9) Subsections (1) to (7) apply for the purposes of this Part.

138 Extradition offences: person sentenced for offence

- (1) This section applies in relation to conduct of a person if—
 - (a) he is alleged to be unlawfully at large after conviction by a court in a category 2 territory of an offence constituted by the conduct, and
 - (b) he has been sentenced for the offence.
- (2) The conduct constitutes an extradition offence in relation to the category 2 territory if these conditions are satisfied—
 - (a) the conduct occurs in the category 2 territory;
 - (b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom;
 - (c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 2 territory in respect of the conduct.
- (3) The conduct also constitutes an extradition offence in relation to the category 2 territory if these conditions are satisfied—
 - (a) the conduct occurs outside the category 2 territory;
 - (b) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 2 territory in respect of the conduct;
 - (c) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment.
- (4) The conduct also constitutes an extradition offence in relation to the category 2 territory if these conditions are satisfied—
 - (a) the conduct occurs outside the category 2 territory and no part of it occurs in the United Kingdom;
 - (b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom;
 - (c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 2 territory in respect of the conduct.
- (5) The conduct also constitutes an extradition offence in relation to the category 2 territory if these conditions are satisfied—
 - (a) the conduct occurs outside the category 2 territory and no part of it occurs in the United Kingdom;

Status: This is the original version (as it was originally enacted).

- (b) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 2 territory in respect of the conduct;
 - (c) the conduct constitutes or if committed in the United Kingdom would constitute an offence mentioned in subsection (6).
- (6) The offences are—
- (a) an offence under section 51 or 58 of the International Criminal Court Act 2001 (c. 17) (genocide, crimes against humanity and war crimes);
 - (b) an offence under section 52 or 59 of that Act (conduct ancillary to genocide etc. committed outside the jurisdiction);
 - (c) an ancillary offence, as defined in section 55 or 62 of that Act, in relation to an offence falling within paragraph (a) or (b);
 - (d) an offence under section 1 of the International Criminal Court (Scotland) Act 2001 (asp 13) (genocide, crimes against humanity and war crimes);
 - (e) an offence under section 2 of that Act (conduct ancillary to genocide etc. committed outside the jurisdiction);
 - (f) an ancillary offence, as defined in section 7 of that Act, in relation to an offence falling within paragraph (d) or (e).
- (7) If the conduct constitutes an offence under the military law of the category 2 territory but does not constitute an offence under the general criminal law of the relevant part of the United Kingdom it does not constitute an extradition offence; and subsections (1) to (6) have effect subject to this.
- (8) The relevant part of the United Kingdom is the part of the United Kingdom in which—
- (a) the extradition hearing took place, if the question of whether conduct constitutes an extradition offence is to be decided by the Secretary of State;
 - (b) proceedings in which it is necessary to decide that question are taking place, in any other case.
- (9) Subsections (1) to (7) apply for the purposes of this Part.

139 The appropriate judge

- (1) The appropriate judge is—
- (a) in England and Wales, a District Judge (Magistrates' Courts) designated for the purposes of this Part by the Lord Chancellor;
 - (b) in Scotland, the sheriff of Lothian and Borders;
 - (c) in Northern Ireland, such county court judge or resident magistrate as is designated for the purposes of this Part by the Lord Chancellor.
- (2) A designation under subsection (1) may be made for all cases or for such cases (or cases of such description) as the designation stipulates.
- (3) More than one designation may be made under subsection (1).
- (4) This section applies for the purposes of this Part.

140 The extradition hearing

- (1) The extradition hearing is the hearing at which the appropriate judge is to deal with a request for extradition to a category 2 territory.

(2) This section applies for the purposes of this Part.

141 Scotland: references to Secretary of State

- (1) This Part applies in relation to any function which falls under this Part to be exercised in relation to Scotland only as if references in this Part to the Secretary of State were to the Scottish Ministers.
- (2) Subsection (1) does not apply to the references to the Secretary of State in sections 83(3), 101(5) and 121.