



Extradition Act 2003

2003 CHAPTER 41

PART 5

MISCELLANEOUS AND GENERAL

Other miscellaneous provisions

208 National security

- (1) This section applies if the Secretary of State believes that the conditions in subsections (2) to (4) are satisfied in relation to a person.
- (2) The first condition is that the person's extradition is sought or will be sought under Part 1 or Part 2 in respect of an offence.
- (3) The second condition is that—
 - (a) in engaging in the conduct constituting (or alleged to constitute) the offence the person was acting for the purpose of assisting in the exercise of a function conferred or imposed by or under an enactment, or
 - (b) as a result of an authorisation given by the Secretary of State the person is not liable under the criminal law of any part of the United Kingdom for the conduct constituting (or alleged to constitute) the offence.
- (4) The third condition is that the person's extradition in respect of the offence would be against the interests of national security.
- (5) The Secretary of State may certify that the conditions in subsections (2) to (4) are satisfied in relation to the person.
- (6) If the Secretary of State issues a certificate under subsection (5) he may—
 - (a) direct that a Part 1 warrant issued in respect of the person and in respect of the offence is not to be proceeded with, or
 - (b) direct that a request for the person's extradition in respect of the offence is not to be proceeded with.

*Changes to legislation: There are currently no known outstanding effects
for the Extradition Act 2003, Section 208. (See end of Document for details)*

- (7) If the Secretary of State issues a certificate under subsection (5) he may order the person's discharge (instead of or in addition to giving a direction under subsection (6)).
- (8) These rules apply if the Secretary of State gives a direction under subsection (6)(a) in respect of a warrant—
- (a) if the designated authority has not issued a certificate under section 2 in respect of the warrant it must not do so;
 - (b) if the person is arrested under the warrant or under section 5 there is no requirement for him to be brought before the appropriate judge and he must be discharged;
 - (c) if the person is brought before the appropriate judge under section 4 or 6 the judge is no longer required to proceed or continue proceeding under sections 7 and 8;
 - (d) if the extradition hearing has begun the judge is no longer required to proceed or continue proceeding under sections 10 to 25;
 - (e) if the person has consented to his extradition, the judge is no longer required to order his extradition;
 - (f) if an appeal to the High Court or [F¹Supreme Court]^{F1} has been brought, the court is no longer required to hear or continue hearing the appeal;
 - (g) if the person's extradition has been ordered there is no requirement for him to be extradited.
- (9) These rules apply if the Secretary of State gives a direction under subsection (6)(b) in respect of a request—
- (a) if he has not issued a certificate under section 70 in respect of the request he is no longer required to do so;
 - (b) if the person is arrested under a warrant issued under section 71 [F², under a provisional warrant or under section 74A] there is no requirement for him to appear or be brought before the appropriate judge and he must be discharged;
 - (c) if the person appears or is brought before the appropriate judge the judge is no longer required to proceed or continue proceeding under sections 72, 74, [F³, 74D, 74E] 75 and 76;
 - (d) if the extradition hearing has begun the judge is no longer required to proceed or continue proceeding under sections 78 to 91;
 - (e) if the person has given his consent to his extradition to the appropriate judge, the judge is no longer required to send the case to the Secretary of State for his decision whether the person is to be extradited;
 - (f) if an appeal to the High Court or [F¹Supreme Court]^{F1} has been brought, the court is no longer required to hear or continue hearing the appeal;
 - (g) if the person's extradition has been ordered there is no requirement for him to be extradited.
- (10) These must be made under the hand of the Secretary of State—
- (a) a certificate under subsection (5);
 - (b) a direction under subsection (6);
 - (c) an order under subsection (7).
- (11) The preceding provisions of this section apply to Scotland with these modifications—
- (a) in subsection (9)(a) for “he has” substitute “ the Scottish Ministers have ” and for “he is” substitute “ they are ”;

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(b) in subsection (9)(e) for “Secretary of State for his” substitute “ Scottish Ministers for their ”.

(12) In subsection (3) the reference to an enactment includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.

[^{F4}(13) In this section, “appeal” includes an application for leave to appeal.]

Textual Amendments

- F1** Words in s. 208 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 148, [Sch. 9 para. 81\(4\)\(o\)](#); [S.I. 2009/1604](#), [art. 2\(d\)](#)
- F2** Words in s. 208(9)(b) substituted (31.12.2020) by [Extradition \(Provisional Arrest\) Act 2020 \(c. 18\)](#), s. 2(4), [Sch. para. 24\(2\)](#); [S.I. 2020/1652](#), reg. 2(1)(b)
- F3** Words in s. 208(9)(c) inserted (31.12.2020) by [Extradition \(Provisional Arrest\) Act 2020 \(c. 18\)](#), s. 2(4), [Sch. para. 24\(3\)](#); [S.I. 2020/1652](#), reg. 2(1)(b)
- F4** S. 208(13) inserted (15.4.2015) by [The Extradition Act 2003 \(Amendment to Designations and Appeals\) Order 2015 \(S.I. 2015/992\)](#), arts. 1(1), [3\(14\)](#) (with art. 1(4))
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Commencement Information

- I1** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103](#), [art. 2](#) (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258](#) art. 2(2) and [S.I. 2003/3312](#) art. 2(2))

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