

# **POLICING AND CRIME ACT 2009**

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## **EXPLANATORY NOTES**

### **TERRITORIAL EXTENT AND APPLICATION**

#### **Part 6 – Extradition**

#### **Extradition to UK**

##### *Section 74 Return to extraditing territory etc*

360. Where a person whose extradition has been requested is being prosecuted or serving a sentence of imprisonment in a member state, article 24(2) of the European Arrest Warrant Framework Decision 2002/584/JHA allows the requested member state to agree terms subject to which the person in question may be temporarily surrendered. Similarly, article 5(3) of the European Arrest Warrant Framework Decision allows member states in accusation cases to make surrender of a national or a resident conditional on the requested person being returned to their jurisdiction to serve any sentence imposed in the requesting state. Sections 143 and 144 of the Extradition Act 2003 provide a legislative basis on which the UK can comply with requests from other member states to make extradition subject to such conditions.
361. *Section 74* repeals sections 143 and 144 of the Extradition Act 2003 and inserts new sections 153A, 153B and 153C. These provisions provide a regime within which the UK will be able to provide undertakings as to a person's treatment in the UK and eventual return to a requested territory. Unlike sections 143 and 144, the new provisions will facilitate the provisions of undertakings in relation to persons who have been extradited to the UK from any territory.
362. Section 153A(2) provides that where a person is serving a sentence of imprisonment or another form of detention in a territory, the Secretary of State may give an undertaking as to his or her treatment in the UK and his or her return to the requested territory.
363. Section 153A(3) provides that where a person is wanted in the UK for the purpose of prosecution, the Secretary of State may give an undertaking that the person will be kept in custody until the conclusion of the UK proceedings and that they will thereafter be returned to the requesting territory to serve the remainder of the foreign sentence. In contrast, where a person is wanted in the UK so that a sentence previously imposed may be enforced, section 153A(4) allows the Secretary of State to give an undertaking that the person in question will be returned to the requested territory once the person is entitled to be released from detention pursuant to the sentence imposed in the United Kingdom.
364. Where a person falls to be returned to a requested territory pursuant to an undertaking given under section 153A(2) section 153A(5) provides the authority for that person to be removed from prison and kept in custody while conveyed to the requested territory.
365. Section 153B governs the situation where a person is returned to a requested territory in compliance with an undertaking given under section 153A(2) but subsequently returns to the UK. By virtue of section 153B(2), any time spent outside the United Kingdom as

*These notes refer to the Policing and Crime Act 2009  
(c.26) which received Royal Assent on 12 November 2009*

a result of an undertaking given under section 153A(2) does not count as time served by the person as part of the sentence. In consequence section 153B(3) provides that where a person is not entitled to be released from detention pursuant to their sentence they may be detained and will be treated as unlawfully at large where at large. Section 153B(4) (a) provides that where someone is entitled to be released from detention on licence pursuant to their sentence any licence which was imposed prior to return to the requested territory will be suspended on their return to the requested territory, but will take effect once they come back to the UK. Section 153B(5) provides that where someone who is entitled to be released from detention on licence was not released on licence prior to their return to the requested territory, they can be detained in any place in which they could have been detained before the time of their return to the requested territory. Section 153B(6) provides that a constable or immigration officer may take the person in to custody for the purpose of conveying them to the place of detention referred to in section 153B(5). Section 153B(7) provides that the person must be released on licence within a five day period, starting from when the offender was taken in to custody under this section. Section 153B(8) makes it clear that in calculating the period of five days, no account should be taken of weekends and public holidays as set out in section 59(10). Section 153B(9) makes it clear that the powers set out at section 153B(6) are exercisable in any part of the UK.

366. Section 153C allows the Secretary of State to give an undertaking that someone who has been extradited to the UK will be returned to the requested territory to serve any sentence of imprisonment imposed in the UK. Section 153C(4) establishes that where such an undertaking has been given the person must be returned to the requested territory as soon as is reasonably practicable after the sentence has been imposed and once any other proceedings in respect of the offence have been concluded. Where a person is returned to serve a UK sentence overseas, section 153C(5) provides that the sentence for the offence is to be regarded as having been served. This is to ensure that someone does not remain liable to imprisonment pursuant to their UK sentence despite having served it overseas.
367. Section 153D(1) makes it clear that nothing in section 153A or 153C require the return of a person where the Secretary of State is not satisfied that their return would be compatible with the Refugee Convention or the Human Rights Act 1998. Section 153D(2) provides that all references in sections 153A and 153C to the Secretary of State should be read as references to Scottish Ministers where a Part 3 warrant has been issued by a sheriff.