Policing and Crime Act 2009

2009 CHAPTER 26

PART 6

EXTRADITION

Extradition to UK

74 Return to extraditing territory etc

(1) The Extradition Act 2003 (c. 41) is amended as follows.

(2) Omit sections 143 (undertaking in relation to person serving sentence) and 144 (return to extraditing territory to serve sentence).

(3) After section 153 insert—

"**153A Undertaking in relation to person serving sentence**

(1) This section applies if—

(a) a person is accused in the United Kingdom of the commission of an offence or has been convicted of an offence by or before a court in the United Kingdom;

(b) a Part 3 warrant is issued in respect of the person or the Secretary of State makes a request for the extradition of the person;

(c) the person is serving a sentence of imprisonment or another form of detention in a territory;

(d) the person's extradition to the United Kingdom from the territory in pursuance of the warrant or request is made subject to a condition that an undertaking is given by or on behalf of the United Kingdom with regard to the person's treatment in the United Kingdom or return to the territory (or both).

(2) The Secretary of State may give an undertaking to a person acting on behalf of the territory with regard to either or both of these things—

(a) the treatment in the United Kingdom of the person in respect of whom the warrant is issued or the request for extradition is made;
(b) the return of that person to the territory.

(3) The terms which may be included by the Secretary of State in an undertaking given under subsection (2) in relation to a person accused in the United Kingdom of the commission of an offence include terms—
(a) that the person be kept in custody until the conclusion of the proceedings against the person for the offence and any other offence in respect of which the person is permitted to be dealt with in the United Kingdom;
(b) that the person be returned to the territory to serve the remainder of the sentence on the conclusion of those proceedings.

(4) The terms which may be included by the Secretary of State in an undertaking given under subsection (2) in relation to a person who has been convicted of an offence by or before a court in the United Kingdom include terms that the person be returned to the territory to serve the remainder of the sentence after the person would otherwise be released from detention pursuant to the sentence imposed in the United Kingdom (whether or not on licence).

(5) If a person is to be returned to a territory by virtue of an undertaking given under subsection (2), the undertaking is sufficient authority for a constable—
(a) to remove the person from any prison or other institution where the person is detained;
(b) to keep the person in custody until returned;
(c) to convey the person to the territory.

153B Return of person in pursuance of undertaking

(1) This section applies if—
(a) an undertaking is given under section 153A(2) as to the return of a person to a territory;
(b) the person is returned to the territory in pursuance of the undertaking;
(c) the person is returned to the United Kingdom to serve the remainder of any sentence imposed in the United Kingdom or the person otherwise returns to the United Kingdom.

(2) Time during which the person was outside the United Kingdom as a result of the undertaking given under section 153A(2) does not count as time served by the person as part of the sentence.

(3) If the person is not entitled to be released from detention pursuant to the sentence—
(a) the person is liable to be detained in pursuance of the sentence, and
(b) if at large, the person must be treated as being unlawfully at large.

(4) If the person is entitled to be released from detention on licence pursuant to the sentence—
(a) if the person was released on licence at the time of return to the territory, the licence is suspended until the person's return to the United Kingdom;

(b) if the person was not released on licence at that time, subsections (5) to (8) apply in relation to the person ("the offender").

(5) The offender is liable to be detained, on return to the United Kingdom, in any place in which the offender could have been detained pursuant to the sentence before the time of return to the territory.

(6) A constable or immigration officer may—
(a) take the offender into custody, and
(b) convey the offender to the place mentioned in subsection (5).

(7) The offender must be released on licence within the period of 5 days beginning when the offender is taken (or retaken) into custody under this section.

(8) In calculating a period of 5 days for the purposes of subsection (7) no account is to be taken of any day mentioned in any of paragraphs (a) to (d) of section 59(10).

(9) The powers conferred on a constable by subsection (6) are exercisable in any part of the United Kingdom.

(10) For the purposes of this section—
(a) a person is entitled to be released from detention if there is—
(i) a duty to release the person under section 33(1), (1A) or (2) of the Criminal Justice Act 1991,
(ii) a duty to release the person under section 244 of the Criminal Justice Act 2003 (other than temporarily on licence pursuant to an intermittent custody order under section 183(1)(b) of the Criminal Justice Act 2003),
(iii) a duty to release the person under section 1, 1AA or 7(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 or section 5, 11(2), 13, 19 or 23 of the Custodial Sentences and Weapons (Scotland) Act 2007, or
(iv) a duty to release the person under section 1 of the Northern Ireland (Remission of Sentences) Act 1995, Article 26 of the Criminal Justice (Northern Ireland) Order 1996 or Article 17 or 18(8) of the Criminal Justice (Northern Ireland) Order 2008;
(b) an immigration officer is a person who is an immigration officer within the meaning of the Immigration Act 1971.

153C Return to extraditing territory to serve sentence

(1) This section applies if—
(a) a person is extradited to the United Kingdom from a territory for the purposes of being prosecuted for an offence;
(b) the person's extradition is made subject to a condition that an undertaking is given by or on behalf of the United Kingdom as to the person's return to the territory.

(2) The Secretary of State may give an undertaking to a person acting on behalf of the territory as to the person's return to the territory.

(3) The terms which may be included by the Secretary of State in an undertaking given under subsection (2) in relation to a person include terms that if the person is convicted of the offence and a sentence of imprisonment or another form of detention is imposed in respect of it, the person is to be returned to the territory to serve the sentence.

(4) A person who is to be returned to a territory by virtue of an undertaking given under subsection (2) must be returned as soon as is reasonably practicable after the sentence is imposed and any other proceedings in respect of the offence are concluded.

(5) If subsection (4) is complied with the sentence for the offence is treated as served but the person's conviction for the offence must be treated as a conviction for all other purposes.

(6) The sentence for the offence is treated as served under subsection (5) only in so far as it consists of the sentence of imprisonment or another form of detention mentioned in subsection (3).

(7) Subsection (8) applies if—
   (a) subsection (4) is not complied with, and
   (b) the person applies to the court which imposed the sentence to expedite return to the territory.

(8) The court must order return by such date as is specified in the order unless reasonable cause is shown for the delay.

(9) If a person is to be returned by virtue of an undertaking given under subsection (2), a constable may—
   (a) remove the person from any prison or other institution where the person is detained;
   (b) keep the person in custody until returned;
   (c) convey the person to the territory to which the person is to be returned.

153D Sections 153A and 153C etc: supplementary

(1) Nothing in section 153A or 153C requires the return of a person to a territory in a case in which the Secretary of State is not satisfied that the return is compatible with the Convention rights within the meaning of the Human Rights Act 1998 or with the United Kingdom's obligations under the Refugee Convention.

(2) References in sections 153A and 153C and subsection (1) above to the Secretary of State are to be read as references to the Scottish Ministers in a case in which—
   (a) a Part 3 warrant was issued in respect of the person to be returned, and
   (b) the warrant was issued by a sheriff.

(3) The reference in subsection (1) to the Refugee Convention is to the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to the Convention."

(4) In section 153(1)(b) (return of person acquitted or not tried) for the words from "from" to the end substitute "from a territory;".

(5) In section 197(2) (powers on escape from custody) after “Part 2” insert “, or kept in custody by virtue of a power under Part 3,”.