

SCHEDULES

SCHEDULE 7

COSTS IN CRIMINAL CASES

PART 3

EXTRADITION ACT 2003

Introduction

12 The Extradition Act 2003 is amended as follows.

Extradition to Category 1 Territories

13 (1) Section 61 (costs where discharge ordered) is amended as follows.

(2) After subsection (5) insert—

“(5A) In England and Wales, an order under subsection (5) is to be made, and the appropriate amount is to be determined, in accordance with sections 62A and 62B.

(5B) In Scotland and Northern Ireland, an order under subsection (5) is to be made, and the appropriate amount is to be determined, in accordance with subsections (6) to (9).”

14 In section 62 (supplementary provision about costs where discharge ordered) omit subsections (1) and (2).

15 After section 62 insert—

“62A Appropriate amount: England and Wales

(1) For the purposes of an order under section 61(5), the appropriate amount is such amount as the judge or court making the order considers reasonably sufficient to compensate the person in whose favour the order is made for any expenses properly incurred by the person in the proceedings under this Part.

(2) But if the judge or court considers that there are circumstances that make it inappropriate for the person to recover the full amount mentioned in subsection (1), the order under section 61(5) must be for the payment out of money provided by Parliament of such lesser amount as the judge or court considers just and reasonable.

(3) Subsections (1) and (2) have effect subject to—
(a) section 62B, and

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- (b) regulations under section 20(1A)(d) of the Prosecution of Offences Act 1985 (as applied by this section).
- (4) When making an order under section 61(5), the judge or court must fix the amount to be paid out of money provided by Parliament in the order if the judge or court considers it appropriate to do so and—
 - (a) the person in whose favour the order is made agrees the amount, or
 - (b) subsection (2) applies.
- (5) Where the judge or court does not fix the amount to be paid out of money provided by Parliament in the order—
 - (a) the judge or court must describe in the order any reduction required under subsection (2), and
 - (b) the amount must be fixed by means of a determination made by or on behalf of the judge or court in accordance with procedures specified in regulations made by the Lord Chancellor.
- (6) Subsections (1A) to (1C) and (3) of section 20 of the Prosecution of Offences Act 1985 (regulations as to amounts ordered to be paid out of central funds) apply in relation to amounts payable out of money provided by Parliament in pursuance of an order under section 61 as they apply in relation to amounts payable out of central funds in pursuance of costs orders made under section 16 of that Act.
- (7) This section extends to England and Wales only.

62B Legal costs: England and Wales

- (1) An order under section 61(5) may not require the payment out of money provided by Parliament of an amount that includes an amount in respect of legal costs incurred by the person in whose favour the order is made, subject to the following provisions of this section.
- (2) Subsection (1) does not apply in relation to legal costs incurred in—
 - (a) proceedings in a magistrates' court, or
 - (b) proceedings in the Supreme Court.
- (3) The Lord Chancellor may by regulations make provision about exceptions from the prohibition in subsection (1), including—
 - (a) provision amending this section by adding, modifying or removing an exception, and
 - (b) provision for an exception to arise where a determination has been made by a person specified in the regulations.
- (4) Regulations under subsection (3) may not remove or limit the exception provided by subsection (2)(b).
- (5) Where a judge or court makes an order under section 61(5) requiring the payment out of money provided by Parliament of an amount that includes an amount in respect of legal costs, the order must include a statement to that effect.
- (6) Where, in an order under section 61(5), a judge or court fixes an amount to be paid out of money provided by Parliament that includes an amount

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in respect of legal costs incurred in proceedings in a court other than the Supreme Court, the latter amount must not exceed an amount specified by regulations made by the Lord Chancellor.

(7) In this section—

“legal costs” means fees, charges, disbursements and other amounts payable in respect of advocacy services or litigation services including, in particular, expert witness costs;

“advocacy services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide;

“expert witness costs” means amounts payable in respect of the services of an expert witness, including amounts payable in connection with attendance by the witness at court or elsewhere;

“litigation services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to proceedings, or contemplated proceedings, to provide.

(8) This section extends to England and Wales only.”

Extradition to Category 2 Territories

16 (1) Section 134 (costs where discharge ordered) is amended as follows.

(2) After subsection (5) insert—

“(5A) In England and Wales, an order under subsection (5) is to be made, and the appropriate amount is to be determined, in accordance with sections 135A and 135B.

(5B) In Scotland and Northern Ireland, an order under subsection (5) is to be made, and the appropriate amount is to be determined, in accordance with subsections (6) to (9).”

17 In section 135 (supplementary provision about costs where discharge ordered) omit subsections (1) and (2).

18 After section 135 insert—

“135A Appropriate amount: England and Wales

(1) For the purposes of an order under section 134(5), the appropriate amount is such amount as the judge or court making the order considers reasonably sufficient to compensate the person in whose favour the order is made for any expenses properly incurred by the person in the proceedings under this Part.

(2) But if the judge or court considers that there are circumstances that make it inappropriate for the person to recover the full amount mentioned in subsection (1), the order under section 134(5) must be for the payment out of money provided by Parliament of such lesser amount as the judge or court considers just and reasonable.

(3) Subsections (1) and (2) have effect subject to—

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- (a) section 135B, and
 - (b) regulations under section 20(1A)(d) of the Prosecution of Offences Act 1985 (as applied by this section).
- (4) When making an order under section 134(5), the judge or court must fix the amount to be paid out of money provided by Parliament in the order if the judge or court considers it appropriate to do so and—
- (a) the person in whose favour the order is made agrees the amount, or
 - (b) subsection (2) applies.
- (5) Where the judge or court does not fix the amount to be paid out of money provided by Parliament in the order—
- (a) the judge or court must describe in the order any reduction required under subsection (2), and
 - (b) the amount must be fixed by means of a determination made by or on behalf of the court in accordance with procedures specified in regulations made by the Lord Chancellor.
- (6) Subsections (1A) to (1C) and (3) of section 20 of the Prosecution of Offences Act 1985 (regulations as to amounts ordered to be paid out of central funds) apply in relation to amounts payable out of money provided by Parliament in pursuance of an order under section 134 as they apply in relation to amounts payable out of central funds in pursuance of costs orders made under section 16 of that Act.
- (7) This section extends to England and Wales only.

135B Legal costs: England and Wales

- (1) An order under section 134(5) may not require the payment out of money provided by Parliament of an amount that includes an amount in respect of legal costs incurred by the person in whose favour the order is made, subject to the following provisions of this section.
- (2) Subsection (1) does not apply in relation to legal costs incurred in—
- (a) proceedings in a magistrates' court, or
 - (b) proceedings in the Supreme Court.
- (3) The Lord Chancellor may by regulations make provision about exceptions from the prohibition in subsection (1), including—
- (a) provision amending this section by adding, modifying or removing an exception, and
 - (b) provision for an exception to arise where a determination has been made by a person specified in the regulations.
- (4) Regulations under subsection (3) may not remove or limit the exception provided by subsection (2)(b).
- (5) Where a judge or court makes an order under section 134(5) requiring the payment out of money provided by Parliament of an amount that includes an amount in respect of legal costs, the order must include a statement to that effect.

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(6) Where, in an order under section 134(5), a judge or court fixes an amount to be paid out of money provided by Parliament that includes an amount in respect of legal costs incurred in proceedings in a court other than the Supreme Court, the latter amount must not exceed an amount specified by regulations made by the Lord Chancellor.

(7) In this section—

“legal costs” means fees, charges, disbursements and other amounts payable in respect of advocacy services or litigation services including, in particular, expert witness costs;

“advocacy services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide;

“expert witness costs” means amounts payable in respect of the services of an expert witness, including amounts payable in connection with attendance by the witness at court or elsewhere;

“litigation services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to proceedings, or contemplated proceedings, to provide.

(8) This section extends to England and Wales only.”

Regulations

19 In section 223(6) (orders and regulations subject to affirmative procedure), at the appropriate places insert—

“section 62B(3)”;

“section 135B(3)”.