

SCHEDULES

SCHEDULE 20

EXTRADITION

PART 1

FORUM

Extradition to category 1 territories

- 1 Part 1 of the Extradition Act 2003 (extradition to category 1 territories) is amended as follows.
- 2 In section 11 (bars to extradition)—
 - (a) at the end of subsection (1) insert—

“(j) forum.”;
 - (b) after subsection (1) insert—

“(1A) But the judge is to decide whether the person’s extradition is barred by reason of forum only in a case where the Part 1 warrant contains the statement referred to in section 2(3) (warrant issued for purposes of prosecution for offence in category 1 territory).”;
 - (c) in subsection (2), for the words from “12” to “apply” substitute “12 to 19F apply”.
- 3 After section 19A insert—

“19B Forum

- (1) The extradition of a person (“D”) to a category 1 territory is barred by reason of forum if the extradition would not be in the interests of justice.
- (2) For the purposes of this section, the extradition would not be in the interests of justice if the judge—
 - (a) decides that a substantial measure of D’s relevant activity was performed in the United Kingdom; and
 - (b) decides, having regard to the specified matters relating to the interests of justice (and only those matters), that the extradition should not take place.
- (3) These are the specified matters relating to the interests of justice—
 - (a) the place where most of the loss or harm resulting from the extradition offence occurred or was intended to occur;
 - (b) the interests of any victims of the extradition offence;

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- (c) any belief of a prosecutor that the United Kingdom, or a particular part of the United Kingdom, is not the most appropriate jurisdiction in which to prosecute D in respect of the conduct constituting the extradition offence;
 - (d) were D to be prosecuted in a part of the United Kingdom for an offence that corresponds to the extradition offence, whether evidence necessary to prove the offence is or could be made available in the United Kingdom;
 - (e) any delay that might result from proceeding in one jurisdiction rather than another;
 - (f) the desirability and practicability of all prosecutions relating to the extradition offence taking place in one jurisdiction, having regard (in particular) to—
 - (i) the jurisdictions in which witnesses, co-defendants and other suspects are located, and
 - (ii) the practicability of the evidence of such persons being given in the United Kingdom or in jurisdictions outside the United Kingdom;
 - (g) D's connections with the United Kingdom.
- (4) In deciding whether the extradition would not be in the interests of justice, the judge must have regard to the desirability of not requiring the disclosure of material which is subject to restrictions on disclosure in the category 1 territory concerned.
- (5) If, on an application by a prosecutor, it appears to the judge that the prosecutor has considered the offences for which D could be prosecuted in the United Kingdom, or a part of the United Kingdom, in respect of the conduct constituting the extradition offence, the judge must make that prosecutor a party to the proceedings on the question of whether D's extradition is barred by reason of forum.
- (6) In this section "D's relevant activity" means activity which is material to the commission of the extradition offence and which is alleged to have been performed by D.

19C Effect of prosecutor's certificates on forum proceedings

- (1) The judge hearing proceedings under section 19B (the "forum proceedings") must decide that the extradition is not barred by reason of forum if (at a time when the judge has not yet decided the proceedings) the judge receives a prosecutor's certificate relating to the extradition.
- (2) That duty to decide the forum proceedings in that way is subject to the determination of any question relating to the prosecutor's certificate raised in accordance with section 19E.
- (3) A designated prosecutor may apply for the forum proceedings to be adjourned for the purpose of assisting that or any other designated prosecutor—
 - (a) in considering whether to give a prosecutor's certificate relating to the extradition,
 - (b) in giving such a certificate, or

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- (c) in sending such a certificate to the judge.
- (4) If such an application is made, the judge must—
 - (a) adjourn the forum proceedings until the application is decided; and
 - (b) continue the adjournment, for such period as appears to the judge to be reasonable, if the application is granted.
- (5) But the judge must end the adjournment if the application is not granted.

19D Prosecutor’s certificates

- (1) A “prosecutor’s certificate” is a certificate given by a designated prosecutor which—
 - (a) certifies both matter A and matter B, and
 - (b) certifies either matter C or matter D.
- (2) Matter A is that a responsible prosecutor has considered the offences for which D could be prosecuted in the United Kingdom, or a part of the United Kingdom, in respect of the conduct constituting the extradition offence.
- (3) Matter B is that the responsible prosecutor has decided that there are one or more such offences that correspond to the extradition offence (the “corresponding offences”).
- (4) Matter C is that—
 - (a) the responsible prosecutor has made a formal decision as to the prosecution of D for the corresponding offences,
 - (b) that decision is that D should not be prosecuted for the corresponding offences, and
 - (c) the reason for that decision is a belief that—
 - (i) there would be insufficient admissible evidence for the prosecution; or
 - (ii) the prosecution would not be in the public interest.
- (5) Matter D is that the responsible prosecutor believes that D should not be prosecuted for the corresponding offences because there are concerns about the disclosure of sensitive material in—
 - (a) the prosecution of D for the corresponding offences, or
 - (b) any other proceedings.
- (6) In relation to the extradition of any person to a category 1 territory, neither this section nor any other rule of law (whether or not contained in an enactment) may require a designated prosecutor—
 - (a) to consider any matter relevant to giving a prosecutor’s certificate; or
 - (b) to consider whether to give a prosecutor’s certificate.
- (7) In this section “sensitive material” means material which appears to the responsible prosecutor to be sensitive, including material appearing to be sensitive on grounds relating to—
 - (a) national security,
 - (b) international relations, or

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- (c) the prevention or detection of crime (including grounds relating to the identification or activities of witnesses, informants or any other persons supplying information to the police or any other law enforcement agency who may be in danger if their identities are revealed).

19E Questioning of prosecutor’s certificate

- (1) No decision of a designated prosecutor relating to a prosecutor’s certificate in respect of D’s extradition (a “relevant certification decision”) may be questioned except on an appeal under section 26 against an order for that extradition.
- (2) In England and Wales, and Northern Ireland, for the purpose of—
 - (a) determining whether to give permission for a relevant certification decision to be questioned, and
 - (b) determining any such question (if that permission is given),the High Court must apply the procedures and principles which would be applied by it on an application for judicial review.
- (3) In Scotland, for the purpose of determining any questioning of a relevant certification decision, the High Court must apply the procedures and principles that would be applied by it on an application for judicial review.
- (4) In a case where the High Court quashes a prosecutor’s certificate, the High Court is to decide the question of whether or not the extradition is barred by reason of forum.
- (5) Where the High Court is required to decide that question by virtue of subsection (4)—
 - (a) sections 19B to 19D and this section apply in relation to that decision (with the appropriate modifications) as they apply to a decision by a judge; and
 - (b) in particular—
 - (i) a reference in this section to an appeal under section 26 has effect as a reference to an appeal under section 32 to the Supreme Court;
 - (ii) a reference in this section to the High Court has effect as a reference to the Supreme Court.

19F Interpretation of sections 19B to 19E

- (1) This section applies for the purposes of sections 19B to 19E (and this section).
- (2) These expressions have the meanings given—
 - “D” has the meaning given in section 19B(1);
 - “designated prosecutor” means—
 - (a) a member of the Crown Prosecution Service, or
 - (b) any other person who—
 - (i) is a prosecutor designated for the purposes of this section by order made by the Secretary of State, or

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- (ii) is within a description of prosecutors so designated;
“extradition offence” means the offence specified in the Part 1 warrant (including the conduct that constitutes the extradition offence);
“forum proceedings” has the meaning given in section 19C(1);
“part of the United Kingdom” means—
 - (a) England and Wales;
 - (b) Scotland;
 - (c) Northern Ireland;“prosecutor” means a person who has responsibility for prosecuting offences in any part of the United Kingdom (whether or not the person also has other responsibilities);
“prosecutor’s certificate” has the meaning given in section 19D(1);
“responsible prosecutor”, in relation to a prosecutor’s certificate, means—
 - (a) the designated prosecutor giving the certificate, or
 - (b) another designated prosecutor.
- (3) In determining for any purpose whether an offence corresponds to the extradition offence, regard must be had, in particular, to the nature and seriousness of the two offences.
- (4) A reference to a formal decision as to the prosecution of D for an offence is a reference to a decision (made after complying with, in particular, any applicable requirement concerning a code of practice) that D should, or should not, be prosecuted for the offence.”

Extradition to category 2 territories

- 4 Part 2 of the Extradition Act 2003 (extradition to category 2 territories) is amended as follows.
- 5 In section 79 (bars to extradition)—
 - (a) at the end of subsection (1) insert—
 - “(e) forum.”;
 - (b) after subsection (1) insert—
 - “(1A) But the judge is to decide whether the person’s extradition is barred by reason of forum only in a case where the request for extradition contains the statement referred to in section 70(4) (warrant issued for purposes of prosecution for offence in category 2 territory).”;
 - (c) in subsection (2), for “Sections 80 to 83” substitute “Sections 80 to 83E”.
- 6 After section 83 insert—

“83A Forum

- (1) The extradition of a person (“D”) to a category 2 territory is barred by reason of forum if the extradition would not be in the interests of justice.

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- (2) For the purposes of this section, the extradition would not be in the interests of justice if the judge—
- (a) decides that a substantial measure of D’s relevant activity was performed in the United Kingdom; and
 - (b) decides, having regard to the specified matters relating to the interests of justice (and only those matters), that the extradition should not take place.
- (3) These are the specified matters relating to the interests of justice—
- (a) the place where most of the loss or harm resulting from the extradition offence occurred or was intended to occur;
 - (b) the interests of any victims of the extradition offence;
 - (c) any belief of a prosecutor that the United Kingdom, or a particular part of the United Kingdom, is not the most appropriate jurisdiction in which to prosecute D in respect of the conduct constituting the extradition offence;
 - (d) were D to be prosecuted in a part of the United Kingdom for an offence that corresponds to the extradition offence, whether evidence necessary to prove the offence is or could be made available in the United Kingdom;
 - (e) any delay that might result from proceeding in one jurisdiction rather than another;
 - (f) the desirability and practicability of all prosecutions relating to the extradition offence taking place in one jurisdiction, having regard (in particular) to—
 - (i) the jurisdictions in which witnesses, co-defendants and other suspects are located, and
 - (ii) the practicability of the evidence of such persons being given in the United Kingdom or in jurisdictions outside the United Kingdom;
 - (g) D’s connections with the United Kingdom.
- (4) In deciding whether the extradition would not be in the interests of justice, the judge must have regard to the desirability of not requiring the disclosure of material which is subject to restrictions on disclosure in the category 2 territory concerned.
- (5) If, on an application by a prosecutor, it appears to the judge that the prosecutor has considered the offences for which D could be prosecuted in the United Kingdom, or a part of the United Kingdom, in respect of the conduct constituting the extradition offence, the judge must make that prosecutor a party to the proceedings on the question of whether D’s extradition is barred by reason of forum.
- (6) In this section “D’s relevant activity” means activity which is material to the commission of the extradition offence and is alleged to have been performed by D.

83B Effect of prosecutor’s certificates on forum proceedings

- (1) The judge hearing proceedings under section 83A (the “forum proceedings”) must decide that the extradition is not barred by reason of forum if (at a time

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when the judge has not yet decided the proceedings) the judge receives a prosecutor's certificate relating to the extradition.

- (2) That duty to decide the forum proceedings in that way is subject to the determination of any question relating to the prosecutor's certificate raised in accordance with section 83D.
- (3) A designated prosecutor may apply for the forum proceedings to be adjourned for the purpose of assisting that or any other designated prosecutor—
 - (a) in considering whether to give a prosecutor's certificate relating to the extradition,
 - (b) in giving such a certificate, or
 - (c) in sending such a certificate to the judge.
- (4) If such an application is made, the judge must—
 - (a) adjourn the forum proceedings until the application is decided; and
 - (b) continue the adjournment, for such period as appears to the judge to be reasonable, if the application is granted.
- (5) But the judge must end the adjournment if the application is not granted.

83C Prosecutor's certificates

- (1) A "prosecutor's certificate" is a certificate given by a designated prosecutor which—
 - (a) certifies both matter A and matter B, and
 - (b) certifies either matter C or matter D.
- (2) Matter A is that a responsible prosecutor has considered the offences for which D could be prosecuted in the United Kingdom, or a part of the United Kingdom, in respect of the conduct constituting the extradition offence.
- (3) Matter B is that the responsible prosecutor has decided that there are one or more such offences that correspond to the extradition offence (the "corresponding offences").
- (4) Matter C is that—
 - (a) the responsible prosecutor has made a formal decision as to the prosecution of D for the corresponding offences,
 - (b) that decision is that D should not be prosecuted for the corresponding offences, and
 - (c) the reason for that decision is a belief that—
 - (i) there would be insufficient admissible evidence for the prosecution; or
 - (ii) the prosecution would not be in the public interest.
- (5) Matter D is that the responsible prosecutor believes that D should not be prosecuted for the corresponding offences because there are concerns about the disclosure of sensitive material in—
 - (a) the prosecution of D for the corresponding offences, or
 - (b) any other proceedings.

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- (6) In relation to the extradition of any person to a category 2 territory, neither this section nor any other rule of law (whether or not contained in an enactment) may require a designated prosecutor—
- (a) to consider any matter relevant to giving a prosecutor’s certificate; or
 - (b) to consider whether to give a prosecutor’s certificate.
- (7) In this section “sensitive material” means material which appears to the responsible prosecutor to be sensitive, including material appearing to be sensitive on grounds relating to—
- (a) national security,
 - (b) international relations, or
 - (c) the prevention or detection of crime (including grounds relating to the identification or activities of witnesses, informants or any other persons supplying information to the police or any other law enforcement agency who may be in danger if their identities are revealed).

83D Questioning of prosecutor’s certificate

- (1) No decision of a designated prosecutor relating to a prosecutor’s certificate in respect of D’s extradition (a “relevant certification decision”) may be questioned except on an appeal under section 103 or 108 against an order for that extradition.
- (2) In England and Wales, and Northern Ireland, for the purpose of—
- (a) determining whether to give permission for a relevant certification decision to be questioned, and
 - (b) determining any such question (if that permission is given),
- the High Court must apply the procedures and principles which would be applied by it on an application for judicial review.
- (3) In Scotland, for the purpose of determining any questioning of a relevant certification decision, the High Court must apply the procedures and principles that would be applied by it on an application for judicial review.
- (4) In a case where the High Court quashes a prosecutor’s certificate, the High Court is to decide the question of whether or not the extradition is barred by reason of forum.
- (5) Where the High Court is required to decide that question by virtue of subsection (4)—
- (a) sections 83A to 83C and this section apply in relation to that decision (with the appropriate modifications) as they apply to a decision by a judge; and
 - (b) in particular—
 - (i) a reference in this section to an appeal under section 103 or 108 has effect as a reference to an appeal under section 114 to the Supreme Court;
 - (ii) a reference in this section to the High Court has effect as a reference to the Supreme Court.

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

83E Interpretation of sections 83A to 83D

- (1) This section applies for the purposes of sections 83A to 83D (and this section).
- (2) These expressions have the meanings given—
 - “D” has the meaning given in section 83A(1);
 - “designated prosecutor” means—
 - (a) a member of the Crown Prosecution Service, or
 - (b) any other person who—
 - (i) is a prosecutor designated for the purposes of this section by order made by the Secretary of State, or
 - (ii) is within a description of prosecutors so designated;
 - “extradition offence” means the offence specified in the request for extradition (including the conduct that constitutes the extradition offence);
 - “forum proceedings” has the meaning given in section 83B(1);
 - “part of the United Kingdom” means—
 - (a) England and Wales;
 - (b) Scotland;
 - (c) Northern Ireland;
 - “prosecutor” means a person who has responsibility for prosecuting offences in any part of the United Kingdom (whether or not the person also has other responsibilities);
 - “prosecutor’s certificate” has the meaning given in section 83C(1);
 - “responsible prosecutor”, in relation to a prosecutor’s certificate, means—
 - (a) the designated prosecutor giving the certificate, or
 - (b) another designated prosecutor.
- (3) In determining for any purpose whether an offence corresponds to the extradition offence, regard must be had, in particular, to the nature and seriousness of the two offences.
- (4) A reference to a formal decision as to the prosecution of D for an offence is a reference to a decision (made after complying with, in particular, any applicable requirement concerning a code of practice) that D should, or should not, be prosecuted for the offence.”

Transitional provision, saving and repeals

- 7 (1) In a case where the Part 1 warrant, or the request for the person’s extradition, has been issued before the time when the amendments made by this Part of this Schedule come into force, those amendments apply to the extradition concerned only if, at that time, the judge has not yet decided all of the existing extradition bar questions.
- (2) For that purpose—
 - “existing extradition bar questions” means—

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- (a) the questions in section 11(1) of the Extradition Act 2003 (in the case of a Part 1 warrant), or
- (b) the questions in section 79(1) of that Act (in the case of a request for the person's extradition),

as those questions stand before their amendment by this Part of this Schedule;

“Part 1 warrant” and “request for a person's extradition” have the same meanings as in the Extradition Act 2003.

8 The powers conferred by section 177, 178 and 222 of the Extradition Act 2003 are exercisable in relation to any amendment of that Act made by this Part of this Schedule.

9 In the Police and Justice Act 2006, in Schedule 13 (extradition), in Part 1 (amendments to the Extradition Act 2003), omit paragraphs 4 to 6 (and the italic heading preceding paragraph 4).