

Draft Regulations laid before Parliament under section 112(7) of the Anti-terrorism, Crime and Security Act 2001 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2002 No.

EXTRADITION

The European Union Extradition Regulations 2002

*Made - - - - 2002
Coming into force on a date to be notified in the
London, Edinburgh and Belfast Gazettes*

Whereas the Convention drawn up on the basis of Article K.3 of the Treaty on European Union on Simplified Extradition Procedure between the Member States of the European Union (referred to in these Regulations as “the 1995 Convention”)(⁽¹⁾), the terms of which are set out in Schedule 1 to these Regulations, was opened for signature in Brussels on 10th March 1995 and was signed by the United Kingdom on that date;

And whereas the United Kingdom has made the reservation, declarations and statements set out in Schedule 2 to these Regulations;

And whereas the States listed in Schedule 3 to these Regulations are parties to the Convention and have made the reservations, declarations and statements set out in Schedule 4 to these Regulations;

And whereas the Convention drawn up on the basis of Article K.3 of the Treaty on European Union relating to Extradition between the Member States of the European Union (referred to in these Regulations as “the 1996 Convention”)(⁽²⁾) the terms of which are set out in Schedule 5 to these Regulations, was opened for signature in Dublin on 27th September 1996 and was signed by the United Kingdom on that date;

And whereas the United Kingdom has made the declarations and statements set out in Schedule 6 to these Regulations;

And whereas the States listed in Schedule 7 to these Regulations are parties to the Convention and have made the reservations, declarations and statements set out in Schedule 8 to these Regulations;

And whereas the 1995 Convention and the 1996 Convention are third pillar measures for the purposes of section 111(1) of the Anti-terrorism, Crime and Security Act 2001 (⁽³⁾) by virtue of section 111(2)(a) and (b) of that Act;

And whereas the said section 111(1) provides that an authorised Minister may by regulations make provision for the purpose of implementing any obligation of the United Kingdom created or arising by or under any third pillar measure, or enabling any such obligation to be implemented, or for the purpose of enabling any rights enjoyed or to be enjoyed by the United Kingdom under or by virtue

(1) Cm. 2958.

(2) Cm. 3533.

(3) [2001 c. 24](#).

of any third pillar measure to be exercised, or for the purpose of dealing with matters arising out of or related to any such obligation or rights;

And whereas, under section 112(1) and (3) of the said Act, the Secretary of State is an authorised Minister for the purposes of the said section 111(1);

And whereas a draft of these Regulations has been laid before and approved by a resolution of each House of Parliament;

Now, therefore, in exercise of the powers conferred upon him by the said section 111(1) and (3), the Secretary of State hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the European Union Extradition Regulations 2002 and shall come into force on a date to be notified in the London, Edinburgh and Belfast Gazettes.

(2) In these Regulations “the Act” means the Extradition Act 1989⁽⁴⁾.

Application of the 1989 Act

2.—(1) The Act is amended as set out in Schedule 9 to these Regulations.

(2) These Regulations apply only to requests for return made by a foreign state to the United Kingdom or by the United Kingdom to a foreign state after the coming into force of the Regulations.

(3) Where a state has made a declaration under Article 6(3) of the 1996 Convention, in the application of the Act by virtue of the European Convention on Extradition Order 2001 ⁽⁵⁾, Article 5 of the European Convention on Extradition shall not apply, and extradition shall not be refused to that state in respect of an offence which is connected with excise, value added tax or customs.

Home Office
2002

Minister of State

(4) 1989 c. 33.
(5) S.I.2001/962.

SCHEDULE 1

Preamble

THE CONVENTION ON SIMPLIFIED EXTRADITION PROCEDURE BETWEEN MEMBER STATES OF THE EUROPEAN UNION (“THE 1995 CONVENTION”)

The High Contracting Parties to this Convention, Member States of the European Union,

Referring to the Council Act of 10 March 1995,

Desiring to improve judicial co-operation between the Member States in criminal matters, with regard both to proceedings and the execution of sentences,

Recognising the importance of extradition in judicial co-operation in order to achieve these objectives,

Convinced of the need to simplify extradition procedures to the extent that this is compatible with their fundamental legal principles, including the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms,

Noting that, in a large number of extradition proceedings, the person claimed consents to his surrender,

Noting that it is desirable to reduce to a minimum, in such cases, the time necessary for the extradition and any period of detention for extradition purposes,

Considering that, as a result, application of the European Convention on Extradition of 13 December 1957 should be made easier by simplifying and improving extradition procedures,

Considering that the provisions of the European Convention on Extradition remain applicable for all matters not covered by this Convention,

Have agreed the following provisions:

ARTICLE 1

GENERAL PROVISIONS

1. The aim of this Convention is to facilitate the application, between the Member States of the European Union, of the European Convention on Extradition, by supplementing its provisions.

2. Paragraph 1 shall not affect the application of more favourable provisions in the bilateral and multilateral agreements in force between Member States.

ARTICLE 2

OBLIGATION TO SURRENDER PERSONS

Member States undertake to surrender to each other under simplified procedures as provided for by this Convention persons sought for the purpose of extradition, subject to consent of such persons and the agreement of the requested State given in accordance with this Convention.

ARTICLE 3

CONDITIONS FOR SURRENDER

1. Pursuant to Article 2, any person who is the subject of a request for provisional arrest in accordance with Article 16 of the European Convention on Extradition shall be surrendered in accordance with Articles 4 to 11 and Article 12(1) of the present Convention.

2. The surrender referred to in paragraph 1 shall not be subject to submission of a request for extradition or the documents required by Article 12 of the European Convention on Extradition.

ARTICLE 4

INFORMATION TO BE PROVIDED

1. The following information from the requesting State shall be regarded as adequate for the information of the arrested person for the purpose of applying Articles 6 and 7 and for the competent authority referred to in Article 5(2):

- (a) the identity of the person sought;
- (b) the authority requesting the arrest;
- (c) the existence of an arrest warrant or other document having the same legal effect or of an enforceable judgment;
- (d) the nature and legal description of the offence;
- (e) a description of the circumstances in which the offence was committed, including the time, place and degree of involvement of the person sought;
- (f) in so far as possible, the consequences of the offence.

2. Notwithstanding paragraph 1, further information may be requested if the information provided for in the said paragraph is insufficient to allow the competent authority of the requested State to give agreement to the surrender.

ARTICLE 5

CONSENT AND AGREEMENT

1. The consent of the arrested person shall be given in accordance with Articles 6 and 7.
2. The competent authority of the requested State shall give its agreement in accordance with its national procedures.

ARTICLE 6

INFORMATION TO BE GIVEN TO THE PERSON

Where a person wanted for the purpose of extradition is arrested on the territory of another Member State, the competent authority shall inform that person, in accordance with its national law, of the request relating to him and of the possibility of his consent to his surrender to the requesting State under the simplified procedure.

ARTICLE 7

ESTABLISHING CONSENT

1. The consent of the arrested person and, if appropriate, his express renunciation of entitlement to the speciality rule, shall be given before a competent judicial authority of the requested State in accordance with the national law of that State.

2. Each Member State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the arrested person shall have the right to legal counsel.

3. Consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be recorded; the recording procedure shall be in accordance with the national law of the requested State.

4. Consent and, where appropriate, renunciation, as referred to in paragraph 1, may not be revoked. Upon deposit of their instruments of ratification, acceptance, approval or accession, Member States may indicate, in a declaration, that consent and, where appropriate, renunciation may be revoked, in accordance with the rules applicable under national law. In this case, the period

between the notification of consent and that of its revocation shall not be taken into consideration in establishing the periods provided for in Article 16(4) of the European Convention on Extradition.

ARTICLE 8

NOTIFICATION OF CONSENT

1. The Requested State shall immediately notify the requesting State of the consent of the person. So that the requesting State may submit, where applicable, a request for extradition, the requested State shall notify it, no later than 10 days after provisional arrest, whether or not the person has given his consent.

2. Notification referred to in paragraph 1 shall be made directly between the competent authorities.

ARTICLE 9

RENUNCIATION OF ENTITLEMENT TO THE SPECIALITY RULE

Each Member State may declare, upon deposit of its instrument of ratification, acceptance, approval or accession, or at any other time, that the rules laid down in Article 14 of the European Convention on Extradition do not apply where the person, in accordance with Article 7 of the present Convention:

- (a) consents to extradition; or
- (b) consents to extradition and expressly renounces his entitlement to the speciality rule.

ARTICLE 10

NOTIFICATION OF THE EXTRADITION DECISION

1. Notwithstanding the rules laid down in Article 18(1) of the European Convention on Extradition, the extradition decision taken pursuant to the simplified procedure and the information concerning the simplified extradition procedure shall be notified directly between the competent authority of the requested State and the authority of the requesting State which has requested provisional arrest.

2. The decision referred to in paragraph 1 shall be notified at the latest within 20 days of the date on which the person consented.

ARTICLE 11

DEADLINE FOR SURRENDER

1. Surrender shall take place within 20 days of the date on which the extradition decision was notified under the conditions laid down in Article 10(2).

2. After the deadline laid down in paragraph 1, if the person is being held, he shall be released on the territory of the requested State.

3. Should surrender of the person within the deadline laid down in paragraph 1 be prevented by circumstances beyond its control, the authority concerned referred to in Article 10(1) shall so inform the other authority. The two authorities shall agree on a new surrender date. In that event, surrender will take place within 20 days of the new date thus agreed. If the person in question is still being held after expiry of this period, he shall be released.

4. Paragraphs 1, 2 and 3 of this Article shall not apply in cases where the requested State wishes to make use of Article 19 of the European Convention on Extradition.

ARTICLE 12

CONSENT GIVEN AFTER EXPIRY OF THE DEADLINE LAID DOWN IN ARTICLE 8 OR IN OTHER CIRCUMSTANCES

1. Where an arrested person has given his consent after expiry of the deadline of 10 days laid down in Article 8, the requested State:
 - shall implement the simplified procedure as provided for in this Convention if a request for extradition within the meaning of Article 12 of the European Convention on Extradition has not yet been received by it;
 - may use this simplified procedure if a request for extradition within the meaning of Article 12 of the European Convention on Extradition has reached it in the meantime.
2. Where no request for provisional arrest has been made, and where consent has been given after receipt of a request for extradition, the requested State may avail itself of the simplified procedure as provided for in this Convention.
3. Upon deposit of its instrument of ratification, acceptance, approval or accession, each Member State shall state whether it intends to apply paragraph 1, second indent, and paragraph 2 and, if so, under what conditions.

ARTICLE 13

RE-EXTRADITION TO ANOTHER MEMBER STATE

Where the speciality rule has not been applied to the person extradited, in accordance with the declaration of the Member State provided for in Article 9 of this Convention, Article 15 of the European Convention on Extradition shall not apply to the re-extradition of this person to another Member State, unless the aforementioned declaration provides otherwise.

ARTICLE 14

TRANSIT

In the event of transit under the conditions laid down in Article 21 of the European Convention on Extradition, where extradition under the simplified procedure is concerned, the following provisions shall apply:

- (a) in an emergency, an application containing the information required in Article 4 may be made to the State of transit by any method which leaves a written record. The State of transit may make its decision known using the same method;
- (b) the information referred to in Article 4 must be sufficient to enable the competent authority of the State of transit to ascertain whether extradition is under the simplified extradition procedure and to take the constraint measures needed for execution of the transit vis-à-vis the extradited person.

ARTICLE 15

DETERMINING THE COMPETENT AUTHORITIES

Upon deposit of its instrument of ratification, acceptance, approval or accession, each Member State shall indicate in a statement which authorities are competent within the meaning of Articles 4 to 8, 10 and 14.

ARTICLE 16

ENTRY INTO FORCE

1. This Convention shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the General Secretariat of the Council of

the European Union. The Secretary-General of the Council shall notify all Member States of such deposit.

2. This Convention shall enter into force 90 days after the date of deposit of the instrument of ratification, acceptance and approval by the last Member State to carry out this formality.

3. Until this Convention enters into force, any Member State may, when depositing its instrument of ratification, acceptance or approval, or at any other date, declare that the Convention shall apply to it in its relations with Member States that have made the same declaration 90 days after the date of deposit of its declaration.

4. Any declaration made pursuant to Article 9 shall take effect 30 days after deposit thereof, but no earlier than the date of the entry into force of this Convention or of the application thereof of the Member State concerned.

5. This Convention shall apply only to requests submitted after the date on which it enters into force or is applied between the requested State and the requesting State.

ARTICLE 17

ACCESSION

1. This Convention shall be open to accession by any State that becomes a member of the European Union.

2. The text of this Convention in the language of the acceding State, drawn up by the General Secretariat of the Council of the European Union and approved by all the Member States, shall be equally authentic with the other authentic texts. The Secretary-General shall transmit a certified true copy of the text to each Member State.

3. The instruments of accession shall be deposited with the General Secretariat of the Council of the European Union.

4. This Convention shall enter into force with respect to any State that accedes to it 90 days after the deposit of its instrument of accession or the date of entry into force of the Convention if it has not already entered into force at the time of expiry of the said period of 90 days.

5. Where this Convention is not yet in force at the time of the deposit of their instrument of accession, Article 16(3) shall apply to acceding Member States.

SCHEDULE 2

Preamble

RESERVATION, DECLARATIONS AND STATEMENTS BY THE UNITED KINGDOM RELATING TO THE 1995 CONVENTION

Article 7

The United Kingdom reserves the right for the consent of the arrested person to be given before any of the competent authorities determined in accordance with Article 15.

Article 9

The United Kingdom declares that the rules laid down in Article 14 of the European Convention on Extradition do not apply where the person in accordance with Article 7 of this Convention consents to extradition.

Article 12

The United Kingdom intends to apply Article 12(1) and Article 12(2).

Article 14

The provisions of Article 14 do not apply to the United Kingdom because of its reservation to Article 21 of the European Convention on Extradition.

Article 15

In accordance with Article 15, the United Kingdom declares that the competent authorities for the purposes of Articles 4 to 8 and 10 are the Home Office, the Scottish Ministers, the Scottish Executive Justice Department, the Senior District Judge (Chief Magistrate) or another District Judge (Magistrates' Courts) and a sheriff of Lothian and Borders.

Article 16

In accordance with Article 16(3), the United Kingdom declares that until its entry into force, this Convention shall apply to it in its relations with Member States which have made the same declaration 90 days after the date of deposit of the United Kingdom's instrument of ratification.

SCHEDULE 3

Preamble

PARTIES TO THE 1995 CONVENTION

Austria
Belgium
Denmark
Finland
France
Germany
Greece
Italy
Luxembourg
Netherlands
Portugal
Spain
Sweden

SCHEDULE 4

Preamble

RESERVATIONS, DECLARATIONS AND STATEMENTS MADE BY THE PARTIES TO THE 1995 CONVENTION

AUSTRIA

Article 9

Austria declares that the rules laid down in Article 14 of the European Convention on Extradition do not apply where the person consents to extradition, in accordance with Article 7 of the present Convention.

Article 12

Austria declares that it will apply the simplified extradition procedure provided for in the Convention in cases in which a request for extradition has been made in accordance with the second indent of Article 12(1) and Article 12(2).

Article 15

Austria declares that the competent authorities within the meaning of the Convention are the following: (a) within the meaning of Articles 6 to 8 and 10: the Court of First Instance in the district of which the person has his or her domicile or residence; in the absence of such a domicile or residence: the Court of First Instance in the district of which the person was apprehended or has been remanded in custody; (b) within the meaning of Article 4, Article 5(2) and Article 14: the Federal Minister for Justice.

Article 16

Austria declares that this Convention shall apply to its relations with Member States that have made the same declaration until its entry into force.

DENMARK

Article 7

Consent to extradition and express renunciation of entitlement to the speciality rule may be revoked in accordance with the relevant rules applicable at any time under Danish law.

Article 9

The rules laid down in Article 14 of the European Convention on Extradition are not applicable where the person gives his consent to extradition and expressly renounces his entitlement to the speciality rule pursuant to Article 7 of the Convention on simplified extradition procedure between the Member States of the European Union.

Article 12

The Danish authorities intend to apply Article 12(1), 2nd indent, and Article 12(2) on the same conditions as obtain following the statements made by Denmark pursuant to Article 7(4) and Article 9(b).

Article 15

For Denmark the competent authority within the meaning of Articles 4 and 5 is the Ministry of Justice, the local Chief Constable is the competent authority within the meaning of Articles 6, 8 and 10, the courts are the competent authority within the meaning of Article 7 and the National Commissioner of Police (Interpol) is the competent authority within the meaning of Article 14.

Article 16

For Denmark the Convention will apply to its relations with Member States that have made the same declaration 90 days after the date of deposit of the declaration. For Denmark the Convention does not until further notice apply to the Faroes or to Greenland.

FINLAND

Article 7

Consent to the simplified procedure may be revoked in Finland.

Article 9

Finland will not apply the rules (speciality rule) contained in Article 14 of the European Convention on Extradition where the person, in accordance with Article 7 of the Convention, consents to extradition and expressly renounces his entitlement to the speciality rule.

Article 12

Finland will apply Article 12(1), second indent, and Article 12(2) in situations where the procedure began with a request in accordance with Article 16 of the European Convention on Extradition.

Article 16

As far as Finland is concerned, the Convention may apply, before it enters into force internationally, in relations with those Member States which have made a similar declaration.

GERMANY

The provisions of Article 14 of the European Convention on Extradition regarding the speciality rule will not apply if the person has consented to extradition and has expressly waived his entitlement to the speciality rule pursuant to Article 7 of this Convention.

Article 12

The decision to apply the second indent of Article 12(1) or Article 12(2) will be taken in the light of the stage reached in the individual extradition procedure.

Article 15

For the purposes of Articles 4, 5 and 10, the competent authorities will be the competent local public prosecutor's offices at the Higher Regional Courts [Oberlandesgerichte]. For the purposes of Article 6, the competent authorities will be the competent local public prosecutor's offices at the Higher Regional Courts [Oberlandesgerichte] and the Local Courts [Amtsgerichte] with local jurisdiction. For the purposes of Article 7(1), the competent authorities will be the Local Courts [Amtsgerichte] with local jurisdiction. Where Germany is the requested Member State, the competent authorities for the purposes of Article 8 will be the competent local public prosecutor's offices at the Higher Regional Courts [Oberlandesgerichte]. Where Germany is the requesting Member State, they will be

the public prosecutor's offices with responsibility for the subject matter of the case or, in individual cases, the juvenile courts. For the purposes of Article 14, the competent authorities will be the public prosecutor's offices at the Higher Regional Courts [Oberlandesgerichte]. Where transit is by land or sea, local jurisdiction is determined by the district in which the person in transit is likely to be transferred to Germany. In the event of transit by air, local jurisdiction lies with the public prosecutor's offices at the Higher Regional Court [Oberlandesgericht] in whose area the first stop-over is to take place.

Article 16

The Federal Government declares that, as far as it is concerned, the Convention will apply to the Federal Republic of Germany's relations with Member States which have made the same declaration, 90 days after the date of deposit of the declaration.

GREECE

Article 9

The speciality rule laid down in Article 14 of the European Convention on Extradition does not apply where the person has consented to extradition and made an express declaration renouncing his entitlement to that rule.

Article 12

Greece intends to apply paragraph 1, second indent and paragraph 2 of Article 12 of the Convention unconditionally.

Article 15

The authorities competent within the meaning of Articles 4 to 8, 10 and 14 are the Minister for Justice, in respect of Articles 4, 5, 10 and 14, the Public Prosecutor of the Appeal Court of the place of residence of the person to be extradited, in respect of Articles 6 and 8 and the Presiding Judge of the Appeal Court of the place of residence of the person being extradited, in respect of Article 7.

LUXEMBOURG

Articles 9 and 13

The Government of the Grand Duchy of Luxembourg declares that the rules laid down in Article 14 of the European Convention on Extradition will not apply where the person claimed consents to simplified extradition to another Member State. The rules laid down in Article 14 will, however, apply in the event of re-extradition to another Member State.

Article 12

The Government of the Grand Duchy of Luxembourg reserves the right to apply Article 12(1), second indent, and (2).

Article 15

The Government of the Grand Duchy of Luxembourg declares that the competent authorities referred to in Article 15 are as follows:— for the purposes of Articles 6 to 8, the public prosecutor's office attached to the district court with jurisdiction for the place in question; — for the purposes of Articles 4, 5, 10 and 14, the Minister for Justice. However, the public prosecutor's office attached to the

district court with jurisdiction for the place in question is also empowered to request the information referred to in Article 4.

Article 16

Pursuant to Article 16(3), the Government of the Grand Duchy of Luxembourg declares that the Convention will apply to it in its relations with Member States that have made the same declaration.

NETHERLANDS

Articles 6 and 12

The simplified procedure shall also be applicable in the Netherlands in those cases referred to in Article 12(1), first indent, and Article 12(2), on the understanding that the consent of the arrested person can be given not later than the day prior to that set for the court's hearing of the extradition request.

Article 9

The provisions of Article 14 of the European Convention on Extradition of 13th December 1957 shall not apply to the implementation of the simplified procedure in the Netherlands.

Article 16

The Convention shall apply to the relations of the Netherlands with Member States of the European Union that have made the same declaration 90 days after the date of deposit of this Declaration.

PORTUGAL

Article 12

Portugal states that it will not apply the simplified procedure provided for in the Convention to cases in which a formal extradition request provided for in paragraph 1, second indent, and paragraph 2 of that Article has been submitted. Nevertheless, Portuguese law applies as regards the point at which the person requested must give his consent, which is at the beginning of the judicial stage.

Article 15

Portugal states that the following authorities shall be considered competent: (a) for the purposes of Articles 4 and 10, the competent judge of the Court of Appeal in whose district the person requested resides or is to be found at the time of the request; (b) for the purposes of Article 14, the Minister of Justice.

SPAIN

Article 9

Spain declares that it will not apply Article 14 of the European Convention on Extradition in the cases referred to in Article 9.

Article 12

Spain declares that it intends to make use of the options provided for in the second indent of Article 1 and in Article 2 on its own terms.

Article 15

Spain declares that the “competent authority” for the purposes of Articles 4 to 8 and 10 is the Central Examining Magistrate of the High Court in Madrid. The “competent authority” for the purposes of Article 14 is the Ministry of Justice.

Article 16

Spain declares that, until its entry into force, this Convention shall apply 90 days following deposit of Spain’s instrument of ratification in its relations with Member States which have made the same declaration.

SWEDEN

Article 7

Sweden declares that consent under Article 5(1) and renunciation under Article 9 may be revoked until such time as the extradition decision has been implemented.

Article 9

Sweden declares that the rules laid down in Article 14 of the European Convention on Extradition do not apply where the person, in accordance with Article 7 of the present Convention, consents to extradition and expressly renounces his entitlement to the speciality rule.

Article 12

Sweden declares that if consent has been given after expiry of the deadline of 10 days laid down in Article 8 the simplified procedure under this Convention may be used: if Sweden has in the meantime received a request for extradition within the meaning of Article 12 of the European Convention on Extradition; and where no request for provisional arrest has been made; or where consent has been given after receipt of a request for extradition.

Article 15

The competent authorities within the meaning of Articles 4, 5 and 10 are: the Cabinet, the Minister of Justice or the Chief Public Prosecutor; Articles 6–8: the said Public Prosecutor; Article 14: the Minister of Justice.

Article 16

Sweden declares that until the Convention enters into force the Convention shall, 90 days after the date of deposit of Sweden’s instrument of ratification, apply to Sweden’s relations with Member States that have made the same declaration.

SCHEDULE 5

Preamble

THE CONVENTION RELATING TO EXTRADITION BETWEEN MEMBER STATES OF THE EUROPEAN UNION (“THE 1996 CONVENTION”)

The High Contracting Parties to this Convention, Member State of the European Union,
Referring to the Act of the Council of the European Union of twenty-seventh day of September in the year one thousand nine hundred and ninety six.

Desiring to improve judicial co-operation between Member States in criminal matters, with regard both to prosecution and to the execution of sentences,

Recognising the importance of extradition in judicial co-operation for the achievement of these objectives,

Stressing that Member States have an interest in ensuring that extradition procedures operate efficiently and rapidly insofar as their systems of government are based on democratic principles and they comply with the obligations laid down by the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4th November 1950,

Expressing their confidence in the structure and operation of their judicial systems and in the ability of all Member States to ensure a fair trial,

Bearing in mind that by Act of 10th March 1995 the Council drew up the Convention on simplified extradition procedure between the Member States of the European Union,

Taking account of the interest in concluding a Convention between the Member States of the European Union supplementing the European Convention on Extradition of 13 December 1957 and the other Conventions in force on the matter,

Considering that the provisions of those Conventions remain applicable for all matters not covered by this Convention,

Have agreed as follows:

ARTICLE 1

GENERAL PROVISIONS

1. The purpose of this Convention is to supplement the provisions and facilitate the application between the Member States of the European Union:

- of the European Convention on Extradition of 13 December 1957 (hereinafter referred to as “European Convention on Extradition”),
- the European Convention on the Suppression of Terrorism of 27 January 1977 (hereinafter referred to as “European Convention on the Suppression of Terrorism”),
- the Convention of 19 June 1990 applying the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders in relations between the Member States which are party to that Convention, and
- the first chapter of the Treaty on Extradition and Mutual Assistance in Criminal Matters between the Kingdom of Belgium, the Grand-Duchy of Luxembourg and the Kingdom of the Netherlands of 27 June 1962, as amended by the Protocol of 11 May 1974 (hereinafter referred to as the “Benelux Treaty”) in relations between the Member States of the Benelux Economic Union.

2. Paragraph 1 shall not affect the application of more favourable provisions in bilateral or multilateral agreements between Member States, nor, as provided for in Article 28(3) of the European Convention on Extradition, shall it affect extradition arrangements agreed on the basis of uniform or reciprocal laws providing for the execution in the territory of a Member State of warrants of arrest issued in the territory of another Member State.

ARTICLE 2

EXTRADITABLE OFFENCES

1. Extradition shall be granted in respect of offences which are punishable under the law of the requesting Member State by deprivation of liberty or a detention order for a maximum period of at least 12 months and under the law of the requested Member State by deprivation of liberty or a detention order for a maximum period of at least six months.

2. Extradition may not be refused on the grounds that the law of the requested Member State does not provide for the same type of detention order as the law of the requesting Member State.

3. Article 2(2) of the European Convention on Extradition and Article 2(2) of the Benelux Treaty shall also apply where certain offences are punishable by pecuniary penalties.

ARTICLE 3

CONSPIRACY AND ASSOCIATION TO COMMIT OFFENCES

1. Where the offence for which extradition is requested is classified by the law of the requesting Member State as a conspiracy or an association to commit offences and is punishable by a maximum term of deprivation of liberty or a detention order of at least 12 months, extradition shall not be refused on the ground that the law of the requested Member State does not provide for the same facts to be an offence, provided the conspiracy or the association is to commit:

- (a) one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism; or
- (b) any other offence punishable by deprivation of liberty or a detention order of a maximum of at least 12 months in the field of drug trafficking and other forms of organised crime or other acts of violence against the life, physical integrity or liberty of a person, or creating a collective danger for persons.

2. For the purpose of determining whether the conspiracy or the association is to commit one of the offences indicated under paragraph 1 (a) or (b) of this Article, the requested Member State shall take into consideration the information contained in the warrant of arrest or order having the same legal effect or in the conviction of the person whose extradition is requested as well as in the statement of the offences envisaged in Article 12 (2)(b) of the European Convention on Extradition or in Article 11 (2)(b) of the Benelux Treaty.

3. When giving the notification referred to in Article 18(2), any Member State may declare that it reserves the right not to apply paragraph 1 or to apply it under certain specified conditions.

4. Any Member State which has entered a reservation under paragraph 3 shall make extraditable under the terms of Article 2 (1) the behaviour of any person which contributes to the commission by a group of persons acting with a common purpose of one or more offences in the field of terrorism as in Articles 1 and 2 of the European Convention on the Suppression of Terrorism, drug trafficking and other forms of organised crime or other acts of violence against the life, physical integrity or liberty of a person, or creating a collective danger for persons, punishable by deprivation of liberty or a detention order of a maximum of at least 12 months, even where that person does not take part in the actual execution of the offence or offences concerned; such contribution shall be intentional and made having knowledge either of the purpose and the general criminal activity of the group or of the intention of the group to commit the offence or offences concerned.

ARTICLE 4

ORDER FOR DEPRIVATION OF LIBERTY IN A PLACE OTHER THAN A PENITENTIARY INSTITUTION

Extradition for the purpose of prosecution shall not be refused on the ground that the request is supported, pursuant to Article 12(2)(a) of the European Convention on Extradition or Article 11(2) (a) of the Benelux Treaty, by an order of the judicial authorities of the requesting Member State to deprive the person of his liberty in a place other than a penitentiary institution.

ARTICLE 5

POLITICAL OFFENCES

1. For the purposes of applying this Convention, no offence may be regarded by the requested Member State as a political offence, as an offence connected with a political offence or an offence inspired by political motives.
2. Each Member State may, when giving the notification referred to in Article 18(2), declare that it will apply paragraph 1 only in relation to:
 - (a) the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism, and
 - (b) offences of conspiracy or association — which correspond to the description of behaviour referred to in Article 3(4) — to commit one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism.
3. The provisions of Article 3(2) of the European Convention on Extradition and of Article 5 of the European Convention on the Suppression of Terrorism remain unaffected.
4. Reservations made under Article 13 of the European Convention on the Suppression of Terrorism shall not apply to extradition between Member States.

ARTICLE 6

FISCAL OFFENCES

1. With regard to taxes, duties, customs and exchange, extradition shall also be granted under the terms of this Convention, the European Convention on Extradition and the Benelux Treaty in respect of offences which correspond under the law of the requested Member State to a similar offence.
2. Extradition may not be refused on the ground that the law of the requested Member State does not impose the same type of taxes or duties or does not have the same type of provisions in connection with taxes, duties, customs and exchange as the law of the requesting Member State.
3. When giving the notification referred to in Article 18(2), any Member State may declare that it will grant extradition in connection with a fiscal offence only for acts or omissions which may constitute an offence in connection with excise, value-added tax or customs.

ARTICLE 7

EXTRADITION OF NATIONALS

1. Extradition may not be refused on the ground that the person claimed is a national of the requested Member State within the meaning of Article 6 of the European Convention on Extradition.
2. When giving the notification referred to in Article 18(2), any Member State may declare that it will not grant extradition of its nationals or will authorise it only under certain specified conditions.
3. Reservations referred to in paragraph 2 shall be valid for five years from the first day of application of this Convention by the Member State concerned. However, such reservations may be renewed for successive periods of the same duration.

12 months before the date of expiry of the reservation, the depositary shall give notice of that expiry to the Member State concerned.

No later than three months before the expiry of each five-year period, the Member State shall notify the depositary either that it is upholding its reservation, that it is amending it to ease the conditions for extradition or that it is withdrawing it.

In the absence of the notification referred to in the preceding subparagraph, the depositary shall inform the Member State concerned that its reservation is considered to have been extended

automatically for a period of six months, before the expiry of which the Member State must give notification. On expiry of that period, failure to notify shall cause the reservation to lapse.

ARTICLE 8

LAPSE OF TIME

1. Extradition may not be refused on the ground that the prosecution or punishment of the person would be statute-barred according to the law of the requested Member State.

2. The requested Member State shall have the option of not applying paragraph 1 where the request for extradition is based on offences for which that Member State has jurisdiction under its own criminal law.

ARTICLE 9

AMNESTY

Extradition shall not be granted in respect of an offence covered by amnesty in the requested Member State where that State was competent to prosecute the offence under its own criminal law

ARTICLE 10

OFFENCES OTHER THAN THOSE UPON WHICH THE REQUEST FOR EXTRADITION IS BASED

1. A person who has been extradited may, in respect of offences committed before his surrender other than those upon which the request for extradition was based, without it being necessary to obtain the consent of the requested Member State:

- (a) be prosecuted or tried where the offences are not punishable by deprivation of liberty;
- (b) be prosecuted or tried in so far as the criminal proceedings do not give rise to the application of a measure restricting his personal liberty;
- (c) be subjected to a penalty or a measure not involving the deprivation of liberty, including a financial penalty, or a measure in lieu thereof, even if it may restrict his personal liberty; or
- (d) be prosecuted, tried, detained with a view to the execution of a sentence or of a detention order or subjected to any other restriction of his personal liberty if after his surrender he has expressly waived the benefit of the rule of speciality with regard to specific offences preceding his surrender.

2. Waiver on the part of the person extradited as referred to in paragraph 1(d) shall be given before the competent judicial authorities of the requesting Member State and shall be recorded in accordance with that Member State's national law.

3. Each Member State shall adopt the measures necessary to ensure that the waiver referred to in paragraph 1(d) is established in such a way as to show that the person has given it voluntarily and in full awareness of the consequences. To that end, the person extradited shall have the right to legal counsel.

4. When the requested Member State has made a declaration pursuant to Article 6(3), paragraph 1 (a), (b) and (c) of this Article shall not apply to fiscal offences except those referred to in Article 6(3).

ARTICLE 11

PRESUMPTION OF CONSENT OF THE REQUESTED STATE

Each Member State, when giving the notification referred to in Article 18(2) or at any time, may declare that, in its relations with other Member States that have made the same declaration, consent for the purposes of Article 14(1)(a) of the European Convention on Extradition and Article 13(1)(a)

of the Benelux Treaty is presumed to have been given, unless it indicates otherwise when granting extradition in a particular case.

Where in a particular case the Member State has indicated that its consent should not be deemed to have been given, Article 10(1) still applies.

ARTICLE 12

RE-EXTRADITION TO ANOTHER MEMBER STATE

1. Article 15 of the European Convention on Extradition and Article 14(1) of the Benelux Treaty shall not apply to requests for re-extradition from one Member State to another.

2. When giving the notification referred to in Article 18(2), a Member State may declare that Article 15 of the European Convention on Extradition and Article 14 (1) of the Benelux Treaty shall continue to apply except where Article 13 of the Convention on simplified extradition procedure between the Member States of the European Union provides otherwise or where the person concerned consents to be re-extradited to another Member State.

ARTICLE 13

CENTRAL AUTHORITY AND TRANSMISSION OF DOCUMENTS BY FACSIMILE

1. Each Member State shall designate a central authority or, where its constitutional system so requires, central authorities responsible for transmitting and receiving extradition requests and the necessary supporting documents, as well as any other official correspondence relating to extradition requests, unless otherwise provided for in this Convention.

2. When giving the notification referred to in Article 18(2) each Member State shall indicate the authority or authorities which it has designated pursuant to paragraph 1 of this Article. It shall inform the depositary of any change concerning the designation.

3. The extradition request and the documents referred to in paragraph 1 may be sent by facsimile transmission. Each central authority shall be equipped with a facsimile machine for transmitting and receiving such documents and shall ensure that it is kept in proper working order.

4. In order to ensure the authenticity and confidentiality of the transmission, a cryptographic device fitted to the facsimile machine possessed by the central authority shall be in operation when the equipment is being used to apply this Article.

Member States shall consult each other on the practical arrangements for applying this Article.

5. In order to guarantee the authenticity of extradition documents, the central authority of the requesting Member State shall state in its request that it certifies that the documents transmitted in support of that request correspond to the originals and shall describe the pagination. Where the requested Member State disputes that the documents correspond to the originals, its central authority shall be entitled to require the central authority of the requesting Member State to produce the original documents or a true copy thereof within a reasonable period through either diplomatic channels or any other mutually agreed channel.

ARTICLE 14

SUPPLEMENTARY INFORMATION

When giving the notification referred to in Article 18(2), or at any other time, any Member State may declare that, in its relations with other Member States which have made the same declaration, the judicial authorities or other competent authorities of those Member States may, where appropriate, make requests directly to its judicial authorities or other competent authorities responsible for criminal proceedings against the person whose extradition is requested for supplementary information in accordance with Article 13 of the European Convention on Extradition or Article 12 of the Benelux Treaty.

In making such a declaration, a Member State shall specify its judicial authorities or other competent authorities authorised to communicate to communicate and receive such supplementary information.

ARTICLE 15

AUTHENTICATION

Any document or any copy of documents transmitted for the purposes of extradition shall be exempted from authentication or any other formality unless expressly required by the provisions of this Convention, the European Convention on Extradition or the Benelux Treaty. In the latter case, copies of documents shall be considered to be authenticated when they have been certified true copies by the judicial authorities that issued the original or by the central authority referred to in Article 13.

ARTICLE 16

TRANSIT

In the case of transit, under the conditions laid down in Article 21 of the European Convention on Extradition and Article 21 of the Benelux Treaty, through the territory of one Member State to another Member State, the following provisions shall apply:

- (a) any request for transit must contain sufficient information to enable the Member State of transit to assess the request and to take the constraint measures needed for execution of the transit vis-à-vis the extradited person.

To that end, the following information shall be sufficient:

- the identity of the person extradited;
 - the existence of an arrest warrant or other document having the same legal effect or of an enforceable judgement;
 - the nature and the legal description of the offence;
 - a description of the circumstances in which the offence was committed, including the date and place;
- (b) the request for transit and the information provided for in point (a) may be sent to the Member State of transit by any means leaving a written record. The Member State of transit shall make its decision known by the same method;
 - (c) in the case of transport by air without a scheduled stopover, if an unscheduled landing occurs, the requesting Member State shall provide the transit Member State concerned with the information provided for in point (a);
 - (d) subject to the provisions of this Convention, in particular Articles 3, 5 and 7, the provisions of Article 21 (1), (2), (5) and (6) of the European Convention on Extradition and Article 21 (1) of the Benelux Treaty shall continue to apply.

ARTICLE 17

RESERVATIONS

No reservations may be entered in respect of this Convention other than those for which it makes express provision.

ARTICLE 18

ENTRY INTO FORCE

1. This Convention shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.

2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of the constitutional procedures for the adoption of this Convention.

3. This Convention shall enter into force 90 days after the notification referred to in paragraph 2 by the State, Member of the European Union at the time of adoption by the Council of the Act drawing up this Convention, which is last to complete that formality.

4. Until this Convention enters into force, any Member State may, when giving the notification referred to in paragraph 2, or at any other time, declare that as far as it is concerned this Convention shall apply to its relations with Member States that have made the same declaration. Such declarations shall take effect 90 days after the date of deposit thereof.

5. This Convention shall apply only to requests submitted after the date on which it enters into force or is applied as between the requested Member State and the requesting Member State.

ARTICLE 19

ACCESSION OF NEW MEMBER STATES

1. This Convention shall be open to accession by any State that becomes a member of the European Union.

2. The text of this Convention in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

3. The instruments of accession shall be deposited with the depositary.

4. This Convention shall enter into force with respect to any State that accedes to it 90 days after the deposit of its instrument of accession or on the date of entry into force of this Convention if it has not already entered into force at the time of expiry of the said period 90 days.

5. Where this Convention is not yet in force at the time of the deposit of their instrument of accession, Article 18(4) shall apply to acceding Member States.

ARTICLE 20

DEPOSITARY

1. The Secretary-General of the Council of the European Union shall act as depositary of this Convention.

2. The depositary shall publish in the Official Journal of the European Communities information on the progress of adoptions and accessions, declarations and reservations, and also any other notification concerning this Convention.

SCHEDULE 6

Preamble

DECLARATIONS AND STATEMENTS BY THE UNITED KINGDOM RELATING TO THE 1996 CONVENTION

Article 11

Pursuant to Article 11, the United Kingdom declares that in its relations with other Member States that have made the same declaration, consent for the purposes of Article 14(1)(a) of the European Convention on Extradition is presumed to have been given unless it indicates otherwise when granting extradition in a particular case.

Article 13

With regard to Article 13(2), the United Kingdom designates the following central authorities as responsible for transmitting and receiving extradition requests as set out in Article 13(1). Where a request is made to the United Kingdom, the central authorities are the Home Office and the Scotland Office. Where the request is made by the United Kingdom, the central authorities are the Home Office, the Scottish Executive Justice Department and the Northern Ireland Office.

Article 16

The provisions of Article 16 do not apply to the United Kingdom because of its reservation to Article 21 of the European Convention on Extradition.

Article 18

Pursuant to Article 18(4), the United Kingdom declares that until its entry into force, this Convention shall apply to it in its relations with Member States which have made the same declaration 90 days after the date of deposit of the United Kingdom's instrument of ratification.

SCHEDULE 7

Preamble

PARTIES TO THE 1996 CONVENTION

Austria
Belgium
Denmark
Finland
France
Germany
Greece
Italy
Luxembourg
Netherlands
Portugal
Spain
Sweden

SCHEDULE 8

Preamble

RESERVATIONS, DECLARATIONS AND STATEMENTS
MADE BY THE PARTIES TO THE 1996 CONVENTION
ANNEX TO THE 1996 CONVENTION

Joint Declaration on the right of asylum

The Member States declare that this Convention is without prejudice either to the right of asylum to the extent to which it is recognised by their respective constitutions or to the application by the Member States of the provisions of the Convention relating to the Status of Refugees of 28th July 1951, as supplemented by the Convention relating to the Status of Stateless Persons of 28th September 1954 and by the Protocol relating to the Status of Refugees of 31st January 1967.

Declaration by Denmark, Finland and Sweden concerning Article 7 of this Convention

Denmark, Finland and Sweden confirm that—as indicated during their negotiations on accession to the Schengen agreements—they will not invoke, in relation to other Member States which ensure equal treatment, their declarations under Article 6(1) of the European Convention on Extradition as a ground for refusal of extradition of residents from non-Nordic States.

Declaration on the concept of “nationals”

The Council takes note of the Member States' undertaking to apply the Council of Europe Convention of 21st March 1983 on the Transfer of Sentenced Persons in respect of the nationals of each Member State within the meaning of Article 3(4) of the said Convention.

The Member States' undertaking mentioned in the first paragraph is without prejudice to the application of Article 7(2) of this Convention.

Declaration by Greece re Article 5

Greece interprets Article 5 from the standpoint of paragraph 3 thereof. This interpretation ensures compliance with the conditions of the Greek constitution, which:

- expressly prohibits extradition of a foreigner pursued for activities for freedom, and
- distinguishes between political and so-called mixed offences, for which the rules are not the same as for political offences.

Declaration by Portugal on extradition requested for an offence punishable by a life sentence or detention order

Having entered a reservation in respect of the European Convention on Extradition of 1957 to the effect that it will not grant extradition of persons wanted for an offence punishable by a life sentence or detention order, Portugal states that where extradition is sought for an offence punishable by a life sentence or detention order, it will grant extradition, in compliance with the relevant provisions of the Constitution of the Portuguese Republic, as interpreted by its Constitutional Court, only if it regards as sufficient the assurances given by the requesting Member State that it will encourage, in accordance with its law and practice regarding the carrying out of sentences, the application of any measures of clemency to which the person whose extradition is requested might be entitled.

Portugal reaffirms the validity of undertakings entered into in existing international agreements to which it is party, in particular in Article 5 of the Convention on Portuguese accession to the Convention Applying the Schengen Agreement.

AUSTRIA

Article 3

Austria reserves the right not to apply paragraph 1 where the offence for which extradition is requested is not punishable under Austrian law.

Article 5

Austria declares that it will apply Article 5(1) only in relation to offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism and offences of conspiracy or association—which correspond to the description of behaviour referred to in Article 3(4)—to commit one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism.

Article 7

Pursuant to Section 12(1) of the Extradition and Mutual Legal Assistance Act the extradition of Austrian nationals is not permissible. This rule has the rank of a constitutional provision. Austria will therefore not grant extradition of its own nationals.

Article 11

Austria declares that, in its relations with other Member States that have made the same declaration, consent for the purposes of Article 14(1)(a) of the European Convention on Extradition of 13 December 1957 (Federal Gazette No. 320/1969) is presumed to have been given, unless it indicates otherwise when granting extradition in a particular case.

Article 13

The Federal Ministry of Justice will be the central authority within the meaning of Article 13(1).

Article 14

Austria declares that, in its relations with other Member States which have made the same declaration, the judicial authorities before which extradition proceedings are pending may make requests directly for supplementary information in accordance with Article 13 of the European Convention on Extradition. In Austria, the higher district courts (“Landesgerichte”) will be authorised to communicate and receive such supplementary information.

Article 18

Austria declares that this Convention will apply to its relations with those Member States that have made the same declaration 90 days after the date of deposit of the declaration.

BELGIUM

Article 3

Belgium reserves the right not to apply Article 3(1).

Article 7

The extradition of nationals will be granted only under the following conditions:- the possibility of extradition will be confined to extradition for the purposes of prosecution;—the requesting Member

State must, prior to extradition, give its agreement to transfer to Belgium the person to be extradited so that that person serves his sentence there if a penalty involving deprivation of liberty or a detention order is imposed; the provisions in force concerning the inter-State transfer of sentenced persons shall apply, including the consent of the sentenced person;—and it is subject to reciprocity.

Article 12

Article 15 of the European Convention on Extradition and Article 14(1) of the Benelux Treaty shall continue to apply in respect of Belgium.

Article 13

The central authority is the Individual Cases Section of the International Judicial Co-operation Department in the Directorate-General for Criminal Legislation and Human Rights of the Ministry of Justice.

Article 14

In the case of Belgium, the judicial authorities authorised to request or to communicate and receive supplementary information following a request for extradition are: the public prosecutor's offices;—the national magistrates.

Article 18

As far as Belgium is concerned, this Convention shall apply to its relations with Member States that have made the same declaration.

DENMARK

Article 3

A request for extradition may be refused if the offence for which extradition is requested is not regarded as an offence under Danish law, even if the offence is classified by the law of the requesting Member State as a conspiracy or an association to commit offences and is punishable by deprivation of liberty for at least twelve months and even if the conspiracy or the association is to commit one of the offences referred to in Article 3(1)(a) or (b).

Article 5

Article 5(1) will apply only in relation to the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism and offences that can be defined as offences of conspiracy or association—which correspond to the description of behaviour referred to in Article 3(4)—to commit one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism.

Article 7

Extradition may be refused if the person claimed is a Danish national.

Article 12

Article 15 of the European Convention on Extradition shall continue to apply in the case of Denmark, unless the person extradited had, when agreeing to be extradited from Denmark to the Member State to which extradition occurred, indicated his/her agreement to being called to account and re-extradited to a third Member State for punishable offences committed before extradition other than

those for which the person was extradited, or unless the person extradited has indicated his/her agreement to re-extradition at a court hearing in the Member State to which extradition has occurred.

Article 13

The designated central authority is the Ministry of Justice, Slotsholmsgade 10, 1216 København K.

Article 14

In those Member States which have made a declaration to Denmark pursuant to the first paragraph of Article 14, the judicial authorities or other competent authorities may make requests directly to Denmark's judicial authorities or other competent authorities responsible for criminal proceedings against the person whose extradition is requested for supplementary information in accordance with Article 13 of the European Convention on Extradition.

The courts and public prosecution authorities are authorised to request, communicate and receive the supplementary information referred to in the first paragraph of Article 14. Under the Danish Administration of Justice Act, public-prosecution authorities comprise the Ministry of Justice, Director of Public Prosecutions, Public Prosecutors, Commissioner of the Copenhagen Police and Chief Constables.

Article 18

In the case of Denmark, the Convention shall apply to its relations with Member States that have made the same declaration with regard to Denmark, 90 days after the date of deposit thereof. The Convention shall not, in the case of Denmark, apply to the Faroe Islands and Greenland until otherwise provided.

FINLAND

Article 7

Finland will grant extradition of its nationals only under the following conditions: at the discretion of the Ministry of Justice, a Finnish national may be extradited to a Member State of the European Union to stand trial for a crime the most severe punishment for which, under Finnish law, is at least four years imprisonment if committed under similar circumstances in Finland; a condition of extradition is that, once the judgement has become final, the requesting Member State undertake immediately to return an extradited Finnish national to Finland for possible imprisonment if he consents to serve his sentence in Finland; no Finnish vessel on the high seas or in a Finnish aircraft; no Finnish national may be prosecuted or punished for a crime other than that referred to in the application for extradition, without the authorisation of the Ministry of Justice; no Finnish national may be re-extradited to another State.

Article 12

Finland will continue to apply Article 15 of the European Convention on Extradition except where Article 13 of the Convention on simplified extradition procedure between the Member States of the European Union provides otherwise or where the person whose extradition is requested has consented to re-extradition.

Article 13

The central authority in Finland pursuant to Article 13(1) is the Ministry of Justice.

Article 14

Supplementary information as referred to in Article 13 of the European Convention on extradition may be communicated directly between the competent authorities in the manner referred to in Article 14. In Finland, the Ministry of Justice, the Central Criminal Police and the Supreme Court are entitled under Article 14 of the Convention to request, communicate and receive supplementary information.

Article 18

The Convention may apply, before it enters into force internationally, in relations with those Member States which have made a similar declaration.

GERMANY

Article 7

Pursuant to Article 16(2) of the Basic Law, no German may be extradited from the Federal Republic of Germany to a foreign country; the Federal Republic of Germany must therefore refuse extradition of its nationals under any circumstances.

Article 11

The Federal Government declares that in the Federal Republic of Germany's relations with all other Member States which have made the same declaration, consent for the purposes of Article 14(1) (a) of the European Convention on Extradition is presumed to have been given, unless it indicates otherwise when granting extradition in a particular case.

Article 13

For the purposes of Article 13(1), the central authorities will be the Federal Minister for Justice and the Justice Ministers and Senators of the Länder. However, where the documents referred to in Article 13(1) are received or transmitted by facsimile, the Federal Minister for Justice is to be regarded as the sole central authority.

Article 14

The Federal Government declares that in the Federal Republic of Germany's relations with other Member States which have made the same declaration, requests for supplementary information pursuant to Article 13 of the European Convention on Extradition may be made directly to the competent judicial authorities or other competent authorities and answered by them directly. Where the Federal Republic of Germany is the requested Member State, the public prosecutor's offices at the Higher Regional Courts [Oberlandesgerichte] will be responsible for requesting and receiving supplementary information. Where Germany is the requesting Member State, the responsibility for requesting and transmitting supplementary information will lie with the head of the prosecution department [Generalbundesanwalt] at the Federal Supreme Court [Bundesgerichtshof], the public prosecutor's offices at the Higher Regional Courts [Oberlandesgerichte] and the public prosecutor's offices at the District Courts [Landgerichte]. Requests for information should be made directly to the prosecuting authority dealing with the particular extradition case.

Article 18

In accordance with Article 18(4), the Federal Government declares that as far as it is concerned, the Convention will apply to the Federal Republic of Germany's relations with Member States which have made the same declaration, 90 days after the date of deposit of the declaration.

GREECE

Article 5

Greece will apply Article 5(1) only with regard to: (a) the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism, and (b) offences of conspiracy or association—which correspond to the description of behaviour referred to in Article 3(4)—to commit one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism.

Article 6

Greece will grant extradition in connection with a fiscal offence only for acts or omissions which may constitute an offence in connection with excise, value-added tax or customs.

Article 7

Greece will not grant extradition of its nationals.

Article 12

Greece will continue to apply Article 15 of the European Convention on Extradition, except where the person concerned who has consented to being extradited has waived, by way of an express declaration, the benefit of the rule of speciality.

Article 13

The Ministry of Justice is designated as central authority.

LUXEMBOURG

Article 3

The Government of the Grand Duchy of Luxembourg declares that the conditions of Article 3(1) are fulfilled if the participation of the person to be extradited, in addition to meeting the requirements of Articles 66 and 67, meets those of Articles 324 and 324b of the Penal Code or those of Article 11 of the amended Law of 19 February 1973 concerning the sale of medicinal substances and the fight against drug addiction.

Article 5

The Government of the Grand Duchy of Luxembourg declares that it will apply Article 5(1) only in relation to: (a) the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism, and (b) offences of conspiracy or association to commit one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism.

Article 6

The Government of the Grand Duchy of Luxembourg declares that it will grant extradition in connection with a fiscal offence only for acts or omissions which may constitute an offence in connection with excise, value-added tax or customs.

Article 7

The Government of the Grand Duchy of Luxembourg declares that it will not grant extradition of its nationals and, in its relations with the States Parties to this Convention, will uphold the effect of the reservation and the declaration made in the framework of Articles 6 and 21 of the European Convention on Extradition.

Article 12

The Government of the Grand Duchy of Luxembourg declares that Article 15 of the European Convention on Extradition and Article 14(1) of the Benelux Treaty on Extradition and Mutual Assistance in Criminal Matters shall continue to apply except where the person extradited consents to be re-extradited to another Member State in accordance with this Convention.

Article 13

The Government of the Grand Duchy of Luxembourg declares that the Ministry of Justice is designated to perform the function of central authority in the Grand Duchy of Luxembourg within the meaning of Article 13 of the Convention, drawn up on the basis of Article K.3 of the Treaty on European Union, relating to extradition between the Member States of the European Union, signed on 27 September 1996.

Article 14

The Government of the Grand Duchy of Luxembourg declares that, in its relations with other Member States which have made the same declaration, the judicial authorities or other competent authorities of those Member States may, where appropriate, make requests directly to the Principal Public Prosecutor of the State for supplementary information in accordance with Article 13 of the European Convention on Extradition or Article 12 of the Benelux Treaty on Extradition and Mutual Assistance in Criminal Matters. Where Luxembourg is the requested State, the authority to request such supplementary information lies with the Ministry of Justice, the Principal Public Prosecutor (of the State) and the judicial authorities responsible for the extradition procedure.

Article 18

The Government of the Grand Duchy of Luxembourg declares that as far as it is concerned this Convention shall apply to its relations with Member States that have made the same declaration.

NETHERLANDS

Article 3

The Netherlands Government declares pursuant to Article 3(3) that Article 3(1) shall not be applied.

Article 5

The Netherlands Government declares pursuant to Article 5(2) that Article 5(1) shall be applied only in respect of the offences referred to in Article 5(2)(a) and (b).

Article 7

The Netherlands Government declares pursuant to Article 7(2) that no extradition or transit of Netherlands nationals shall be granted for the purpose of execution of a sentence or other measure. However, Netherlands nationals may be extradited for the purpose of prosecution insofar as the requesting State offers the guarantee that the person claimed will be transferred back to the

Netherlands in order to serve his sentence there if, after extradition, a sentence involving deprivation of liberty, other than a provisional sentence, or a detention order is imposed on him. As regards the Kingdom of the Netherlands, for the purposes of applying this Convention, Netherlands nationals are understood to be persons of Netherlands nationality and foreigners who are integrated into Netherlands society insofar as they may be prosecuted in the Netherlands for offences which form the grounds of the extradition request and insofar as it may reasonably be assumed that such foreigners will not lose their right of residence in the Netherlands as a result of a sentence or measure imposed upon them after extradition.

Article 12

The Netherlands Government declares pursuant to Article 12(2) that Article 15 of the European Convention on Extradition of 13 December 1957 and Article 14(1) of the Treaty on Extradition and Mutual Assistance in Criminal Matters between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands of 27 June 1962 shall continue to apply insofar as the person claimed is a Netherlands national within the meaning of the declaration made pursuant to Article 7(2).

Article 14

With a view to obtaining supplementary information as referred to in Article 13 of the European Convention on Extradition and Article 12 of the Benelux Extradition Treaty, with regard to: (a) extradition requests emanating from the Netherlands: the authorities referred to in the declaration by the requested Member State may make requests directly to the judicial authority referred to in the Netherlands extradition request, which may also provide the information requested directly, and (b) extradition requests addressed to the Netherlands: the Netherlands judicial authorities which are responsible for dealing with the extradition request may, in urgent cases, make requests directly to the authorities referred to in the declaration by the requesting Member State. The Netherlands judicial authorities as referred to in (b) are the public prosecutor at the District Court who is responsible for dealing with the request for extradition and the Public Prosecutor's Office at the State Council of the Netherlands (Hoge Raad der Nederlanden).

Article 18

As far as the Netherlands is concerned the Convention shall apply 90 days after the deposit of this declaration to its relations with other Member States of the European Union that have made the same declaration.

PORTUGAL

Article 7

Portugal declares that it will authorise extradition of Portuguese nationals from national territory only under the conditions laid down in the Constitution of the Portuguese Republic: (a) in cases of terrorism and international organised crime; and (b) for the purposes of prosecution, provided that the requesting State guarantees the extradited person's return to Portugal, to serve the sentence or penalty imposed unless that person expresses his opposition by an explicit declaration. For the purposes of carrying out the sentence in Portugal, the procedures set out in the declaration made by Portugal in connection with the Council of Europe Convention on the Transfer of Sentenced Persons shall be observed.

Article 12

Portugal declares that it is not necessary to obtain its consent to the re-extradition of a person to another Member State, if the person concerned has consented to be re-extradited to that State, in accordance with this Convention.

Article 13

Portugal designates the Office of the Public Prosecutor of the Republic as the central authority within the meaning of Article 13(1).

Article 18

Portugal declares that this Convention applies to its relations with Member States that have made the same declaration.

SPAIN

Article 7

Spain declares that it will grant extradition of its nationals provided that the act concerned also constitutes an offence in Spain and that the requesting State guarantees that such persons will, if sentenced, be transferred forthwith to Spain to serve their sentences.

Article 13

Spain designates the Technical General Secretariat of the Ministry of Justice as the central authority.

Article 14

Spain declares that, in its relations with the States which have made the same declaration, requests for supplementary information may be made directly to the judicial body which requested extradition.

Article 18

Spain declares that, as far as it is concerned, this Convention shall, once the notification referred to in Article 18(2) has been made, apply to its relations with the Member States which have made the same declaration 90 days after the date of deposit of said declaration.

SWEDEN

Article 3

Sweden will not apply Article 3(1).

Article 7

A Swedish national may be extradited, for the purposes of prosecution and enforcement of sentence, in accordance with the conditions set out below. In all cases, however, Sweden reserves the right to refuse to extradite a Swedish national. (a) In order for a Swedish national to be extradited for the purpose of prosecution, the person whose extradition is requested must have been permanently resident in the requesting State for at least two years at the time of the offence, or the offence for which extradition is requested must constitute a criminal offence punishable under Swedish law by imprisonment for more than four years. If the offence has been committed entirely within Sweden, extradition for the purpose of prosecution may be granted only if the offence involves complicity in a criminal offence committed outside the country or if extradition is granted for an offence committed

outside the country as well. If extradition is granted, Sweden may impose a condition that the person extradited be returned to Sweden to serve any sentence involving deprivation of liberty or other form of detention order on account of the offence. Such return will be governed by the provisions of Swedish law relating to transfer of the enforcement of criminal judgements. (b) In order for a Swedish national to be extradited for the purpose of enforcement of sentence, the person whose extradition is requested must have been permanently resident in the requesting State for at least two years at the time of the offence or must have consented to extradition, in the presence of a Swedish prosecutor. (c) In the case of extradition of a Swedish national, Articles 5, 8 and 10 to 12 will not apply. (d) In the case of extradition of a Swedish national, in accordance with the Convention on simplified extradition procedure between the Member States of the European Union, Article 9 of that Convention will not apply. (e) Sweden's declaration, under Article 6(1) of the European Convention on Extradition, that non-Nordic nationals resident in Sweden, Denmark or Finland will be treated by Sweden in the same way as Swedish nationals will not be invoked by Sweden in relation to Member States which ensure equal treatment.

Article 12

Article 15 of the European Convention on Extradition will continue to apply, except in cases under the simplified extradition procedure in which the person extradited expressly waives protection from re-extradition or where anyone otherwise extradited expressly waives protection from re-extradition.

Article 13

The Ministry of Justice is to be the central authority in extradition cases.

Article 14

The Prosecutor-General or any other prosecutors dealing with extradition cases are empowered to communicate directly with their counterparts in other countries.

Article 18

Sweden will apply the Convention, even before it enters into force, in relation to other Member States which have made a similar declaration.

SCHEDULE 9

Regulation 2

AMENDMENTS TO THE EXTRADITION ACT 1989

1. The Act is amended as follows.
2. In section 24 (suppression of terrorism) in subsection (3)(a) after "1977" insert " , other than a country that is a party to the 1996 Convention".
3. After section 34 insert—

"1995 and 1996 Convention cases

Application of Act in 1995 and 1996 Convention cases

34A Schedule 1A provides for the application of this Act as between—

- (a) the United Kingdom and states other than the Republic of Ireland that are parties to the 1995 Convention;
- (b) the United Kingdom and states other than the Republic of Ireland that are parties to the 1996 Convention.”.

4. In section 35(1) (interpretation)(6)after the definition of “Hong Kong Special Administrative Region” insert—

““the 1995 Convention” means the Convention drawn up on the basis of Article K.3 of the Treaty on European Union on Simplified Extradition Procedure between the Member States of the European Union;

“the 1996 Convention” means the Convention drawn up on the basis of Article K.3 of the Treaty on European Union relating to Extradition between the Member States of the European Union;

“party to the 1995 Convention” means a state in respect of which the 1995 Convention is in force either generally or between it and the United Kingdom;

“party to the 1996 Convention” means a state in respect of which the 1996 Convention is in force either generally or between it and the United Kingdom;”.

5. After Schedule 1 insert—

“SCHEDULE 1A

THE 1995 CONVENTION AND THE 1996 CONVENTION

PART 1

THE 1995 CONVENTION

Application of Act

1. This Act applies as if the terms of the 1995 Convention were general extradition arrangements made between the United Kingdom and the states other than the Republic of Ireland that are parties to it.

Adaptations of Act

2. As applied by paragraph 1 above, this Act has effect as between the United Kingdom and the states other than the Republic of Ireland that are parties to the 1995 Convention with the following adaptations.

3. In section 6 after subsection (6) insert—

“(6A) Subsection (4) above does not apply if the person has consented to his return to the relevant foreign state under section 14A below.”.

4. In section 9 after subsection (3) insert—

“(3A) The Court of committal shall, as soon as practicable and in any event before committing the person arrested under subsection (8) below—

- (a) inform him that he may consent to his return to the foreign state that made the extradition request; and

(6) The definition of “Hong Kong Administrative Region” was inserted by S.I. [1997/1178](#).

- (b) explain the effect of any such consent and the procedure that will apply if he gives any such consent.

(3B) The court of committal shall also inform the person arrested that—

- (a) any such consent is to be given in writing and is irrevocable;
- (b) any such consent is to be given to the court, if it is given before an order for committal under subsection (8) below has been made;
- (c) any such consent is to be given to the Secretary of State or the Scottish Ministers, if it is given after an order for committal under subsection (8) below has been made.”.

5. After section 14 insert—

“**14A** Consent to return

(1) A person arrested in pursuance of a warrant under section 8 above may consent to his return to the foreign state that made the extradition request.

(2) Any consent under this section is irrevocable.

(3) If the person has not been committed under section 9 above, any consent under this section must be given by notice in writing to the court of committal.

(4) In England and Wales, the notice is to be given in the manner prescribed by rules under section 144 of the Magistrates' Courts Act 1980(7).

(5) Without prejudice to the generality of section 144(1) of that Act, the power to make rules under that section includes power to make provision for a magistrate to order the committal for return of a person if he gives consent under this section before he is committed under section 9 above.

(6) In Scotland, the notice is to be given in the manner prescribed by the High Court of Justiciary by Act of Adjournal and the sheriff may order the committal for return of a person if he gives consent under this section before he is committed under section 9 above.

(7) Where an order is made by virtue of subsection (5) or (6) above, this Act shall cease to apply to the person in respect of whom the order is made, subject to subsection (8) below.

(8) If the person is not returned within 20 days after the order is made, the High Court or in Scotland the High Court of Justiciary may, on application by him or on his behalf, order him to be discharged unless reasonable cause is shown for the delay.

(9) If the person has been committed under section 9 above, any consent under this section must be given to the Secretary of State or the Scottish Ministers.

(10) The Secretary of State or the Scottish Ministers may, by warrant, order his return at any time under this section.”.

6. In section 18 after subsection (1) insert—

“(1A) In a case where the foreign state by which the person is returned has made a declaration under Article 9(a) of the 1995 Convention, subsection (1) above does not apply if—

- (a) the person has consented to his return, and
- (b) where the state has made a declaration under Article 7(4) of that Convention, he has not revoked his consent.

(1B) In a case where the foreign state by which the person is returned has made a declaration under Article 9(b) of the 1995 Convention, subsection (1) above does not apply if—

(7) 1980 c. 43.

- (a) the person has consented to his return and has renounced the benefit of subsection (1) above, and
- (b) where the state has made a declaration under Article 7(4) of that Convention, he has not revoked his consent or renunciation.”.

PART 2

THE 1996 CONVENTION

Application of Act

7. This Act applies as if the terms of the 1996 Convention were general extradition arrangements made between the United Kingdom and the other states other than the Republic of Ireland that are parties to it.

Adaptations of Act

8. As applied by paragraph 7 above, this Act has effect as between the United Kingdom and the states other than the Republic of Ireland that are parties to the 1996 Convention with the following adaptations.

9.—(1) Section 2(8) is amended as follows.

(2) In subsection (1)(a)—

- (a) for “12 months” substitute “6 months”;
- (b) for “so punishable under that law” substitute “punishable under that law with imprisonment, or any form of detention wherever served, for a term of 12 months, or any greater punishment”.

(3) In subsection (1)(b) after “imprisonment” insert “, or any form of detention wherever served,”.

(4) In subsections (2) and (3) for “12 months” substitute “6 months”.

10.—(1) Section 6(9) is amended as follows.

(2) In subsection (1), omit paragraph (a).

(3) In subsection (4) after paragraph (a) insert—

- “(aa) an offence which is not punishable with imprisonment or any other form of detention;
- (ab) an offence in respect of which he will not be detained in connection with his trial, sentence or appeal;
- (ac) an offence in respect of which an appropriate authority is satisfied that a sentence of imprisonment or any other form of detention will be imposed only if he has specifically waived the right which (but for this paragraph) he would have not to be dealt with for the offence;”.

(4) After subsection (4) insert—

(8) Section 2 has been amended, but the amendments are not relevant to the subject matter of these Regulations.

(9) Section 6 has been amended, but the amendments are not relevant to the subject matter of these Regulations.

“(4A) Where the relevant foreign state has made a declaration under Article 6(3) of the 1996 Convention fiscal offences, other than those connected with excise, valued-added tax or customs, are excluded from paragraphs (aa) to (ac) of subsection (4) above.”.

(5) After subsection (6) insert—

“(6A) Subsection (4) above does not apply if

- (a) the relevant foreign state has made a declaration under Article 11 of the 1996 Convention, and
- (b) no indication has been given by the Secretary of State or the Scottish Ministers that consent should not be deemed to have been given in the person’s case.”.

11.—(1) Section 18 is amended as follows.

(2) In subsection (1) after paragraph (b) insert—

- “(ba) an offence which is not punishable with imprisonment; or
- (bb) an offence in respect of which no custodial sentence will be imposed; or
- (bc) an offence in connection with which the person returned will not be detained in custody; or
- (bd) an offence in respect of which he has notified the court in writing that he waives the right which (but for this paragraph) he would have not to be tried for the offence; or”.

(3) After subsection (1) insert—

“(1A) Subsection (1) above does not apply if—

- (a) the foreign state has made a declaration under Article 11 of the 1996 Convention, and
- (b) no indication has been given by the foreign state that consent should not be deemed to have been given in the person’s case.”.

12.—(1) Section 26(**10**) is amended as follows.

(2) For subsection (1) substitute—

“(1) In extradition proceedings in relation to a person whose return has been requested by a foreign state, a copy of an arrest warrant or certificate of conviction issued in the foreign state shall be deemed duly authenticated if it purports to be certified as a true copy of the original by a judicial or other authority of the state.”.

(3) In subsection (2) for “(1)(b)” substitute “(1)”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations will implement the provisions of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union on simplified extradition procedures between the Member States of the European Union which was opened for signature on 10th March 1995 (“the 1995 Convention”) and the Convention drawn up on the basis of Article K.3 of the Treaty of European

(10) Section 26 has been amended, but the amendments are not relevant to the subject matter of these Regulations.

Union relating to extradition between the Member States of the European Union which was opened for signature on 27th September 1996 (“the 1996 Convention”). The Conventions are set out in Schedules 1 and 5 to the Regulations.

These Regulations amend the Extradition Act 1989 (“the Act”) and are made under sections 111 and 112 of the Anti-terrorism, Crime and Security Act 2001. Those sections extend to the whole of the United Kingdom and the Regulations follow the extent provision of those sections.

As it is possible that the Conventions will be in force between the United Kingdom and some (but not all) Member States, there is provision in the Regulations to cater for this. Regulation 2(2) ensures that the Regulations apply only to requests made to or from the United Kingdom after the coming into force of the Regulations (which under regulation 1 will be on a date to be notified in the London, Edinburgh and Belfast Gazettes). Schedule 9 to the Regulations (in particular paragraph 4 which amends section 35(1)) ensures that a party to the 1995 or 1996 Convention for the purposes of the amendments to the Act, is a party in respect of which the Convention is in force either generally (because the last notification/ratification has been made) or specifically between it and the United Kingdom (because declarations have been made to enable the Conventions to apply before the entry into force date).

These Regulations will not apply to extradition between the Republic of Ireland and the United Kingdom: such extradition will be regulated by the Backing of Warrants (Republic of Ireland) Act 1965. The Republic of Ireland is a party to the 1995 and 1996 Conventions but is not a party to the Conventions for the purposes of the Regulations.

Section 4 of the Act provides that where general extradition arrangements have been made, Her Majesty may, by Order in Council reciting or embodying their terms, direct that the Act applies as between the United Kingdom and the state with whom the arrangement has been made. The Regulations follow this model and paragraphs 1 and 7 of Schedule 1A to the Act (as inserted by paragraph 5 of Schedule 9 to the Regulations) provide that the 1995 and 1996 Conventions are general extradition arrangements. Schedules 1 and 5 to the Regulations contain the Conventions, Schedules 2 and 6 contain the United Kingdom’s reservations, declarations and statements, Schedules 3 and 7 list the parties to the Conventions and Schedules 4 and 8 contain their reservations, declarations and statements.

Schedule 9 to the Regulations contains the amendments to the Act.

Paragraph 2 of Schedule 9 excludes countries that are parties to the 1996 Convention from the effect of section 24 of the Act, which provides that no offence to which section 1 of the Suppression of Terrorism Act 1978 applies is to be regarded as a political offence and no proceedings in respect of an offence to which that section applies shall be regarded as a criminal matter of a political character or as criminal proceedings of a political character. This is because pursuant to the 1996 Convention the United Kingdom will not treat any offence as an offence of a political character. Accordingly there has also been an amendment to section 6 of the Act which is explained below.

Paragraph 3 of Schedule 9 inserts a new section (section 34A) after section 34 of the Act. The effect of this new section is to apply the new Schedule 1A to the Act to the United Kingdom and the states other than the Republic of Ireland that are parties to the 1995 and the 1996 Conventions. Paragraph 4 inserts new definitions in section 35(1) of the Act and under those definitions “party to the 1995 Convention” and “party to the 1996 Convention” means a state in respect of which the 1995 and 1996 Convention is in force either generally or between it and the United Kingdom.

Paragraph 5 of Schedule 9 to the Regulations inserts Schedule 1A in to the Act. Schedule 1A contains the amendments to the Act required to give effect to the 1995 and 1996 Conventions. It is divided into two parts: Part 1 contains the amendments necessary to give effect to the 1995 Convention and Part 2 contains the amendments necessary to give effect to the 1996 Convention.

1995 Convention

Paragraph 3 of Schedule 1A inserts a new subsection (subsection 6A) after section 6(6) of the Act, the effect of which is to disapply section 6(4) of the Act (speciality protection) where the person has consented to his return to the relevant state.

Paragraph 4 of Schedule 1A inserts two new subsections ((3A) and (3B)) into section 9 of the Act. Section 9(3A) requires the court of committal, as soon as practicable and before it issues an order for committal under section 9(8) to inform the person arrested that he may consent to his return to the state that has requested his extradition, of the effect of any such consent (loss of speciality) and of the procedure that will apply if he gives his consent.

Section 9(3B) requires the court of committal to inform the arrested person that the consent is to be given in writing and is irrevocable and that it is to be given to the court before an order for committal is made or to the Secretary of State or the Scottish Ministers after an order for committal has been made.

Paragraph 5 of Schedule 1A inserts a new section (section 14A “Consent to return”) after section 14 of the Act. Section 14A(1) provides that a person may consent to his return to the state that has requested his return. Section 14A(2) provides that such consent is irrevocable. Section 14A(3) provides that if the person has not been committed under section 9 of the Act, any consent under this section must be made by notice in writing to the court of committal. Sections 14A(4), (5) and (6) replicate the provisions of section 14(2) and (3) of the Act for these cases; namely that the notice is to be given in the manner prescribed by rules under section 144 of the Magistrates' Courts Act 1980 and in Scotland the notice is to be given in the manner prescribed by the High Court of Justiciary by Act of Adjournment.

Section 14A(7) replicates the provisions of section 14(4) of the Act and provides that where an order is made under section 14A(5) or (6), the Act shall cease to apply to the person in respect of whom the order is made subject to the provisions of section 14A(8). This means that if consent is given to the magistrate or the sheriff, no order for return is made by the Secretary of State or Scottish Ministers under section 12 of the Act. Instead the magistrate or sheriff orders the committal for return.

Section 14A(8) provides that if a person is not returned within 20 days after their return is ordered, the High Court or the High Court of Justiciary in Scotland may on application by him or his behalf, order him to be discharged unless reasonable cause is shown for the delay.

Section 14A(9) provides that if a person has been committed under section 9 of the Act, any consent must be given to the Secretary of State or the Scottish Ministers. Section 14A(10) provides that the Secretary of State or the Scottish Ministers may, by warrant, order his return at any time. That return is ordered under section 14A of the Act so section 12 and 13 would not apply.

Paragraph 6 of Schedule 1A inserts two subsections ((1A) and (1B)) into section 18 of the Act. Section 18(1A) disapplies section 18(1) of the Act if the state which has extradited the person has made a declaration under Article 9a of the 1995 Convention (ie that Article 14 of the European Convention on Extradition (speciality protection) does not apply where someone consents to extradition) and the person has consented to their return and has not revoked that consent, where the state has made a declaration under Article 7(4) of that Convention (ie that consent may be revoked). Section 18(1B) disapplies section 18(1) of the Act if the foreign state which has extradited the person has made a declaration under Article 9b of the 1995 Convention (ie that Article 14 of the European Convention on Extradition (speciality protection) does not apply where someone consents to extradition and expressly renounces his entitlement to the speciality rule) and the person has consented to his return and has renounced the benefit of section 18(1) of the Act and he has not revoked his consent or renunciation, where the state has made a declaration under section 7(4) of that Convention.

1996 Convention

Paragraph 9 of Schedule 1A amends the definition of “extradition crime” in section 2 of the Act. Paragraphs 9(2)(a) and 9(4) of Schedule 1A change the definition of “extradition crime” in section 2(1)(a), (2) and (3) of the Act from an offence punishable for a term of imprisonment of 12 months or more in both the United Kingdom and the foreign state to one punishable for a term of imprisonment of six months or more in the United Kingdom and punishable for a term of imprisonment of 12 months or more in the foreign state.

Paragraphs 9(2)(b) and 9(3) extend the definition of “imprisonment” in section 2 of the Act to include any form of detention, wherever served.

Paragraph 10 of Schedule 1A amends section 6 of the Act. Paragraph 10(2) omits section 6(1)(a) of the Act. This is because the United Kingdom will not for the purposes of the 1996 Convention treat offences as offences of a political character.

Paragraph 10(3) amends section 6(4) of the Act which deals with speciality protection. It adds three new subsections ((aa); (ab); and (ac)) after section 6(4)(a) of the Act which provide that a person may be dealt with without first having had an opportunity to leave if the offence is not punishable with imprisonment or other form of detention; if the offence is one for which he will not be detained in connection with his trial, sentence or appeal or if the offence is punishable with imprisonment or other form of detention but the appropriate authority is satisfied that a sentence of imprisonment or other form of detention will be imposed only if the person has specifically waived the right. Where a state has made a declaration under Article 6(3) of the 1996 Convention, the three new subsections will not apply to fiscal offences except fiscal offences connected with excise, valued-added tax or customs.

Paragraph 10(5) inserts a new subsection (6A) after section 6(6) of the Act, the effect of which is to disapply that section where the state has made a declaration under Article 11 of that Convention and the Secretary of State or the Scottish Ministers have not indicated that their consent should not be deemed to have been given in the person’s case.

Paragraph 11 of Schedule 1A amends section 18 of the Act which relates to persons extradited to the United Kingdom. Paragraph 11(2) inserts four new subsections ((ba); (bb); (bc) and (bd)) after section 18(1)(b) which provide that a person returned to the United Kingdom may be triable or tried in the United Kingdom without first having had the opportunity of leaving the United Kingdom for an offence which is not punishable with imprisonment; for an offence in respect of which no custodial sentence will be imposed; for an offence in connection with which the person returned will not be detained in custody or for an offence in respect of which he has notified the court in writing that he waives the right not to be tried for that offence.

Paragraph 11(3) inserts a new subsection after section 18(1) of the Act which disapplies the effect of section 18(1) if the state has made a declaration under Article 11 of the 1996 Convention and it has not indicated that its consent should not be deemed to have been given in the person’s case.

Paragraph 12 of Schedule 1A amends section 26 of the Act. It replaces sections 26(1) with a new subsection 26(1) the effect of which is to require a copy of any arrest warrant or certificate of conviction submitted to be deemed authenticated if it is certified as a true copy by the judicial or other authority of the state concerned. Paragraph 12(3) has the effect of rendering documents authenticated in this way receivable in evidence.