

# EXTRADITION ACT 2003

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## EXPLANATORY NOTES

### TERRITORIAL APPLICATION: WALES

#### Part 1

#### Extradition to Category 1 Territories

##### *Section 39: Position where asylum claimed*

116. This section sets out what is to happen where a person makes an asylum claim at any time during extradition proceedings under this Part of the Act. This section applies where such a claim is made by the person at any time between the issue of a certificate on a Part 1 warrant under section 2 and the person's extradition in pursuance of that warrant (*subsections (1) and (2)*).
117. *Subsection (3)* states that the person in question must not be extradited until his asylum claim is finally determined. (Sections 35, 36, 47 and 49 set out the procedure for a person's extradition and take effect subject to this subsection.) *Subsection (4)* explains that this is also subject to section 40.
118. Under *subsection (5)* an asylum claim is finally determined, if it is allowed, when the Secretary of State has made this decision. Where the Secretary of State rejects the claim, it is finally determined when the Secretary of State makes his decision, if there is no right to appeal that decision. Where there is a right of appeal, the claim is finally determined when the period allowed to appeal against the decision has lapsed (and no appeal has been brought), or when the appeal is finally determined, withdrawn or abandoned (*subsection (6)*). An appeal has been finally determined when a final decision on it has been made, it has been withdrawn or abandoned and there is no further possibility of appeal or applying for leave to appeal. The remittal of an appeal does not amount to final determination (*subsections (7) and (8)*). Under *subsection (9)* the possibility of leave to appeal out of time against the Secretary of State's decision on an asylum claim must be ignored.