

EXTRADITION ACT 2003

EXPLANATORY NOTES

TERRITORIAL APPLICATION: WALES

Part 5

Miscellaneous and General Provisions

Section 208: National security

588. This section enables the Secretary of State to prevent a person's extradition where it would be against the interests of national security.
589. *Subsection (1)* provides for the section to apply if the Secretary of State believes that the conditions in *subsections (2) to (4)* apply. The condition in *subsection (2)* is that the person's extradition is sought, or likely to be sought, under either Part 1 or Part 2 of this Act. *Subsection (3)* gives two conditions, either of which must be met. The first is that the person was acting for the purpose of assisting in the exercise of a statutory power of this country in engaging in the conduct amounting to, or alleged to amount to the offence. The second is that the person is not liable under the criminal law of any part of the United Kingdom for the conduct amounting to, or alleged to amount to the offence as a result of an authorisation given by the Secretary of State. The third condition that must be met is that the person's extradition for the offence in question would be against the interests of national security (*subsection (4)*).
590. If satisfied that the necessary conditions are met the Secretary of State can issue a certificate to this effect (*subsection (5)*). *Subsection (6)* allows the Secretary of State, having issued such a certificate, to direct that the relevant Part 1 warrant or extradition request (Part 2) is not to be proceeded with for the offence in question. He may also, in addition to or in place of a direction to that effect, order the person's discharge (*subsection (7)*).
591. *Subsection (8)* sets out what is to happen in the event of the Secretary of State giving a direction under *subsection (6)(a)* (a Part 1 warrant):
- the designated authority must not issue a certificate if it has not already done so (see section 2);
 - the person is not required to appear before a judge and must be discharged if he has already been arrested (see sections 3 to 6);
 - the judge is not required to proceed with the case if the person has already been brought before him (see sections 7 and 8);
 - the judge is not required to continue proceedings if they have already begun (see sections 10 to 25);
 - if the person has consented to his extradition the judge is not required to order his extradition;

*These notes refer to the Extradition Act 2003 (c.41)
which received Royal Assent on 20th November 2003*

- the court is not required to deal with an appeal if one has been brought to the High Court or the House of Lords;
 - the person is not required to be extradited if his extradition has been ordered.
592. *Subsection (9)* sets out what is to happen in the event of the Secretary of State giving a direction under subsection (6)(b) (a Part 2 request):
- the Secretary of State is not required to issue a certificate if he has not already done so (see section 70);
 - the person is not required to be brought before a judge and must be discharged if he has already been arrested (see section 71);
 - the judge is not required to proceed with the case if the person has already been brought before him (see sections 72, 74, 75 and 76);
 - the judge is not required to continue proceedings if they have already begun (see sections 78 to 91);
 - if the person has consented to his extradition the judge is not required to send his case to the Secretary of State;
 - the court is not required to deal with an appeal if one has been brought to the High Court or the House of Lords;
 - the person is not required to be extradited if his extradition has been ordered.
593. *Subsection (10)* stipulates that the Secretary of State is required to sign in person any certificate, direction or order issued under this section.
594. *Subsections (11)* and *(12)* contain the appropriate modifications for this section to apply to Scotland.