



# Extradition Act 2003

## 2003 CHAPTER 41

### PART 2

#### EXTRADITION TO CATEGORY 2 TERRITORIES

##### *Secretary of State's functions*

#### **93 Secretary of State's consideration of case**

- (1) This section applies if the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited.
- (2) The Secretary of State must decide whether he is prohibited from ordering the person's extradition under any of these sections—
  - (a) section 94 (death penalty);
  - (b) section 95 (speciality);
  - (c) section 96 (earlier extradition to United Kingdom from other territory).
- (3) If the Secretary of State decides any of the questions in subsection (2) in the affirmative he must order the person's discharge.
- (4) If the Secretary of State decides those questions in the negative he must order the person to be extradited to the territory to which his extradition is requested unless—
  - (a) he is informed that the request has been withdrawn,
  - (b) he makes an order under section 126(2) or 179(2) for further proceedings on the request to be deferred and the person is discharged under section 180, or
  - (c) he orders the person's discharge under section 208.
- (5) In deciding the questions in subsection (2), the Secretary of State is not required to consider any representations received by him after the end of the permitted period.
- (6) The permitted period is the period of 6 weeks starting with the appropriate day.

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#### **94 Death penalty**

- (1) The Secretary of State must not order a person's extradition to a category 2 territory if he could be, will be or has been sentenced to death for the offence concerned in the category 2 territory.
- (2) Subsection (1) does not apply if the Secretary of State receives a written assurance which he considers adequate that a sentence of death—
  - (a) will not be imposed, or
  - (b) will not be carried out (if imposed).

#### **95 Speciality**

- (1) The Secretary of State must not order a person's extradition to a category 2 territory if there are no speciality arrangements with the category 2 territory.
- (2) But subsection (1) does not apply if the person consented to his extradition under section 127 before his case was sent to the Secretary of State.
- (3) There are speciality arrangements with a category 2 territory if (and only if) under the law of that territory or arrangements made between it and the United Kingdom a person who is extradited to the territory from the United Kingdom may be dealt with in the territory for an offence committed before his extradition only if—
  - (a) the offence is one falling within subsection (4), or
  - (b) he is first given an opportunity to leave the territory.
- (4) The offences are—
  - (a) the offence in respect of which the person is extradited;
  - (b) an extradition offence disclosed by the same facts as that offence, other than one in respect of which a sentence of death could be imposed;
  - (c) an extradition offence in respect of which the Secretary of State consents to the person being dealt with;
  - (d) an offence in respect of which the person waives the right that he would have (but for this paragraph) not to be dealt with for the offence.
- (5) Arrangements made with a category 2 territory which is a Commonwealth country or a British overseas territory may be made for a particular case or more generally.
- (6) A certificate issued by or under the authority of the Secretary of State confirming the existence of arrangements with a category 2 territory which is a Commonwealth country or a British overseas territory and stating the terms of the arrangements is conclusive evidence of those matters.

#### **96 Earlier extradition to United Kingdom from other territory**

The Secretary of State must not order a person's extradition to a category 2 territory if—

- (a) the person was extradited to the United Kingdom from another territory (the extraditing territory);
- (b) under arrangements between the United Kingdom and the extraditing territory, that territory's consent is required to the person's extradition from the United Kingdom to the category 2 territory in respect of the extradition offence under consideration;

- (c) that consent has not been given on behalf of the extraditing territory.

**97 Deferral: person charged with offence in United Kingdom**

- (1) This section applies if—
- (a) the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited;
  - (b) the person is charged with an offence in the United Kingdom.
- (2) The Secretary of State must not make a decision with regard to the person's extradition until one of these occurs—
- (a) the charge is disposed of;
  - (b) the charge is withdrawn;
  - (c) proceedings in respect of the charge are discontinued;
  - (d) an order is made for the charge to lie on the file or, in relation to Scotland, the diet is deserted *pro loco et tempore*.
- (3) If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the Secretary of State may defer making a decision with regard to the person's extradition until the sentence has been served.

**98 Deferral: person serving sentence in United Kingdom**

- (1) This section applies if—
- (a) the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited;
  - (b) the person is serving a sentence of imprisonment or another form of detention in the United Kingdom.
- (2) The Secretary of State may defer making a decision with regard to the person's extradition until the sentence has been served.

**99 Time limit for order for extradition or discharge**

- (1) This section applies if—
- (a) the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited;
  - (b) within the required period the Secretary of State does not make an order for the person's extradition or discharge.
- (2) If the person applies to the High Court to be discharged, the court must order his discharge.
- (3) The required period is the period of 2 months starting with the appropriate day.
- (4) If before the required period ends the Secretary of State applies to the High Court for it to be extended the High Court may make an order accordingly; and this subsection may apply more than once.

**100 Information**

- (1) If the Secretary of State orders a person's extradition under this Part he must—

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- (a) inform the person of the order;
  - (b) inform him in ordinary language that he has a right of appeal to the High Court;
  - (c) inform a person acting on behalf of the category 2 territory of the order.
- (2) But subsection (1)(b) does not apply if the person has consented to his extradition under section 127.
- (3) If the Secretary of State orders a person's extradition under this Part and he has received an assurance such as is mentioned in section 94(2), he must give the person a copy of the assurance when he informs him under subsection (1) of the order.
- (4) If the Secretary of State orders a person's discharge under this Part he must—
- (a) inform him of the order;
  - (b) inform a person acting on behalf of the category 2 territory of the order.

### **101 Making of order for extradition or discharge**

- (1) An order to which this section applies must be made under the hand of one of these—
- (a) the Secretary of State;
  - (b) a Minister of State;
  - (c) a Parliamentary Under-Secretary of State;
  - (d) a senior official.
- (2) But, in relation to Scotland, an order to which this section applies must be made under the hand of one of these—
- (a) a member of the Scottish Executive or a junior Scottish Minister;
  - (b) a senior official who is a member of the staff of the Scottish Administration.
- (3) This section applies to—
- (a) an order under section 93 for a person's extradition;
  - (b) an order under section 93 or 123 for a person's discharge.
- (4) A senior official is—
- (a) a member of the Senior Civil Service;
  - (b) a member of the Senior Management Structure of Her Majesty's Diplomatic Service.
- (5) If it appears to the Secretary of State that it is necessary to do so in consequence of any changes to the structure or grading of the home civil service or diplomatic service, he may by order make such amendments to subsection (4) as appear to him appropriate to preserve (so far as practicable) the effect of that subsection.

### **102 The appropriate day**

- (1) This section applies for the purposes of sections 93 and 99 if the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited.
- (2) If the person is charged with an offence in the United Kingdom, the appropriate day is the day on which one of these occurs—
- (a) the charge is disposed of;
  - (b) the charge is withdrawn;

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- (c) proceedings in respect of the charge are discontinued;
  - (d) an order is made for the charge to lie on the file, or in relation to Scotland, the diet is deserted *pro loco et tempore*.
- (3) If under section 97(3) or 98(2) the Secretary of State defers making a decision until the person has served a sentence, the appropriate day is the day on which the person finishes serving the sentence.
- (4) If section 126 applies in relation to the request for the person's extradition (the request concerned) the appropriate day is—
- (a) the day on which the Secretary of State makes an order under that section, if the order is for proceedings on the other request to be deferred;
  - (b) the day on which an order under section 180 is made, if the order under section 126 is for proceedings on the request concerned to be deferred and the order under section 180 is for the proceedings to be resumed.
- (5) If section 179 applies in relation to the request for the person's extradition, the appropriate day is—
- (a) the day on which the Secretary of State makes an order under that section, if the order is for proceedings on the warrant to be deferred;
  - (b) the day on which an order under section 180 is made, if the order under section 179 is for proceedings on the request to be deferred and the order under section 180 is for the proceedings to be resumed.
- (6) If more than one of subsections (2) to (5) applies, the appropriate day is the latest of the days found under the subsections which apply.
- (7) In any other case, the appropriate day is the day on which the judge sends the case to the Secretary of State for his decision whether the person is to be extradited.