



# Extradition Act 2003

## 2003 CHAPTER 41

### PART 1

#### EXTRADITION TO CATEGORY 1 TERRITORIES

##### *The extradition hearing*

#### Commencement Information

- II** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103](#), [art. 2](#) (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258](#) art. 2(2) and [S.I. 2003/3312](#) art. 2(2))

#### **9 Judge's powers at extradition hearing**

- (1) In England and Wales, at the extradition hearing the appropriate judge has the same powers (as nearly as may be) as a magistrates' court would have if the proceedings were the summary trial of an information against the person in respect of whom the Part 1 warrant was issued.
- (2) In Scotland, at the extradition hearing the appropriate judge has the same powers (as nearly as may be) as if the proceedings were summary proceedings in respect of an offence alleged to have been committed by the person in respect of whom the Part 1 warrant was issued.
- (3) In Northern Ireland, at the extradition hearing the appropriate judge has the same powers (as nearly as may be) as a magistrates' court would have if the proceedings were the hearing and determination of a complaint against the person in respect of whom the Part 1 warrant was issued.
- (4) If the judge adjourns the extradition hearing he must remand the person in custody or on bail.
- (5) <sup>[F1]</sup>If the person is remanded in custody, the appropriate judge may<sup>[F1]</sup> later grant bail.

*Status: Point in time view as at 21/07/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Cross Heading: The extradition hearing. (See end of Document for details)*

**Textual Amendments**

**F1** Words in s. 9(5) substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\), ss. 42, 53, Sch. 13 para. 16](#); [S.I. 2006/3364, art. 2\(d\)\(e\)](#)

**Commencement Information**

**I2** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103, art. 2](#) (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258 art. 2\(2\)](#) and [S.I. 2003/3312 art. 2\(2\)](#))

**10 Initial stage of extradition hearing**

- (1) This section applies if a person in respect of whom a Part 1 warrant is issued appears or is brought before the appropriate judge for the extradition hearing.
- (2) The judge must decide whether the offence specified in the Part 1 warrant is an extradition offence.
- (3) If the judge decides the question in subsection (2) in the negative he must order the person’s discharge.
- (4) If the judge decides that question in the affirmative he must proceed under section 11.

**Commencement Information**

**I3** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103, art. 2](#) (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258 art. 2\(2\)](#) and [S.I. 2003/3312 art. 2\(2\)](#))

**11 Bars to extradition**

- (1) If the judge is required to proceed under this section he must decide whether the person’s extradition to the category 1 territory is barred by reason of—
  - (a) the rule against double jeopardy;
  - [<sup>F2</sup>(aa) absence of prosecution decision;]
  - (b) extraneous considerations;
  - (c) the passage of time;
  - (d) the person’s age;
  - [<sup>F3</sup>(e) .....
  - (f) speciality;
  - (g) the person’s earlier extradition to the United Kingdom from another category 1 territory;
  - (h) the person’s earlier extradition to the United Kingdom from a non-category 1 territory.
  - [<sup>F4</sup>(i) the person's earlier transfer to the United Kingdom by the International Criminal Court.]
  - [<sup>F5</sup>(j) forum.]

- [<sup>F6</sup>(1A) But the judge is to decide whether the person's extradition is barred [<sup>F7</sup>by reason of—
  - (a) absence of prosecution decision, or
  - (b) forum,

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only]

in a case where the Part 1 warrant contains the statement referred to in section 2(3) (warrant issued for purposes of prosecution for offence in category 1 territory).]

- (2) Sections [F8 12 to 19F apply] for the interpretation of subsection (1).
- (3) If the judge decides any of the questions in subsection (1) in the affirmative he must order the person's discharge.
- (4) If the judge decides those questions in the negative and the person is alleged to be unlawfully at large after conviction of the extradition offence, the judge must proceed under section 20.
- (5) If the judge decides those questions in the negative and the person is accused of the commission of the extradition offence but is not alleged to be unlawfully at large after conviction of it, the judge must proceed under section [F9 21A].

#### Textual Amendments

- F2** S. 11(1)(aa) inserted (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), [ss. 156\(1\), 185\(1\)](#) (with [ss. 3, 21, 33, 42, 58, 75, 93, 156\(3\)](#)); S.I. 2014/1916, art. 2(c)
- F3** S. 11(1)(e) omitted (21.7.2014) by virtue of [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), [ss. 158\(2\), 185\(1\)](#) (with [ss. 3, 21, 33, 42, 58, 75, 93, 158\(3\)](#)); S.I. 2014/1916, art. 2(e)
- F4** S. 11(1)(i) inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), [ss. 42, 53](#), [Sch. 13 para. 3\(1\)\(a\)](#); S.I. 2006/3364, [art. 2\(d\)\(e\)](#)
- F5** S. 11(1)(j) inserted (14.10.2013 for E.W.N.I., 17.9.2021 for S.) by [Crime and Courts Act 2013 \(c. 22\)](#), [s. 61\(2\)](#), [Sch. 20 para. 2\(a\)](#) (with [Sch. 20 paras. 7, 8](#)); S.I. 2013/2349, art. 2(3); S.I. 2021/1018, art. 3
- F6** S. 11(1A) inserted (14.10.2013 for E.W.N.I., 17.9.2021 for S.) by [Crime and Courts Act 2013 \(c. 22\)](#), [s. 61\(2\)](#), [Sch. 20 para. 2\(b\)](#) (with [Sch. 20 paras. 7, 8](#)); S.I. 2013/2349, art. 2(3); S.I. 2021/1018, art. 3
- F7** Words in s. 11(1A) substituted (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), [s. 185\(1\)](#), [Sch. 11 para. 104](#) (with [ss. 21, 33, 42, 58, 75, 93](#)); S.I. 2014/1916, art. 2(t)
- F8** Words in s. 11(2) substituted (14.10.2013 for E.W.N.I., 17.9.2021 for S.) by [Crime and Courts Act 2013 \(c. 22\)](#), [s. 61\(2\)](#), [Sch. 20 para. 2\(c\)](#) (with [Sch. 20 paras. 7, 8](#)); S.I. 2013/2349, art. 2(3); S.I. 2021/1018, art. 3
- F9** Word in s. 11(5) substituted (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), [ss. 157\(1\), 185\(1\)](#) (with [ss. 3, 21, 33, 42, 58, 75, 93, 157\(5\)](#)); S.I. 2014/1916, art. 2(d)

#### Commencement Information

- I4** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103, art. 2](#) (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258 art. 2\(2\)](#) and [S.I. 2003/3312 art. 2\(2\)](#))

## 12 Rule against double jeopardy

A person's extradition to a category 1 territory is barred by reason of the rule against double jeopardy if (and only if) it appears that he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction on the assumption—

- (a) that the conduct constituting the extradition offence constituted an offence in the part of the United Kingdom where the judge exercises jurisdiction;
- (b) that the person were charged with the extradition offence in that part of the United Kingdom.

*Status: Point in time view as at 21/07/2014.*

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#### Commencement Information

- I5** Act wholly in force at 1.1.2004, see s. 221 and S.I. 2003/3103, **art. 2** (subject to **arts. 3-5**) (as amended by S.I. 2003/3258 art. 2(2) and S.I. 2003/3312 art. 2(2))

### [<sup>F10</sup>12A Absence of prosecution decision

- (1) A person's extradition to a category 1 territory is barred by reason of absence of prosecution decision if (and only if)—
- (a) it appears to the appropriate judge that there are reasonable grounds for believing that—
    - (i) the competent authorities in the category 1 territory have not made a decision to charge or have not made a decision to try (or have made neither of those decisions), and
    - (ii) the person's absence from the category 1 territory is not the sole reason for that failure,
 and
  - (b) those representing the category 1 territory do not prove that—
    - (i) the competent authorities in the category 1 territory have made a decision to charge and a decision to try, or
    - (ii) in a case where one of those decisions has not been made (or neither of them has been made), the person's absence from the category 1 territory is the sole reason for that failure.
- (2) In this section “to charge” and “to try”, in relation to a person and an extradition offence, mean—
- (a) to charge the person with the offence in the category 1 territory, and
  - (b) to try the person for the offence in the category 1 territory.]

#### Textual Amendments

- F10** S. 12A inserted (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), **ss. 156(2), 185(1)** (with **ss. 3, 21, 33, 42, 58, 75, 93, 156(3)**); S.I. 2014/1916, art. 2(c)

### 13 Extraneous considerations

A person's extradition to a category 1 territory is barred by reason of extraneous considerations if (and only if) it appears that—

- (a) the Part 1 warrant issued in respect of him (though purporting to be issued on account of the extradition offence) is in fact issued for the purpose of prosecuting or punishing him on account of his race, religion, nationality, gender, sexual orientation or political opinions, or
- (b) if extradited he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, gender, sexual orientation or political opinions.

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#### Commencement Information

- I6** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103, art. 2](#) (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258](#) art. 2(2) and [S.I. 2003/3312](#) art. 2(2))

### 14 Passage of time

A person's extradition to a category 1 territory is barred by reason of the passage of time if (and only if) it appears that it would be unjust or oppressive to extradite him by reason of the passage of time <sup>F11</sup> since he is alleged to have—

- (a) committed the extradition offence (where he is accused of its commission), or
- (b) become unlawfully at large (where he is alleged to have been convicted of it)

<sup>F11</sup>

#### Textual Amendments

- F11** Words in s. 14 substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\), ss. 42, 53, Sch. 13 para. 2\(1\)](#); [S.I. 2006/3364, art. 2\(d\)\(e\)](#)

#### Commencement Information

- I7** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103, art. 2](#) (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258](#) art. 2(2) and [S.I. 2003/3312](#) art. 2(2))

### 15 Age

A person's extradition to a category 1 territory is barred by reason of his age if (and only if) it would be conclusively presumed because of his age that he could not be guilty of the extradition offence on the assumption—

- (a) that the conduct constituting the extradition offence constituted an offence in the part of the United Kingdom where the judge exercises jurisdiction;
- (b) that the person carried out the conduct when the extradition offence was committed (or alleged to be committed);
- (c) that the person carried out the conduct in the part of the United Kingdom where the judge exercises jurisdiction.

#### Commencement Information

- I8** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103, art. 2](#) (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258](#) art. 2(2) and [S.I. 2003/3312](#) art. 2(2))

### <sup>F12</sup>16 Hostage-taking considerations

#### Textual Amendments

- F12** S. 16 repealed (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), ss. 158\(1\), 185\(1\)](#) (with [ss. 3, 21, 33, 42, 58, 75, 93, 158\(3\)](#)); [S.I. 2014/1916, art. 2\(e\)](#)

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#### **Commencement Information**

**I9** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103](#), **art. 2** (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258](#) art. 2(2) and [S.I. 2003/3312](#) art. 2(2))

## **17 Speciality**

- (1) A person's extradition to a category 1 territory is barred by reason of speciality if (and only if) there are no speciality arrangements with the category 1 territory.
- (2) There are speciality arrangements with a category 1 territory 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 (3), or
  - (b) the condition in subsection (4) is satisfied.
- (3) 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;
  - (c) an extradition offence in respect of which the appropriate judge gives his consent under section 55 to the person being dealt with;
  - (d) an offence which is not punishable with imprisonment or another form of detention;
  - (e) an offence in respect of which the person will not be detained in connection with his trial, sentence or appeal;
  - (f) 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.
- (4) The condition is that the person is given an opportunity to leave the category 1 territory and—
  - (a) he does not do so before the end of the permitted period, or
  - (b) if he does so before the end of the permitted period, he returns there.
- (5) The permitted period is 45 days starting with the day on which the person arrives in the category 1 territory.
- (6) Arrangements made with a category 1 territory which is a Commonwealth country or a British overseas territory may be made for a particular case or more generally.
- (7) A certificate issued by or under the authority of the Secretary of State confirming the existence of arrangements with a category 1 territory which is a Commonwealth country or a British overseas territory and stating the terms of the arrangements is conclusive evidence of those matters.

#### **Commencement Information**

**I10** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103](#), **art. 2** (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258](#) art. 2(2) and [S.I. 2003/3312](#) art. 2(2))

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## 18 Earlier extradition to United Kingdom from category 1 territory

A person's extradition to a category 1 territory is barred by reason of his earlier extradition to the United Kingdom from another category 1 territory if (and only if)—

- (a) the person was extradited to the United Kingdom from another category 1 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 1 territory in respect of the extradition offence under consideration;
- (c) that consent has not been given on behalf of the extraditing territory.

### Commencement Information

- I11** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103, art. 2](#) (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258](#) art. 2(2) and [S.I. 2003/3312](#) art. 2(2))

## 19 Earlier extradition to United Kingdom from non-category 1 territory

A person's extradition to a category 1 territory is barred by reason of his earlier extradition to the United Kingdom from a non-category 1 territory if (and only if)—

- (a) the person was extradited to the United Kingdom from a territory that is not a category 1 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 being dealt with in the United Kingdom in respect of the extradition offence under consideration;
- (c) consent has not been given on behalf of the extraditing territory to the person's extradition from the United Kingdom to the category 1 territory in respect of the extradition offence under consideration.

### Commencement Information

- I12** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103, art. 2](#) (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258](#) art. 2(2) and [S.I. 2003/3312](#) art. 2(2))

## [<sup>F13</sup>19A Earlier transfer to United Kingdom by International Criminal Court

(1) A person's extradition to a category 1 territory is barred by reason of his earlier transfer by the International Criminal Court if (and only if)—

- (a) the person was transferred to the United Kingdom to serve a sentence imposed by the Court;
- (b) under arrangements between the United Kingdom and the Court, the consent of the Presidency of the Court is required to the person's extradition from the United Kingdom to the category 1 territory in respect of the extradition offence under consideration;
- (c) that consent has not been given.

(2) Subsection (1) does not apply if the person has served the sentence imposed by the Court and has subsequently—

- (a) remained voluntarily in the United Kingdom for more than 30 days, or

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(b) left the United Kingdom and returned to it.]

#### **Textual Amendments**

**F13** S. 19A inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 3\(2\)](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)

#### **Commencement Information**

**I13** Act wholly in force at 1.1.2004, see s. 221 and [S.I. 2003/3103](#), [art. 2](#) (subject to [arts. 3-5](#)) (as amended by [S.I. 2003/3258](#) art. 2(2) and [S.I. 2003/3312](#) art. 2(2))

### **[<sup>F14</sup>19B Forum**

- (1) The extradition of a person (“D”) to a category 1 territory is barred by reason of forum if the extradition would not be in the interests of justice.
- (2) For the purposes of this section, the extradition would not be in the interests of justice if the judge—
  - (a) decides that a substantial measure of D's relevant activity was performed in the United Kingdom; and
  - (b) decides, having regard to the specified matters relating to the interests of justice (and only those matters), that the extradition should not take place.
- (3) These are the specified matters relating to the interests of justice—
  - (a) the place where most of the loss or harm resulting from the extradition offence occurred or was intended to occur;
  - (b) the interests of any victims of the extradition offence;
  - (c) any belief of a prosecutor that the United Kingdom, or a particular part of the United Kingdom, is not the most appropriate jurisdiction in which to prosecute D in respect of the conduct constituting the extradition offence;
  - (d) were D to be prosecuted in a part of the United Kingdom for an offence that corresponds to the extradition offence, whether evidence necessary to prove the offence is or could be made available in the United Kingdom;
  - (e) any delay that might result from proceeding in one jurisdiction rather than another;
  - (f) the desirability and practicability of all prosecutions relating to the extradition offence taking place in one jurisdiction, having regard (in particular) to—
    - (i) the jurisdictions in which witnesses, co-defendants and other suspects are located, and
    - (ii) the practicability of the evidence of such persons being given in the United Kingdom or in jurisdictions outside the United Kingdom;
  - (g) D's connections with the United Kingdom.
- (4) In deciding whether the extradition would not be in the interests of justice, the judge must have regard to the desirability of not requiring the disclosure of material which is subject to restrictions on disclosure in the category 1 territory concerned.
- (5) If, on an application by a prosecutor, it appears to the judge that the prosecutor has considered the offences for which D could be prosecuted in the United Kingdom, or a part of the United Kingdom, in respect of the conduct constituting the extradition



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offence, the judge must make that prosecutor a party to the proceedings on the question of whether D's extradition is barred by reason of forum.

- (6) In this section “ D's relevant activity ” means activity which is material to the commission of the extradition offence and which is alleged to have been performed by D.

#### Textual Amendments

**F14** Ss. 19B-19F inserted (18.9.2013 for specified purposes, 14.10.2013 for E.W.N.I. in so far as not already in force) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 3](#) (with [Sch. 20 para. 78](#)); [S.I. 2013/2349](#), art. 2(2)(3)

### 19C Effect of prosecutor's certificates on forum proceedings

- (1) The judge hearing proceedings under section 19B (the “forum proceedings”) must decide that the extradition is not barred by reason of forum if (at a time when the judge has not yet decided the proceedings) the judge receives a prosecutor's certificate relating to the extradition.
- (2) That duty to decide the forum proceedings in that way is subject to the determination of any question relating to the prosecutor's certificate raised in accordance with section 19E.
- (3) A designated prosecutor may apply for the forum proceedings to be adjourned for the purpose of assisting that or any other designated prosecutor—
- (a) in considering whether to give a prosecutor's certificate relating to the extradition,
  - (b) in giving such a certificate, or
  - (c) in sending such a certificate to the judge.
- (4) If such an application is made, the judge must—
- (a) adjourn the forum proceedings until the application is decided; and
  - (b) continue the adjournment, for such period as appears to the judge to be reasonable, if the application is granted.
- (5) But the judge must end the adjournment if the application is not granted.

#### Textual Amendments

**F14** Ss. 19B-19F inserted (18.9.2013 for specified purposes, 14.10.2013 for E.W.N.I. in so far as not already in force) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 3](#) (with [Sch. 20 para. 78](#)); [S.I. 2013/2349](#), art. 2(2)(3)

### 19D Prosecutor's certificates

- (1) A “prosecutor's certificate” is a certificate given by a designated prosecutor which—
- (a) certifies both matter A and matter B, and
  - (b) certifies either matter C or matter D.

*Status: Point in time view as at 21/07/2014.*

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

#### **Textual Amendments**

**F14** Ss. 19B-19F inserted (18.9.2013 for specified purposes, 14.10.2013 for E.W.N.I. in so far as not already in force) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 3](#) (with [Sch. 20 para. 78](#)); [S.I. 2013/2349](#), art. 2(2)(3)

### **19E Questioning of prosecutor's certificate**

- (1) No decision of a designated prosecutor relating to a prosecutor's certificate in respect of D's extradition (a “relevant certification decision”) may be questioned except on an appeal under section 26 against an order for that extradition.

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- (2) In England and Wales, and Northern Ireland, for the purpose of—
  - (a) determining whether to give permission for a relevant certification decision to be questioned, and
  - (b) determining any such question (if that permission is given),the High Court must apply the procedures and principles which would be applied by it on an application for judicial review.
- (3) In Scotland, for the purpose of determining any questioning of a relevant certification decision, the High Court must apply the procedures and principles that would be applied by it on an application for judicial review.
- (4) In a case where the High Court quashes a prosecutor's certificate, the High Court is to decide the question of whether or not the extradition is barred by reason of forum.
- (5) Where the High Court is required to decide that question by virtue of subsection (4)—
  - (a) sections 19B to 19D and this section apply in relation to that decision (with the appropriate modifications) as they apply to a decision by a judge; and
  - (b) in particular—
    - (i) a reference in this section to an appeal under section 26 has effect as a reference to an appeal under section 32 to the Supreme Court;
    - (ii) a reference in this section to the High Court has effect as a reference to the Supreme Court.

#### Textual Amendments

**F14** Ss. 19B-19F inserted (18.9.2013 for specified purposes, 14.10.2013 for E.W.N.I. in so far as not already in force) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 3](#) (with [Sch. 20 para. 78](#)); [S.I. 2013/2349](#), art. 2(2)(3)

#### 19F Interpretation of sections 19B to 19E

- (1) This section applies for the purposes of sections 19B to 19E (and this section).
- (2) These expressions have the meanings given—
  - “ D ” has the meaning given in section 19B(1);
  - “ designated prosecutor ” means—
    - (a) a member of the Crown Prosecution Service, or
    - (b) any other person who—
      - (i) is a prosecutor designated for the purposes of this section by order made by the Secretary of State, or
      - (ii) is within a description of prosecutors so designated;
  - “ extradition offence ” means the offence specified in the Part 1 warrant (including the conduct that constitutes the extradition offence);
  - “ forum proceedings ” has the meaning given in section 19C(1);
  - “ part of the United Kingdom ” means—
    - (a) England and Wales;
    - (b) Scotland;
    - (c) Northern Ireland;

*Status: Point in time view as at 21/07/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Cross Heading: The extradition hearing. (See end of Document for details)*

“ prosecutor ” means a person who has responsibility for prosecuting offences in any part of the United Kingdom (whether or not the person also has other responsibilities);

“ prosecutor's certificate ” has the meaning given in section 19D(1);

“ responsible prosecutor ”, in relation to a prosecutor's certificate, means—

- (a) the designated prosecutor giving the certificate, or
- (b) another designated prosecutor.

- (3) In determining for any purpose whether an offence corresponds to the extradition offence, regard must be had, in particular, to the nature and seriousness of the two offences.
- (4) A reference to a formal decision as to the prosecution of D for an offence is a reference to a decision (made after complying with, in particular, any applicable requirement concerning a code of practice) that D should, or should not, be prosecuted for the offence.]

#### **Textual Amendments**

**F14** Ss. 19B-19F inserted (18.9.2013 for specified purposes, 14.10.2013 for E.W.N.I. in so far as not already in force) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 3](#) (with [Sch. 20 para. 78](#)); [S.I. 2013/2349](#), art. 2(2)(3)

## **20 Case where person has been convicted**

- (1) If the judge is required to proceed under this section (by virtue of section 11) he must decide whether the person was convicted in his presence.
- (2) If the judge decides the question in subsection (1) in the affirmative he must proceed under section 21.
- (3) If the judge decides that question in the negative he must decide whether the person deliberately absented himself from his trial.
- (4) If the judge decides the question in subsection (3) in the affirmative he must proceed under section 21.
- (5) If the judge decides that question in the negative he must decide whether the person would be entitled to a retrial or (on appeal) to a review amounting to a retrial.
- (6) If the judge decides the question in subsection (5) in the affirmative he must proceed under section 21.
- (7) If the judge decides that question in the negative he must order the person's discharge.
- (8) The judge must not decide the question in subsection (5) in the affirmative unless, in any proceedings that it is alleged would constitute a retrial or a review amounting to a retrial, the person would have these rights—
  - (a) the right to defend himself in person or through legal assistance of his own choosing or, if he had not sufficient means to pay for legal assistance, to be given it free when the interests of justice so required;
  - (b) the right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

*Status: Point in time view as at 21/07/2014.*

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### Commencement Information

**114** Act wholly in force at 1.1.2004, see s. 221 and S.I. 2003/3103, **art. 2** (subject to **arts. 3-5**) (as amended by S.I. 2003/3258 art. 2(2) and S.I. 2003/3312 art. 2(2))

## 21 <sup>F15</sup>Person unlawfully at large: human rights]

- (1) If the judge is required to proceed under this section (by virtue of section <sup>F16</sup>... 20) he must decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998 (c. 42).
- (2) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.
- (3) If the judge decides that question in the affirmative he must order the person to be extradited to the category 1 territory in which the warrant was issued.
- (4) If the judge makes an order under subsection (3) he must remand the person in custody or on bail to wait for his extradition to the category 1 territory.
- (5) [<sup>F17</sup>If the person is remanded in custody, the appropriate judge may] later grant bail.

### Textual Amendments

- F15** S. 21 heading substituted (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), **Sch. 11 para. 105(2)** (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 2(t)
- F16** Words in s. 21(1) omitted (21.7.2014) by virtue of [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), **Sch. 11 para. 105(3)** (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 2(t)
- F17** Words in s. 21(5) substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, **Sch. 13 para. 16**; S.I. 2006/3364, **art. 2(d)(e)**

## <sup>F18</sup>21A Person not convicted: human rights and proportionality

- (1) If the judge is required to proceed under this section (by virtue of section 11), the judge must decide both of the following questions in respect of the extradition of the person ("D")—
  - (a) whether the extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998;
  - (b) whether the extradition would be disproportionate.
- (2) In deciding whether the extradition would be disproportionate, the judge must take into account the specified matters relating to proportionality (so far as the judge thinks it appropriate to do so); but the judge must not take any other matters into account.
- (3) These are the specified matters relating to proportionality—
  - (a) the seriousness of the conduct alleged to constitute the extradition offence;
  - (b) the likely penalty that would be imposed if D was found guilty of the extradition offence;
  - (c) the possibility of the relevant foreign authorities taking measures that would be less coercive than the extradition of D.
- (4) The judge must order D's discharge if the judge makes one or both of these decisions—

*Status: Point in time view as at 21/07/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Extradition Act 2003, Cross Heading: The extradition hearing. (See end of Document for details)*

- (a) that the extradition would not be compatible with the Convention rights;
  - (b) that the extradition would be disproportionate.
- (5) The judge must order D to be extradited to the category 1 territory in which the warrant was issued if the judge makes both of these decisions—
- (a) that the extradition would be compatible with the Convention rights;
  - (b) that the extradition would not be disproportionate.
- (6) If the judge makes an order under subsection (5) he must remand the person in custody or on bail to wait for extradition to the category 1 territory.
- (7) If the person is remanded in custody, the appropriate judge may later grant bail.
- (8) In this section “relevant foreign authorities” means the authorities in the territory to which D would be extradited if the extradition went ahead. ]

#### **Textual Amendments**

**F18** S. 21A inserted (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), ss. [157\(2\)\(4\)](#), [185\(1\)](#) (with ss. [3](#), [21](#), [33](#), [42](#), [58](#), [75](#), [93](#), [157\(5\)](#)); S.I. 2014/1916, art. 2(d)

#### **[<sup>F19</sup>21B Request for temporary transfer etc**

- (1) This section applies if—
- (a) a Part 1 warrant is issued which contains the statement referred to in section 2(3) (warrant issued for purposes of prosecution for offence in category 1 territory), and
  - (b) at any time before or in the extradition hearing, the appropriate judge is informed that a request under subsection (2) or (3) has been made.
- (2) A request under this subsection is a request by a judicial authority of the category 1 territory in which the warrant is issued (“the requesting territory”)—
- (a) that the person in respect of whom the warrant is issued be temporarily transferred to the requesting territory, or
  - (b) that arrangements be made to enable the person to speak with representatives of an authority in the requesting territory responsible for investigating, prosecuting or trying the offence specified in the warrant.
- (3) A request under this subsection is a request by the person in respect of whom the warrant is issued—
- (a) to be temporarily transferred to the requesting territory, or
  - (b) that arrangements be made to enable the person to speak with representatives of an authority in the requesting territory responsible for investigating, prosecuting or trying the offence specified in the warrant.
- (4) The judge must order further proceedings in respect of the extradition to be adjourned if the judge thinks it necessary to do so to enable the person (in the case of a request under subsection (2)) or the authority by which the warrant is issued (in the case of a request under subsection (3)) to consider whether to consent to the request.

An adjournment under this subsection must not be for more than 7 days.

- (5) If the person or authority consents to the request, the judge must—

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*Status: Point in time view as at 21/07/2014.*

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- (a) make whatever orders and directions seem appropriate for giving effect to the request;
  - (b) order further proceedings in respect of the extradition to be adjourned for however long seems necessary to enable the orders and directions to be carried out.
- (6) If the request, or consent to the request, is withdrawn before effect (or full effect) has been given to it—
- (a) no steps (or further steps) may be taken to give effect to the request;
  - (b) the judge may make whatever further orders and directions seem appropriate (including an order superseding one made under subsection (5)(b)).
- (7) A person may not make a request under paragraph (a) or (b) of subsection (3) in respect of a warrant if the person has already given consent to a request under the corresponding paragraph of subsection (2) in respect of that warrant (even if that consent has been withdrawn).
- (8) A person may not make a further request under paragraph (a) or (b) of subsection (3) in respect of a warrant if the person has already made a request under that paragraph in respect of that warrant (even if that request has been withdrawn).
- (9) If—
- (a) a request under subsection (2) or (3) is made before a date has been fixed on which the extradition hearing is to begin, and
  - (b) the proceedings are adjourned under this section,
- the permitted period for the purposes of fixing that date (see section 8(4)) is extended by the number of days for which the proceedings are so adjourned.]

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**Textual Amendments**

**F19** S. 21B inserted (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), ss. 159, 185(1) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 2(f)

**Status:**

Point in time view as at 21/07/2014.

**Changes to legislation:**

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