



Extradition Act 2003

2003 CHAPTER 41

PART 2

EXTRADITION TO CATEGORY 2 TERRITORIES

Appeals

103 Appeal where case sent to Secretary of State

- (1) If the judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited, the person may appeal to the High Court against the relevant decision.
- (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) The relevant decision is the decision that resulted in the case being sent to the Secretary of State.
- (4) An appeal under this section may be brought on a question of law or fact.
- (5) If an appeal is brought under this section before the Secretary of State has decided whether the person is to be extradited the appeal must not be heard until after the Secretary of State has made his decision.
- (6) If the Secretary of State orders the person's discharge the appeal must not be proceeded with.
- (7) No appeal may be brought under this section if the Secretary of State has ordered the person's discharge.
- (8) If notice of an appeal under section 110 against the decision which resulted in the order for the person's discharge is given in accordance with subsection (5) of that section—
 - (a) subsections (6) and (7) do not apply;
 - (b) no appeal may be brought under this section if the High Court has made its decision on the appeal.

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- (9) Notice of an appeal under this section must be given in accordance with rules of court before the end of the permitted period, which is 14 days starting with the day on which the Secretary of State informs the person under section 100(1) or (4) of the order he has made in respect of the person.

104 Court's powers on appeal under section 103

- (1) On an appeal under section 103 the High Court may—
- (a) allow the appeal;
 - (b) direct the judge to decide again a question (or questions) which he decided at the extradition hearing;
 - (c) dismiss the appeal.
- (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.
- (3) The conditions are that—
- (a) the judge ought to have decided a question before him at the extradition hearing differently;
 - (b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge.
- (4) The conditions are that—
- (a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;
 - (b) the issue or evidence would have resulted in the judge deciding a question before him at the extradition hearing differently;
 - (c) if he had decided the question in that way, he would have been required to order the person's discharge.
- (5) If the court allows the appeal it must—
- (a) order the person's discharge;
 - (b) quash the order for his extradition.
- (6) If the judge comes to a different decision on any question that is the subject of a direction under subsection (1)(b) he must order the person's discharge.
- (7) If the judge comes to the same decision as he did at the extradition hearing on the question that is (or all the questions that are) the subject of a direction under subsection (1)(b) the appeal must be taken to have been dismissed by a decision of the High Court.

105 Appeal against discharge at extradition hearing

- (1) If at the extradition hearing the judge orders a person's discharge, an appeal to the High Court may be brought on behalf of the category 2 territory against the relevant decision.
- (2) But subsection (1) does not apply if the order for the person's discharge was under section 122.
- (3) The relevant decision is the decision which resulted in the order for the person's discharge.

- (4) An appeal under this section may be brought on a question of law or fact.
- (5) Notice of an appeal under this section must be given in accordance with rules of court before the end of the permitted period, which is 14 days starting with the day on which the order for the person's discharge is made.

106 Court's powers on appeal under section 105

- (1) On an appeal under section 105 the High Court may—
 - (a) allow the appeal;
 - (b) direct the judge to decide the relevant question again;
 - (c) dismiss the appeal.
- (2) A question is the relevant question if the judge's decision on it resulted in the order for the person's discharge.
- (3) The court may allow the appeal only if the conditions in subsection (4) or the conditions in subsection (5) are satisfied.
- (4) The conditions are that—
 - (a) the judge ought to have decided the relevant question differently;
 - (b) if he had decided the question in the way he ought to have done, he would not have been required to order the person's discharge.
- (5) The conditions are that—
 - (a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;
 - (b) the issue or evidence would have resulted in the judge deciding the relevant question differently;
 - (c) if he had decided the question in that way, he would not have been required to order the person's discharge.
- (6) If the court allows the appeal it must—
 - (a) quash the order discharging the person;
 - (b) remit the case to the judge;
 - (c) direct him to proceed as he would have been required to do if he had decided the relevant question differently at the extradition hearing.
- (7) If the court makes a direction under subsection (1)(b) and the judge decides the relevant question differently he must proceed as he would have been required to do if he had decided that question differently at the extradition hearing.
- (8) If the court makes a direction under subsection (1)(b) and the judge does not decide the relevant question differently the appeal must be taken to have been dismissed by a decision of the High Court.

107 Detention pending conclusion of appeal under section 105

- (1) This section applies if immediately after the judge orders the person's discharge the judge is informed on behalf of the category 2 territory of an intention to appeal under section 105.
- (2) The judge must remand the person in custody or on bail while the appeal is pending.

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- (3) If the judge remands the person in custody he may later grant bail.
- (4) An appeal under section 105 ceases to be pending at the earliest of these times—
 - (a) when the proceedings on the appeal are discontinued;
 - (b) when the High Court dismisses the appeal, if the court is not immediately informed on behalf of the category 2 territory of an intention to apply for leave to appeal to the House of Lords;
 - (c) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the House of Lords against the decision of the High Court on the appeal is granted;
 - (d) when there is no further step that can be taken on behalf of the category 2 territory in relation to the appeal (ignoring any power of a court to grant leave to take a step out of time).
- (5) The preceding provisions of this section apply to Scotland with these modifications—
 - (a) in subsection (4)(b) omit the words from “if” to the end;
 - (b) omit subsection (4)(c).

108 Appeal against extradition order

- (1) If the Secretary of State orders a person’s extradition under this Part, the person may appeal to the High Court against the order.
- (2) But subsection (1) does not apply if the person has consented to his extradition under section 127.
- (3) An appeal under this section may be brought on a question of law or fact.
- (4) Notice of an appeal under this section must be given in accordance with rules of court before the end of the permitted period, which is 14 days starting with the day on which the Secretary of State informs the person of the order under section 100(1).

109 Court’s powers on appeal under section 108

- (1) On an appeal under section 108 the High Court may—
 - (a) allow the appeal;
 - (b) dismiss the appeal.
- (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.
- (3) The conditions are that—
 - (a) the Secretary of State ought to have decided a question before him differently;
 - (b) if he had decided the question in the way he ought to have done, he would not have ordered the person’s extradition.
- (4) The conditions are that—
 - (a) an issue is raised that was not raised when the case was being considered by the Secretary of State or information is available that was not available at that time;
 - (b) the issue or information would have resulted in the Secretary of State deciding a question before him differently;

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- (c) if he had decided the question in that way, he would not have ordered the person's extradition.
- (5) If the court allows the appeal it must—
 - (a) order the person's discharge;
 - (b) quash the order for his extradition.

110 Appeal against discharge by Secretary of State

- (1) If the Secretary of State makes an order for a person's discharge under this Part, an appeal to the High Court may be brought on behalf of the category 2 territory against the relevant decision.
- (2) But subsection (1) does not apply if the order for the person's discharge was under section 123.
- (3) The relevant decision is the decision which resulted in the order for the person's discharge.
- (4) An appeal under this section may be brought on a question of law or fact.
- (5) Notice of an appeal under this section must be given in accordance with rules of court before the end of the permitted period, which is 14 days starting with the day on which (under section 100(4)) the Secretary of State informs a person acting on behalf of the category 2 territory of the order.

111 Court's powers on appeal under section 110

- (1) On an appeal under section 110 the High Court may—
 - (a) allow the appeal;
 - (b) dismiss the appeal.
- (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.
- (3) The conditions are that—
 - (a) the Secretary of State ought to have decided a question before him differently;
 - (b) if he had decided the question in the way he ought to have done, he would have ordered the person's extradition.
- (4) The conditions are that—
 - (a) an issue is raised that was not raised when the case was being considered by the Secretary of State or information is available that was not available at that time;
 - (b) the issue or information would have resulted in the Secretary of State deciding a question before him differently;
 - (c) if he had decided the question in that way, he would have ordered the person's extradition.
- (5) If the court allows the appeal it must—
 - (a) quash the order discharging the person;
 - (b) order the person's extradition.

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112 Detention pending conclusion of appeal under section 110

- (1) This section applies if immediately after the Secretary of State orders the person's discharge under this Part the Secretary of State is informed on behalf of the category 2 territory of an intention to appeal under section 110.
- (2) The judge must remand the person in custody or on bail while the appeal is pending.
- (3) If the judge remands the person in custody he may later grant bail.
- (4) An appeal under section 110 ceases to be pending at the earliest of these times—
 - (a) when the proceedings on the appeal are discontinued;
 - (b) when the High Court dismisses the appeal, if the court is not immediately informed on behalf of the category 2 territory of an intention to apply for leave to appeal to the House of Lords;
 - (c) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the House of Lords against the decision of the High Court on the appeal is granted;
 - (d) when there is no further step that can be taken on behalf of the category 2 territory in relation to the appeal (ignoring any power of a court to grant leave to take a step out of time).
- (5) The preceding provisions of this section apply to Scotland with these modifications—
 - (a) in subsection (4)(b) omit the words from “if” to the end;
 - (b) omit subsection (4)(c).

113 Appeal to High Court: time limit for start of hearing

- (1) Rules of court must prescribe the period (the relevant period) within which the High Court must begin to hear an appeal under section 103, 105, 108 or 110.
- (2) The High Court must begin to hear the appeal before the end of the relevant period.
- (3) The High Court may extend the relevant period if it believes it to be in the interests of justice to do so; and this subsection may apply more than once.
- (4) The power in subsection (3) may be exercised even after the end of the relevant period.
- (5) If subsection (2) is not complied with and the appeal is under section 103 or 108—
 - (a) the appeal must be taken to have been allowed by a decision of the High Court;
 - (b) the person whose extradition has been ordered must be taken to have been discharged by the High Court;
 - (c) the order for the person's extradition must be taken to have been quashed by the High Court.
- (6) If subsection (2) is not complied with and the appeal is under section 105 or 110 the appeal must be taken to have been dismissed by a decision of the High Court.

114 Appeal to House of Lords

- (1) An appeal lies to the House of Lords from a decision of the High Court on an appeal under section 103, 105, 108 or 110.
- (2) An appeal under this section lies at the instance of—

- (a) the person whose extradition is requested;
 - (b) a person acting on behalf of the category 2 territory.
- (3) An appeal under this section lies only with the leave of the High Court or the House of Lords.
- (4) Leave to appeal under this section must not be granted unless—
- (a) the High Court has certified that there is a point of law of general public importance involved in the decision, and
 - (b) it appears to the court granting leave that the point is one which ought to be considered by the House of Lords.
- (5) An application to the High Court for leave to appeal under this section must be made before the end of the permitted period, which is 14 days starting with the day on which the court makes its decision on the appeal to it.
- (6) An application to the House of Lords for leave to appeal under this section must be made before the end of the permitted period, which is 14 days starting with the day on which the High Court refuses leave to appeal.
- (7) If leave to appeal under this section is granted, the appeal must be brought before the end of the permitted period, which is 28 days starting with the day on which leave is granted.
- (8) If subsection (7) is not complied with—
- (a) the appeal must be taken to have been brought;
 - (b) the appeal must be taken to have been dismissed by the House of Lords immediately after the end of the period permitted under that subsection.
- (9) These must be ignored for the purposes of subsection (8)(b)—
- (a) any power of a court to extend the period permitted for bringing the appeal;
 - (b) any power of a court to grant leave to take a step out of time.
- (10) The High Court may grant bail to a person appealing under this section or applying for leave to appeal under this section.
- (11) Section 5 of the Appellate Jurisdiction Act 1876 (c. 59) (composition of House of Lords for hearing and determination of appeals) applies in relation to an appeal under this section or an application for leave to appeal under this section as it applies in relation to an appeal under that Act.
- (12) An order of the House of Lords which provides for an application for leave to appeal under this section to be determined by a committee constituted in accordance with section 5 of the Appellate Jurisdiction Act 1876 may direct that the decision of the committee is taken on behalf of the House.
- (13) The preceding provisions of this section do not apply to Scotland.

115 Powers of House of Lords on appeal under section 114

- (1) On an appeal under section 114 the House of Lords may—
- (a) allow the appeal;
 - (b) dismiss the appeal.
- (2) Subsection (3) applies if—

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- (a) the person whose extradition is requested brings an appeal under section 114, and
 - (b) the House of Lords allows the appeal.
- (3) The House of Lords must—
- (a) order the person’s discharge;
 - (b) quash the order for his extradition, if the appeal was against a decision of the High Court to dismiss an appeal under section 103 or 108 or to allow an appeal under section 110.
- (4) Subsection (5) applies if—
- (a) the High Court allows an appeal under section 103 or 108 by the person whose extradition is requested or dismisses an appeal under section 110 by a person acting on behalf of the category 2 territory,
 - (b) a person acting on behalf of the category 2 territory brings an appeal under section 114 against the decision of the High Court, and
 - (c) the House of Lords allows the appeal.
- (5) The House of Lords must—
- (a) quash the order discharging the person made by the High Court under section 104(5) or 109(5) or by the Secretary of State under this Part;
 - (b) order the person to be extradited to the category 2 territory.
- (6) Subsection (7) applies if—
- (a) the High Court dismisses an appeal under section 105 against a decision made by the judge at the extradition hearing,
 - (b) a person acting on behalf of the category 2 territory brings an appeal under section 114 against the decision of the High Court, and
 - (c) the House of Lords allows the appeal.
- (7) The House of Lords must—
- (a) quash the order of the judge discharging the person whose extradition is requested;
 - (b) remit the case to the judge;
 - (c) direct him to proceed as he would have been required to do if he had decided the relevant question differently at the extradition hearing.
- (8) A question is the relevant question if the judge’s decision on it resulted in the order for the person’s discharge.

116 Appeals: general

A decision under this Part of the judge or the Secretary of State may be questioned in legal proceedings only by means of an appeal under this Part.