



Extradition Act 2003

2003 CHAPTER 41

PART 1

EXTRADITION TO CATEGORY 1 TERRITORIES

Time for extradition

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))

35 Extradition where no appeal

- (1) This section applies if—
- the appropriate judge orders a person's extradition to a category 1 territory under this Part, and
 - no notice of an appeal under section 26 is given before the end of the period permitted under that section.
- (2) But this section does not apply if the order is made under section 46 or 48.
- (3) The person must be extradited to the category 1 territory before the end of the required period.
- (4) The required period is—
- 10 days starting with [^{F1}the first day after the period permitted under section 26 for giving notice of appeal against the judge's order]^{F1}, or
 - if the judge and the authority which issued the Part 1 warrant agree a later date, 10 days starting with the later date.

Status: Point in time view as at 29/07/2013.

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

- (5) If subsection (3) is not complied with and the person applies to the appropriate judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay.
- (6) These must be ignored for the purposes of subsection (1)(b)—
- (a) any power of a court to extend the period permitted for giving notice of appeal;
 - (b) any power of a court to grant leave to take a step out of time.

Textual Amendments

F1 Words in s. 35(4)(a) substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 9\(1\)](#); [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))

36 Extradition following appeal

- (1) This section applies if—
- (a) there is an appeal to the High Court under section 26 against an order for a person's extradition to a category 1 territory, and
 - (b) the effect of the decision of the relevant court on the appeal is that the person is to be extradited there.
- (2) The person must be extradited to the category 1 territory before the end of the required period.
- (3) The required period is—
- (a) 10 days starting with the day on which the decision of the relevant court on the appeal becomes final or proceedings on the appeal are discontinued, or
 - (b) if the relevant court and the authority which issued the Part 1 warrant agree a later date, 10 days starting with the later date.
- (4) The relevant court is—
- (a) the High Court, if there is no appeal to the [F²Supreme Court] against the decision of the High Court on the appeal;
 - (b) the [F²Supreme Court], if there is such an appeal.
- (5) The decision of the High Court on the appeal becomes final—
- (a) when the period permitted for applying to the High Court for leave to appeal to the [F²Supreme Court] ends, if there is no such application;
 - (b) when the period permitted for applying to the [F²Supreme Court] for leave to appeal to it ends, if the High Court refuses leave to appeal and there is no application to the [F²Supreme Court] for leave to appeal;
 - (c) when the [F²Supreme Court] refuses leave to appeal to it;
 - (d) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the [F²Supreme Court] is granted, if no such appeal is brought before the end of that period.
- (6) These must be ignored for the purposes of subsection (5)—

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- (a) any power of a court to extend the period permitted for applying for leave to appeal;
 - (b) any power of a court to grant leave to take a step out of time.
- (7) The decision of the [^{F2}Supreme Court] on the appeal becomes final when it is made.
- (8) If subsection (2) is not complied with and the person applies to the appropriate judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay.
- [^{F3}(9) The preceding provisions of this section do not apply to Scotland.]

Textual Amendments

- F2** Words in s. 36 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40, 148, Sch. 9 para. 81\(4\)\(c\)](#); [S.I. 2009/1604, art. 2\(d\)](#)
- F3** S. 36(9) substituted (29.7.2013) by [Crime and Courts Act 2013 \(c. 22\), s. 61\(2\), Sch. 20 para. 21\(1\)](#) (with [Sch. 20 para. 29](#)); [S.I. 2013/1682, art. 2\(1\)\(b\)](#) (with [art. 4\(4\)](#))

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\(2\)](#))

[^{F4}36A Extradition following appeal: Scotland

- (1) This section applies if—
- (a) there is an appeal to the High Court under section 26 against an order for a person's extradition to a category 1 territory, and
 - (b) the effect of the decision in the relevant proceedings is that the person must be extradited to the category 1 territory.
- (2) The “relevant proceedings” are—
- (a) the proceedings on the appeal under section 26 if—
 - (i) no Supreme Court devolution appeal is made, or
 - (ii) a Supreme Court devolution appeal is made and the Supreme Court remits the case to the High Court, or
 - (b) the proceedings on a Supreme Court devolution appeal if such an appeal is made and the Supreme Court does not remit the case to the High Court.
- (3) The person must be extradited to the category 1 territory before the end of the required period, which is 28 days starting with—
- (a) the day on which the decision in the relevant proceedings becomes final, or
 - (b) the day on which the relevant proceedings are abandoned.
- (4) In a case where the relevant proceedings are proceedings on the appeal under section 26 (except where the case has been remitted to the High Court on a Supreme Court devolution appeal), the decision in those proceedings becomes final—
- (a) at the end of the period of 28 days starting with the day of the decision (unless, within that period, an application is made to the High Court for permission to make a Supreme Court devolution appeal);
 - (b) at the end of the period of 28 days starting with the day when the High Court refuses permission to make a Supreme Court devolution appeal (unless, within

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- that period, an application is made to the Supreme Court for permission to make that appeal);
- (c) when the Supreme Court refuses permission to make a Supreme Court devolution appeal;
- (d) at the end of the permitted period, which is 28 days starting with the day on which permission to make a Supreme Court devolution appeal is granted, if no such appeal is brought before the end of that period.
- (5) These must be ignored for the purposes of subsection (4)—
- (a) any power of a court to extend the period permitted for applying for permission to appeal;
- (b) any power of a court to grant permission to take a step out of time.
- (6) In a case where—
- (a) the relevant proceedings are proceedings on the appeal under section 26, and
- (b) the case has been remitted to the High Court on a Supreme Court devolution appeal,
- the decision in those proceedings becomes final when it is made.
- (7) In a case where—
- (a) the relevant proceedings are proceedings on a Supreme Court devolution appeal, and
- (b) the decision is not to remit the case to the High Court,
- the decision in those proceedings becomes final when it is made.
- (8) If subsection (3) is not complied with and the person applies to the appropriate judge to be discharged, the judge must order the person's discharge, unless reasonable cause is shown for the delay.
- (9) In this section “Supreme Court devolution appeal” means an appeal to the Supreme Court against a determination of a devolution issue relating to a person's extradition.
- (10) This section applies only to Scotland.]

Textual Amendments

F4 S. 36A inserted (29.7.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 20 para. 21\(2\)](#) (with [Sch. 20 para. 29](#)); [S.I. 2013/1682](#), art. 2(1)(b) (with art. 4(4))

37 Undertaking in relation to person serving sentence in United Kingdom

- (1) This section applies if—
- (a) the appropriate judge orders a person's extradition to a category 1 territory under this Part;
- (b) the person is serving a sentence of imprisonment or another form of detention in the United Kingdom ^{F5}, either—
- (i) in custody, or
- (ii) on licence] ^{F5}.
- (2) But this section does not apply if the order is made under section 46 or 48.

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- (3) The judge may make the order for extradition subject to the condition that extradition is not to take place before he receives an undertaking given on behalf of the category 1 territory in terms specified by him.
- (4) The terms which may be specified by the judge in relation to a person [^{F6}within subsection (1)(b)(i) who is]^{F6} accused in a category 1 territory of the commission of an offence include terms—
- (a) that the person be kept in custody until the conclusion of the proceedings against him for the offence and any other offence in respect of which he is permitted to be dealt with in the category 1 territory;
 - (b) that the person be returned to the United Kingdom to serve the remainder of his sentence on the conclusion of those proceedings.
- [^{F7}(4A) The terms which may be specified by the judge in relation to a person within subsection (1)(b)(ii) who is accused in a category 1 territory of the commission of an offence include terms that the person be returned to the United Kingdom to serve the remainder of his sentence after serving any sentence imposed on him in the category 1 territory for—
- (a) the offence, and
 - (b) any other offence in respect of which he is permitted to be dealt with in the category 1 territory.]

^{F7}(5) The terms which may be specified by the judge in relation to a person alleged to be unlawfully at large after conviction of an offence by a court in a category 1 territory include terms that the person be returned to the United Kingdom to serve the remainder of his sentence after serving any sentence imposed on him in the category 1 territory for—

 - (a) the offence, and
 - (b) any other offence in respect of which he is permitted to be dealt with in the category 1 territory.

(6) Subsections (7) and (8) apply if the judge makes an order for extradition subject to a condition under subsection (3).

(7) If the judge does not receive the undertaking before the end of the period of 21 days starting with the day on which he makes the order and the person applies to the appropriate judge to be discharged, the judge must order his discharge.

(8) If the judge receives the undertaking before the end of that period—

 - (a) in a case where section 35 applies, the required period for the purposes of section 35(3) is 10 days starting with the day on which the judge receives the undertaking;
 - (b) in a case where section 36 applies, the required period for the purposes of section 36(2) is 10 days starting with the day on which the decision of the relevant court on the appeal becomes final (within the meaning of that section) or (if later) the day on which the judge receives the undertaking.

[^{F8}Paragraph (a) applies only if the day mentioned in that paragraph is later than the day mentioned in section 35(4)(a).]^{F8}

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Textual Amendments

- F5** S. 37(b)(i)(ii) and word inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 10\(2\)](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)
- F6** Words in s. 37(4) substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 10\(3\)](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)
- F7** S. 37(4A) inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 10\(4\)](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)
- F8** Words in s. 37(8) inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 9\(2\)](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)

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))

38 Extradition following deferral for competing claim

- (1) This section applies if—
- (a) an order is made under this Part for a person to be extradited to a category 1 territory in pursuance of a Part 1 warrant;
 - (b) before the person is extradited to the territory an order is made under section 44(4)(b) or 179(2)(b) for the person's extradition in pursuance of the warrant to be deferred;
 - (c) the appropriate judge makes an order under section 181(2) for the person's extradition in pursuance of the warrant to cease to be deferred.
- (2) But this section does not apply if the order for the person's extradition is made under section 46 or 48.
- (3) In a case where section 35 applies, the required period for the purposes of section 35(3) is 10 days starting with the day on which the order under section 181(2) is made.^{F9} This subsection applies only if the day on which the order is made is later than the day mentioned in section 35(4)(a).]
- ^{F9}(4) In a case where section 36 applies, the required period for the purposes of section 36(2) is 10 days starting with the day on which the decision of the relevant court on the appeal becomes final (within the meaning of that section) or (if later) the day on which the order under section 181(2) is made.

Textual Amendments

- F9** Words in s. 38(3) inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 42, 53, [Sch. 13 para. 9\(3\)](#); [S.I. 2006/3364](#), [art. 2\(d\)\(e\)](#)

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))

39 Asylum claim

- (1) This section applies if—

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- (a) a person in respect of whom a Part 1 warrant is issued makes an asylum claim at any time in the relevant period;
 - (b) an order is made under this Part for the person to be extradited in pursuance of the warrant.
- (2) The relevant period is the period—
- (a) starting when a certificate is issued under section 2 in respect of the warrant;
 - (b) ending when the person is extradited in pursuance of the warrant.
- (3) The person must not be extradited in pursuance of the warrant before the asylum claim is finally determined; and sections 35, 36, 47 and 49 have effect subject to this.
- (4) Subsection (3) is subject to section 40.
- (5) If the Secretary of State allows the asylum claim, the claim is finally determined when he makes his decision on the claim.
- (6) If the Secretary of State rejects the asylum claim, the claim is finally determined—
- (a) when the Secretary of State makes his decision on the claim, if there is no right to appeal against the Secretary of State’s decision on the claim;
 - (b) when the period permitted for appealing against the Secretary of State’s decision on the claim ends, if there is such a right but there is no such appeal;
 - (c) when the appeal against that decision is finally determined or is withdrawn or abandoned, if there is such an appeal.
- (7) An appeal against the Secretary of State’s decision on an asylum claim is not finally determined for the purposes of subsection (6) at any time when a further appeal or an application for leave to bring a further appeal—
- (a) has been instituted and has not been finally determined or withdrawn or abandoned, or
 - (b) may be brought.
- (8) The remittal of an appeal is not a final determination for the purposes of subsection (7).
- (9) The possibility of an appeal out of time with leave must be ignored for the purposes of subsections (6) and (7).

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\(2\)](#))

40 Certificate in respect of asylum claimant

- (1) Section 39(3) does not apply in relation to a person if the Secretary of State has certified that the conditions in subsection (2) or the conditions in subsection (3) are satisfied in relation to him.
- (2) The conditions are that—
- (a) the category 1 territory to which the person’s extradition has been ordered has accepted that, under standing arrangements, it is the responsible State in relation to the person’s asylum claim;

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- (b) in the opinion of the Secretary of State, the person is not a national or citizen of the territory.
- (3) The conditions are that, in the opinion of the Secretary of State—
 - (a) the person is not a national or citizen of the category 1 territory to which his extradition has been ordered;
 - (b) the person’s life and liberty would not be threatened in that territory by reason of his race, religion, nationality, political opinion or membership of a particular social group;
 - (c) the government of the territory would not send the person to another country otherwise than in accordance with the Refugee Convention.

- (4) In this section—

“the Refugee Convention” has the meaning given by section 167(1) of the Immigration and Asylum Act 1999 (c. 33);

“standing arrangements” means arrangements in force between the United Kingdom and the category 1 territory for determining which State is responsible for considering applications for asylum.

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))

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