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STATUTORY INSTRUMENTS

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**1993 No. 2663**

**EXTRADITION**

**The European Convention on  
Extradition (Fiscal Offences) Order 1993**

<i>Made</i>	- - - -	<i>27th October 1993</i>
<i>Laid before Parliament</i>		<i>8th November 1993</i> <i>On a date to be notified in the London, Edinburgh and Belfast Gazettes</i>
<i>Coming into force</i>	- -	

At the Court at Buckingham Palace, the 27th day of October 1993

Present,

The Queen's Most Excellent Majesty in Council

Whereas the European Convention on Extradition (“the Convention”)(1) opened for signature by Members of the Council of Europe on 13th December 1957, entered into force for the United Kingdom on 14th May 1991:

And whereas the Second Additional Protocol to the European Convention on Extradition (“the Protocol”)(2), the terms of which are set out in Schedule 1 to this Order, was opened for signature, by Members of the Council of Europe which have signed the Convention, on 17th March 1978:

And whereas the Convention States listed in Schedule 2 to this Order are parties to the Protocol which have accepted Chapter II thereof and those States have made certain reservations and declarations, the terms of which are set out in Schedule 3 to this Order:

And whereas the Protocol provides for denunciation by means of a notification by a party to it, such denunciation to take effect six months after the date when the Secretary General of the Council of Europe receives such notification:

And whereas it is intended to ratify the Protocol and to make the reservation set out in Schedule 4 to this Order:

And whereas the reservations made by the Convention States listed in Schedule 2 to this Order and by the United Kingdom on becoming party to the Convention, which are set out in Schedules 3 and 4 respectively to the European Convention on Extradition Order 1990(3), are also applicable to the Protocol:

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(1) Cm. 1762.

(2) Cm. 2113.

(3) S.I. 1990/1507.

And whereas the Protocol as it will have effect in relation to the United Kingdom is in conformity with the provisions of the Extradition Act 1989 (“the 1989 Act”)(<sup>4</sup>), in particular with the restrictions on return contained in Part II of that Act:

And whereas section 4(1) of the 1989 Act provides that where general extradition arrangements have been made, Her Majesty may by Order in Council reciting or embodying their terms, direct that the 1989 Act, so far as it relates to extradition procedures under Part III of that Act, shall apply as between the United Kingdom and the foreign State, or any foreign State, with which they have been made, subject to the limitations, restrictions, exceptions and qualifications in the Order:

Now, therefore, Her Majesty, in exercise of the powers conferred on Her by section 4(1) of the Extradition Act 1989 or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:–

1.—(1) This Order may be cited as the European Convention on Extradition (Fiscal Offences) Order 1993, and shall come into force on the date, to be notified in the London, Edinburgh and Belfast Gazettes, on which the Protocol enters into force for the United Kingdom.

(2) This Order shall extend to the United Kingdom only.

(3) In this Order “the United Kingdom” means Great Britain and Northern Ireland.

2. The European Convention on Extradition Order 1990 shall have effect as regards a Convention State listed in Schedule 2 to this Order with the provision set out in Article 2 of the Protocol in place of Article 5 of the Convention as set out in Schedule 1 to the 1990 Order.

*N. H. Nicholls*  
Clerk of the Privy Council

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(4) 1989 c. 33.

## SCHEDULE 1

### THE PROTOCOL THE SECOND ADDITIONAL PROTOCOL TO THE EUROPEAN CONVENTION ON EXTRADITION

The member States of the Council of Europe, signatory to this Protocol,  
Desirous of facilitating the application of the European Convention on Extradition opened for signature in Paris on 13 December 1957 (hereinafter referred to as “the Convention”) in the field of fiscal offences;

Considering it also desirable to supplement the Convention in certain other respects,  
Have agreed as follows:

#### CHAPTER I

##### *Article 1*

Paragraph 2 of Article 2 of the Convention shall be supplemented by the following provision:

“This right shall also apply to offences which are subject only to pecuniary sanctions.”

#### CHAPTER II

##### *Article 2*

Article 5 of the Convention shall be replaced by the following provisions:

##### *“Fiscal offences*

1. For offences in connection with taxes, duties, customs and exchange extradition shall take place between the Contracting Parties in accordance with the provisions of the Convention if the offence, under the law of the requested Party, corresponds to an offence of the same nature.

2. Extradition may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, customs or exchange regulation of the same kind as the law of the requesting Party.”

#### CHAPTER III

##### *Article 3*

The Convention shall be supplemented by the following provisions:

##### *“Judgments in absentia*

1. When a Contracting Party requests from another Contracting Party the extradition of a person for the purpose of carrying out a sentence or detention order imposed by a decision rendered against him in absentia, the requested Party may refuse to extradite for this purpose if, in its opinion, the proceedings leading to the judgment did not satisfy the minimum rights of defence recognised as due to everyone charged with criminal offence. However, extradition shall be granted if the requesting Party gives an assurance considered sufficient to guarantee to the person claimed the right to a retrial which safeguards the rights of defence. This decision will authorise the requesting Party either to enforce the judgment in question if the convicted person does not make an opposition or, if he does, to take proceedings against the person extradited.

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2. When the requested Party informs the person whose extradition has been requested of the judgment rendered against him in absentia, the requesting Party shall not regard this communication as a formal notification for the purposes of the criminal procedure in that State.”

## CHAPTER IV

### *Article 4*

The Convention shall be supplemented by the following provisions:

#### *“Amnesty*

Extradition shall not be granted for an offence in respect of which an amnesty has been declared in the requested State and which that State had competence to prosecute under its own criminal law.”

## CHAPTER V

### *Article 5*

Paragraph 1 of Article 12 of the Convention shall be replaced by the following provisions:

“The request shall be in writing and shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party; however, use of the diplomatic channel is not excluded. Other means of communication may be arranged by direct agreement between two or more Parties.”

## CHAPTER VI

### *Article 6*

1. This Protocol shall be open to signature by the member States of the Council of Europe which have signed the Convention. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2. The Protocol shall enter into force 90 days after the date of the deposit of the third instrument of ratification, acceptance or approval.

3. In respect of a signatory State ratifying, accepting or approving subsequently, the Protocol shall enter into force 90 days after the date of the deposit of its instrument of ratification, acceptance or approval.

4. A member State of the Council of Europe may not ratify, accept or approve this Protocol without having, simultaneously or previously, ratified the Convention.

### *Article 7*

1. Any State which has acceded to the Convention may accede to this Protocol after the Protocol has entered into force.

2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect 90 days after the date of its deposit.

#### Article 8

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.

2. Any State may, when depositing its instrument of ratification, acceptance, approval or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Protocol to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.

3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn by means of a notification addressed to the Secretary General of the Council of Europe. Such withdrawal shall take effect six months after the date of receipt by the Secretary General of the Council of Europe of the notification.

#### Article 9

1. Reservations made by a State to a provision of the Convention shall be applicable also to this Protocol, unless that State otherwise declares at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession.

2. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it reserves the right:

- (a) not to accept Chapter I;
- (b) not to accept Chapter II, or to accept it only in respect of certain offences or certain categories of the offences referred to in Article 2;
- (c) not to accept Chapter III, or to accept only paragraph 1 of Article 3;
- (d) not to accept Chapter IV;
- (e) not to accept Chapter V.

3. Any Contracting Party may withdraw a reservation it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.

4. A Contracting Party which has applied to this Protocol a reservation made in respect of a provision of the Convention or which has made a reservation in respect of a provision of this Protocol may not claim the application of that provision by another Contracting Party; it may, however, if its reservation is partial or conditional claim, the application of that provision in so far as it has itself accepted it.

5. No other reservation may be made to the provisions of this Protocol.

#### Article 10

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Protocol and shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

#### Article 11

1. Any Contracting Party may, in so far as it is concerned, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.

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2. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

3. Denunciation of the Convention entails automatically denunciation of this Protocol.

#### Article 12

The Secretary of the Council of Europe shall notify the member States of the Council and any State which has acceded to the Convention of:

- (a) any signature of this Protocol;
- (b) any deposit of an instrument of ratification, acceptance, approval or accession;
- (c) any date of entry into force of this Protocol in accordance with Articles 6 and 7;
- (d) any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 8;
- (e) any declaration received in pursuance of the provisions of paragraph 1 of Article 9;
- (f) any reservation made in pursuance of the provisions of paragraph 2 of Article 9;
- (g) the withdrawal of any reservation carried out in pursuance of the provisions of paragraph 3 of Article 9;
- (h) any notification received in pursuance of the provisions of Article 11 and the date on which denunciation takes effect.

#### SCHEDULE 2

Article 2

##### STATES PARTIES TO THE PROTOCOL WHICH HAVE ACCEPTED CHAPTER II

Austria  
Cyprus  
Denmark  
Finland  
Germany  
Hungary  
Iceland  
Italy  
Netherlands  
Norway  
Poland  
Portugal  
Spain  
Sweden  
Turkey

### SCHEDULE 3

#### RESERVATIONS AND DECLARATIONS MADE BY STATES PARTIES TO THE PROTOCOL WHICH HAVE ACCEPTED CHAPTER II

##### *AUSTRIA*

According to Article 9, paragraph 2 of the Protocol, the Republic of Austria declares to accept Chapter II only in respect of offences in connection with taxes, duties and customs.

##### *NORWAY*

Pursuant to Article 9, Norway declares that it does not accept Chapters I and V of the Protocol.

##### *SWEDEN*

In the application of Article 12.1 of the Convention (Chapter V, Article 5 of the Protocol), the duties assigned to the Ministry of Justice shall be assumed by the Ministry of Foreign Affairs.

##### *TURKEY*

The Government of the Republic of Turkey reserves the right to use diplomatic channels in transmitting extradition requests in order to follow-up and carry out the necessary proceedings by diplomatic missions in the requested State, taking into consideration the type of request.

### SCHEDULE 4

#### RESERVATION BY THE UNITED KINGDOM

In accordance with paragraph 2 of Article 9, the United Kingdom declares that it does not accept Chapter I, Chapter III, Chapter IV or Chapter V of the Protocol.

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### EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order gives effect to Chapter II of the Second Additional Protocol to the European Convention on Extradition which the United Kingdom is to ratify. Chapter II substitutes a new Article 5 of the Convention which removes the existing restriction on extradition under the Convention for fiscal offences. Extradition for such an offence will be able to take place between Contracting Parties which have accepted Chapter II, in accordance with the Convention, if the offence corresponds to an offence of the same nature under the law of the requested Party.

By virtue of the reservation to be entered by the United Kingdom on ratifying the Protocol, the United Kingdom will not be bound by Chapters I, III, IV or V of the Protocol. This Order is concerned therefore only with the amendment to the Convention made by Chapter II of the Protocol.

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This Order, which is limited in its operation to the United Kingdom, will come into force when the Protocol enters into force for the United Kingdom, that is to say, 90 days after the deposit of the instrument of ratification on behalf of the United Kingdom.