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## EXPLANATORY NOTE

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

These Regulations will implement the provisions of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union on simplified extradition procedures between the Member States of the European Union which was opened for signature on 10th March 1995 (“the 1995 Convention”) and the Convention drawn up on the basis of Article K.3 of the Treaty of European Union relating to extradition between the Member States of the European Union which was opened for signature on 27th September 1996 (“the 1996 Convention”). The Conventions are set out in Schedules 1 and 5 to the Regulations.

These Regulations amend the Extradition Act 1989 (“the Act”) and are made under sections 111 and 112 of the Anti-terrorism, Crime and Security Act 2001. Those sections extend to the whole of the United Kingdom and the Regulations follow the extent provision of those sections.

As it is possible that the Conventions will be in force between the United Kingdom and some (but not all) Member States, there is provision in the Regulations to cater for this. Regulation 2(2) ensures that the Regulations apply only to requests made to or from the United Kingdom after the coming into force of the Regulations (which under regulation 1 will be on a date to be notified in the London, Edinburgh and Belfast Gazettes). Schedule 9 to the Regulations (in particular paragraph 4 which amends section 35(1)) ensures that a party to the 1995 or 1996 Convention for the purposes of the amendments to the Act, is a party in respect of which the Convention is in force either generally (because the last notification/ratification has been made) or specifically between it and the United Kingdom (because declarations have been made to enable the Conventions to apply before the entry into force date).

These Regulations will not apply to extradition between the Republic of Ireland and the United Kingdom: such extradition will be regulated by the Backing of Warrants (Republic of Ireland) Act 1965. The Republic of Ireland is a party to the 1995 and 1996 Conventions but is not a party to the Conventions for the purposes of the Regulations.

Section 4 of the 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 Act applies as between the United Kingdom and the state with whom the arrangement has been made. The Regulations follow this model and paragraphs 1 and 7 of Schedule 1A to the Act (as inserted by paragraph 5 of Schedule 9 to the Regulations) provide that the 1995 and 1996 Conventions are general extradition arrangements. Schedules 1 and 5 to the Regulations contain the Conventions, Schedules 2 and 6 contain the United Kingdom’s reservations, declarations and statements, Schedules 3 and 7 list the parties to the Conventions and Schedules 4 and 8 contain their reservations, declarations and statements.

Schedule 9 to the Regulations contains the amendments to the Act.

Paragraph 2 of Schedule 9 excludes countries that are parties to the 1996 Convention from the effect of section 24 of the Act, which provides that no offence to which section 1 of the Suppression of Terrorism Act 1978 applies is to be regarded as a political offence and no proceedings in respect of an offence to which that section applies shall be regarded as a criminal matter of a political character or as criminal proceedings of a political character. This is because pursuant to the 1996 Convention the United Kingdom will not treat any offence as an offence of a political character. Accordingly there has also been an amendment to section 6 of the Act which is explained below.

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Paragraph 3 of Schedule 9 inserts a new section (section 34A) after section 34 of the Act. The effect of this new section is to apply the new Schedule 1A to the Act to the United Kingdom and the states other than the Republic of Ireland that are parties to the 1995 and the 1996 Conventions. Paragraph 4 inserts new definitions in section 35(1) of the Act and under those definitions “party to the 1995 Convention” and “party to the 1996 Convention” means a state in respect of which the 1995 and 1996 Convention is in force either generally or between it and the United Kingdom.

Paragraph 5 of Schedule 9 to the Regulations inserts Schedule 1A in to the Act. Schedule 1A contains the amendments to the Act required to give effect to the 1995 and 1996 Conventions. It is divided into two parts: Part 1 contains the amendments necessary to give effect to the 1995 Convention and Part 2 contains the amendments necessary to give effect to the 1996 Convention.

### **1995 Convention**

Paragraph 3 of Schedule 1A inserts a new subsection (subsection 6A) after section 6(6) of the Act, the effect of which is to disapply section 6(4) of the Act (speciality protection) where the person has consented to his return to the relevant state.

Paragraph 4 of Schedule 1A inserts two new subsections ((3A) and (3B)) into section 9 of the Act. Section 9(3A) requires the court of committal, as soon as practicable and before it issues an order for committal under section 9(8) to inform the person arrested that he may consent to his return to the state that has requested his extradition, of the effect of any such consent (loss of speciality) and of the procedure that will apply if he gives his consent.

Section 9(3B) requires the court of committal to inform the arrested person that the consent is to be given in writing and is irrevocable and that it is to be given to the court before an order for committal is made or to the Secretary of State or the Scottish Ministers after an order for committal has been made.

Paragraph 5 of Schedule 1A inserts a new section (section 14A “Consent to return”) after section 14 of the Act. Section 14A(1) provides that a person may consent to his return to the state that has requested his return. Section 14A(2) provides that such consent is irrevocable. Section 14A(3) provides that if the person has not been committed under section 9 of the Act, any consent under this section must be made by notice in writing to the court of committal. Sections 14A(4), (5) and (6) replicate the provisions of section 14(2) and (3) of the Act for these cases; namely that the notice is to be given in the manner prescribed by rules under section 144 of the Magistrates' Courts Act 1980 and in Scotland the notice is to be given in the manner prescribed by the High Court of Justiciary by Act of Adjournal.

Section 14A(7) replicates the provisions of section 14(4) of the Act and provides that where an order is made under section 14A(5) or (6), the Act shall cease to apply to the person in respect of whom the order is made subject to the provisions of section 14A(8). This means that if consent is given to the magistrate or the sheriff, no order for return is made by the Secretary of State or Scottish Ministers under section 12 of the Act. Instead the magistrate or sheriff order the committal for return.

Section 14A(8) provides that if a person is not returned within 20 days after their return is ordered, the High Court or the High Court of Justiciary in Scotland may on application by him or his behalf, order him to be discharged unless reasonable cause is shown for the delay.

Section 14A(9) provides that if a person has been committed under section 9 of the Act, any consent must be given to the Secretary of State or the Scottish Ministers. Section 14A(10) provides that the Secretary of State or the Scottish Ministers may, by warrant, order his return at any time. That return is ordered under section 14A of the Act so section 12 and 13 would not apply.

Paragraph 6 of Schedule 1A inserts two subsections ((1A) and (1B)) into section 18 of the Act. Section 18(1A) disapplies section 18(1) of the Act if the state which has extradited the person has made a declaration under Article 9a of the 1995 Convention (ie that Article 14 of the European Convention on Extradition (speciality protection) does not apply where someone consents to extradition) and the person has consented to their return and has not revoked that consent, where

state has made a declaration under Article 7(4) of that Convention (ie that consent may be revoked). Section 18(1B) disapplies section 18(1) of the Act if the foreign state which has extradited the person has made a declaration under Article 9b of the 1995 Convention (ie that Article 14 of the European Convention on Extradition (speciality protection) does not apply where someone consents to extradition and expressly renounces his entitlement to the speciality rule) and the person has consented to his return and has renounced the benefit of section 18(1) of the Act and he has not revoked his consent or renunciation, where the state has made a declaration under section 7(4) of that Convention.

### **1996 Convention**

Paragraph 9 of Schedule 1A amends the definition of “extradition crime” in section 2 of the Act. Paragraphs 9(2)(a) and 9(4) of Schedule 1A change the definition of “extradition crime” in section 2(1)(a), (2) and (3) of the Act from an offence punishable for a term of imprisonment of 12 months or more in both the United Kingdom and the foreign state to one punishable for a term of imprisonment of six months or more in the United Kingdom and punishable for a term of imprisonment of 12 months or more in the foreign state.

Paragraphs 9(2)(b) and 9(3) extend the definition of “imprisonment” in section 2 of the Act to include any form of detention, wherever served.

Paragraph 10 of Schedule 1A amends section 6 of the Act. Paragraph 10(2) omits section 6(1)(a) of the Act. This is because the United Kingdom will not for the purposes of the 1996 Convention treat offences as offences of a political character.

Paragraph 10(3) amends section 6(4) of the Act which deals with speciality protection. It adds three new subsections ((aa); (ab); and (ac)) after section 6(4)(a) of the Act which provide that a person may be dealt with without first having had an opportunity to leave if the offence is not punishable with imprisonment or other form of detention; if the offence is one for which he will not be detained in connection with his trial, sentence or appeal or if the offence is punishable with imprisonment or other form of detention but the appropriate authority is satisfied that a sentence of imprisonment or other form of detention will be imposed only if the person has specifically waived the right. Where a state has made a declaration under Article 6(3) of the 1996 Convention, the three new subsections will not apply to fiscal offences except fiscal offences connected with excise, valued-added tax or customs.

Paragraph 10(5) inserts a new subsection (6A) after section 6(6) of the Act, the effect of which is to disapply that section where the state has made a declaration under Article 11 of that Convention and the Secretary of State or the Scottish Ministers have not indicated that their consent should not be deemed to have been given in the person’s case.

Paragraph 11 of Schedule 1A amends section 18 of the Act which relates to persons extradited to the United Kingdom. Paragraph 11(2) inserts four new subsections ((ba); (bb); (bc) and (bd)) after section 18(1)(b) which provide that a person returned to the United Kingdom may be triable or tried in the United Kingdom without first having had the opportunity of leaving the United Kingdom for an offence which is not punishable with imprisonment; for an offence in respect of which no custodial sentence will be imposed; for an offence in connection with which the person returned will not be detained in custody or for an offence in respect of which he has notified the court in writing that he waives the right not to be tried for that offence.

Paragraph 11(3) inserts a new subsection after section 18(1) of the Act which disapplies the effect of section 18(1) if the state has made a declaration under Article 11 of the 1996 Convention and it has not indicated that its consent should not be deemed to have been given in the person’s case.

Paragraph 12 of Schedule 1A amends section 26 of the Act. It replaces sections 26(1) with a new subsection 26(1) the effect of which is to require a copy of any arrest warrant or certificate of conviction submitted to be deemed authenticated if it is certified as a true copy by the judicial or other

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authority of the state concerned. Paragraph 12(3) has the effect of rendering documents authenticated in this way receivable in evidence.