

has been laid before, and approved by a resolution of, each House of Parliament.”

PART 12

EXTRADITION

Amendments of the Extradition Act 2003

155 Date of extradition hearing

In section 8 of the Extradition Act 2003 (date of extradition hearing etc: extradition to category 1 territory) after subsection (4) there is inserted –

“(4A) But if proceedings in respect of the extradition are adjourned under section 8A or 8B, the permitted period is extended by the number of days for which the proceedings are so adjourned.”

156 Extradition barred if no prosecution decision in requesting territory

(1) In section 11 of the Extradition Act 2003 (bars to extradition), after paragraph (a) of subsection (1) there is inserted –

“(aa) absence of prosecution decision;”.

(2) After section 12 of that Act there is inserted –

“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.”

(3) In a case where the Part 1 warrant (within the meaning of the Extradition Act 2003) has been issued before the time when the amendments made by this

section come into force, those amendments apply to the extradition concerned only if, at that time, the judge has not yet decided all of the questions in section 11(1) of that Act.

157 Proportionality

(1) In section 11 of the Extradition Act 2003 (bars to extradition), in subsection (5), for “21” there is substituted “21A”.

(2) After section 21 of that Act there is inserted –

“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 –
 - (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.”

- (3) In section 2 of that Act (Part 1 warrant and certificate), after subsection (7) there is inserted –
- “(7A) But in the case of a Part 1 warrant containing the statement referred to in subsection (3), the designated authority must not issue a certificate under this section if it is clear to the designated authority that a judge proceeding under section 21A would be required to order the person’s discharge on the basis that extradition would be disproportionate. In deciding that question, the designated authority must apply any general guidance issued for the purposes of this subsection.
- (7B) Any guidance under subsection (7A) may be revised, withdrawn or replaced.
- (7C) The function of issuing guidance under subsection (7A), or of revising, withdrawing or replacing any such guidance, is exercisable by the Lord Chief Justice of England and Wales with the concurrence of –
- (a) the Lord Justice General of Scotland, and
- (b) the Lord Chief Justice of Northern Ireland.”
- (4) In deciding any question whether section 21A of the Extradition Act 2003 is compatible with European Union law, regard must be had (in particular) to Article 1(3) of the framework decision of the Council of the European Union made on 13 June 2002 on the European arrest warrant and the surrender procedures between member states (2002/584/JHA) (which provides that that decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union).
- (5) In a case where the Part 1 warrant (within the meaning of the Extradition Act 2003) has been issued before the time when the amendments made by this section come into force, those amendments apply to the extradition concerned only if, at that time, the judge has not yet decided all of the questions in section 11(1) of that Act.

158 Hostage-taking considerations

- (1) Section 16 of the Extradition Act 2003 (extradition to category 1 territory barred by reason of hostage-taking considerations) is repealed.
- (2) In section 11 of that Act (bars to extradition), paragraph (e) of subsection (1) is omitted.
- (3) In a case where the Part 1 warrant (within the meaning of the Extradition Act 2003) has been issued before the time when the amendments made by this section come into force, those amendments apply to the extradition concerned only if, at that time, the judge has not yet decided all of the questions in section 11(1) of that Act.

159 Request for temporary transfer etc

Before section 22 of the Extradition Act 2003 there is inserted –

“21B Request for temporary transfer etc

- (1) This section applies if –