

Notes from Extradition Training

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2. Council of Europe Framework Decision

Council Framework Decision

of 13 June 2002

on the European arrest warrant and the surrender procedures between
Member States

(2002/584/JHA)

THE COUNCIL OF THE EUROPEAN
UNION,

Having regard to the Treaty on
European Union, and in particular
Article 31(a) and (b) and Article 34(2)(b)
thereof,

Having regard to the proposal from the
Commission¹,

Having regard to the opinion of the
European Parliament²,

Whereas:

(1) According to the Conclusions of the
Tampere European Council of 15 and
16 October 1999, and in particular point
35 thereof, the formal extradition
procedure should be abolished among
the Member States in respect of
persons who are fleeing from justice
after having been finally sentenced and
extradition procedures should be
speeded up in respect of persons
suspected of having committed an
offence.

(2) The programme of measures to
implement the principle of mutual
recognition of criminal decisions
envisaged in point 37 of the Tampere
European Council Conclusions and
adopted by the Council on 30

November 2000³, addresses the matter
of mutual enforcement of arrest
warrants.

(3) All or some Member States are
parties to a number of conventions in
the field of extradition, including the
European Convention on extradition of
13 December 1957 and the European
Convention on the suppression of
terrorism of 27 January 1977. The
Nordic States have extradition laws with
identical wording.

(4) In addition, the following three
Conventions dealing in whole or in part
with extradition have been agreed upon
among Member States and form part of
the Union acquis: the Convention of 19
June 1990 implementing the Schengen
Agreement of 14 June 1985 on the
gradual abolition of checks at their
common borders⁴ (regarding relations
between the Member States which are
parties to that Convention), the
Convention of 10 March 1995 on
simplified extradition procedure
between the Member States of the
European Union⁵ and the Convention of
27 September 1996 relating to
extradition between the Member States
of the European Union⁶.

(5) The objective set for the Union to
become an area of freedom, security

¹ OJ C 332 E, 27.11.2001, p. 305.

² Opinion delivered on 9 January 2002 (not yet
published in the Official Journal).

³ OJ C 12 E, 15.1.2001, p. 10.

⁴ OJ L 239, 22.9.2000, p. 19.

⁵ OJ C 78, 30.3.1995, p. 2.

⁶ OJ C 313, 13.10.1996, p. 12.

and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.

(6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the "cornerstone" of judicial cooperation.

(7) Since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition of 13 December 1957 cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.

(8) Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the

Member State where the requested person has been arrested will have to take the decision on his or her surrender.

(9) The role of central authorities in the execution of a European arrest warrant must be limited to practical and administrative assistance.

(10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) of the Treaty on European Union, determined by the Council pursuant to Article 7(1) of the said Treaty with the consequences set out in Article 7(2) thereof.

(11) In relations between Member States, the European arrest warrant should replace all the previous instruments concerning extradition, including the provisions of Title III of the Convention implementing the Schengen Agreement which concern extradition.

(12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union⁷, in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position

⁷ OJ C 364, 18.12.2000, p. 1.

may be prejudiced for any of these reasons.

This Framework Decision does not prevent a Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media.

(13) No person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

(14) Since all Member States have ratified the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data, the personal data processed in the context of the implementation of this Framework Decision should be protected in accordance with the principles of the said Convention,

HAS ADOPTED THIS FRAMEWORK DECISION:

CHAPTER 1

GENERAL PRINCIPLES

Article 1

Definition of the European arrest warrant and obligation to execute it

1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and

in accordance with the provisions of this Framework Decision.

3. This Framework 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.

Article 2

Scope of the European arrest warrant

1. A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.

2. The following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant:

- participation in a criminal organisation,
- terrorism,
- trafficking in human beings,
- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,

- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,

- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage.

3. The Council may decide at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty on European Union (TEU), to add other categories of offence to the list contained in paragraph 2. The Council shall examine, in the light of the report submitted by the Commission pursuant to Article 34(3), whether the list should be extended or amended.

4. For offences other than those covered by paragraph 2, surrender may be subject to the condition that the acts for which the European arrest warrant has been issued constitute an offence under the law of the executing Member State, whatever the constituent elements or however it is described.

Article 3

Grounds for mandatory non-execution of the European arrest warrant

The judicial authority of the Member State of execution (hereinafter "executing judicial authority") shall refuse to execute the European arrest warrant in the following cases:

1. if the offence on which the arrest warrant is based is covered by amnesty

in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law;

2. if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State;

3. if the person who is the subject of the European arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State.

Article 4

Grounds for optional non-execution of the European arrest warrant

The executing judicial authority may refuse to execute the European arrest warrant:

1. if, in one of the cases referred to in Article 2(4), the act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State; however, in relation to taxes or duties, customs and exchange, execution of the European arrest warrant shall not be refused on the ground that the law of the executing Member State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing Member State;

2. where the person who is the subject of the European arrest warrant is being prosecuted in the executing Member State for the same act as that on which the European arrest warrant is based;

3. where the judicial authorities of the executing Member State have decided either not to prosecute for the offence on which the European arrest warrant is based or to halt proceedings, or where a final judgment has been passed upon the requested person in a Member State, in respect of the same acts, which prevents further proceedings;

4. where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law;

5. if the executing judicial authority is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country;

6. if the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law;

7. where the European arrest warrant relates to offences which:

(a) are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such; or

(b) have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the

same offences when committed outside its territory.

Article 5

Guarantees to be given by the issuing Member State in particular cases

The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:

1. where the European arrest warrant has been issued for the purposes of executing a sentence or a detention order imposed by a decision rendered in absentia and if the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia, surrender may be subject to the condition that the issuing judicial authority gives an assurance deemed adequate to guarantee the person who is the subject of the European arrest warrant that he or she will have an opportunity to apply for a retrial of the case in the issuing Member State and to be present at the judgment;

2. if the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the said arrest warrant may be subject to the condition that the issuing Member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing Member State, aiming at a non-execution of such penalty or measure;

3. where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State.

Article 6

Determination of the competent judicial authorities

1. The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State.

2. The executing judicial authority shall be the judicial authority of the executing Member State which is competent to execute the European arrest warrant by virtue of the law of that State.

3. Each Member State shall inform the General Secretariat of the Council of the competent judicial authority under its law.

Article 7

Recourse to the central authority

1. Each Member State may designate a central authority or, when its legal system so provides, more than one central authority to assist the competent judicial authorities.

2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception of European

arrest warrants as well as for all other official correspondence relating thereto.

Member State wishing to make use of the possibilities referred to in this Article shall communicate to the General Secretariat of the Council information relating to the designated central authority or central authorities. These indications shall be binding upon all the authorities of the issuing Member State.

Article 8

Content and form of the European arrest warrant

1. The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:

(a) the identity and nationality of the requested person;

(b) the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;

(c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2;

(d) the nature and legal classification of the offence, particularly in respect of Article 2;

(e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;

(f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State;

(g) if possible, other consequences of the offence.

2. The European arrest warrant must be translated into the official language or one of the official languages of the executing Member State. Any Member State may, when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Communities.

CHAPTER 2

SURRENDER PROCEDURE

Article 9

Transmission of a European arrest warrant

1. When the location of the requested person is known, the issuing judicial authority may transmit the European arrest warrant directly to the executing judicial authority.

2. The issuing judicial authority may, in any event, decide to issue an alert for the requested person in the Schengen Information System (SIS).

3. Such an alert shall be effected in accordance with the provisions of Article 95 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of controls at common borders. An alert in the Schengen Information System shall be equivalent to a European arrest warrant accompanied by the information set out in Article 8(1).

For a transitional period, until the SIS is capable of transmitting all the information described in Article 8, the alert shall be equivalent to a European

arrest warrant pending the receipt of the original in due and proper form by the executing judicial authority.

Article 10

Detailed procedures for transmitting a European arrest warrant

1. If the issuing judicial authority does not know the competent executing judicial authority, it shall make the requisite enquiries, including through the contact points of the European Judicial Network⁸, in order to obtain that information from the executing Member State.

2. If the issuing judicial authority so wishes, transmission may be effected via the secure telecommunications system of the European Judicial Network.

3. If it is not possible to call on the services of the SIS, the issuing judicial authority may call on Interpol to transmit a European arrest warrant.

4. The issuing judicial authority may forward the European arrest warrant by any secure means capable of producing written records under conditions allowing the executing Member State to establish its authenticity.

5. All difficulties concerning the transmission or the authenticity of any document needed for the execution of the European arrest warrant shall be dealt with by direct contacts between the judicial authorities involved, or, where appropriate, with the involvement of the central authorities of the Member States.

6. If the authority which receives a European arrest warrant is not competent to act upon it, it shall automatically forward the European

arrest warrant to the competent authority in its Member State and shall inform the issuing judicial authority accordingly.

Article 11

Rights of a requested person

1. When a requested person is arrested, the executing competent judicial authority shall, in accordance with its national law, inform that person of the European arrest warrant and of its contents, and also of the possibility of consenting to surrender to the issuing judicial authority.

2. A requested person who is arrested for the purpose of the execution of a European arrest warrant shall have a right to be assisted by a legal counsel and by an interpreter in accordance with the national law of the executing Member State.

Article 12

Keeping the person in detention

When a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention, in accordance with the law of the executing Member State. The person may be released provisionally at any time in conformity with the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding.

⁸ Council Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network (OJ L 191, 7.7.1998, p. 4).

Article 13

Consent to surrender

1. If the arrested person indicates that he or she consents to surrender, that consent and, if appropriate, express renunciation of entitlement to the "speciality rule", referred to in Article 27(2), shall be given before the executing judicial authority, in accordance with the domestic law of the executing Member State.

2. Each Member State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel.

3. The consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be formally recorded in accordance with the procedure laid down by the domestic law of the executing Member State.

4. In principle, consent may not be revoked. Each Member State may provide that consent and, if appropriate, renunciation may be revoked, in accordance with the rules applicable under its domestic law. In this case, the period between the date of consent and that of its revocation shall not be taken into consideration in establishing the time limits laid down in Article 17. A Member State which wishes to have recourse to this possibility shall inform the General Secretariat of the Council accordingly when this Framework Decision is adopted and shall specify the procedures whereby revocation of consent shall be possible and any amendment to them.

Article 14

Hearing of the requested person

Where the arrested person does not consent to his or her surrender as referred to in Article 13, he or she shall be entitled to be heard by the executing judicial authority, in accordance with the law of the executing Member State.

Article 15

Surrender decision

1. The executing judicial authority shall decide, within the time-limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.

2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17.

3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.

Article 16

Decision in the event of multiple requests

1. If two or more Member States have issued European arrest warrants for the same person, the decision on which of the European arrest warrants shall be executed shall be taken by the executing judicial authority with due consideration of all the circumstances

and especially the relative seriousness and place of the offences, the respective dates of the European arrest warrants and whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order.

2. The executing judicial authority may seek the advice of Eurojust⁹ when making the choice referred to in paragraph 1.

3. In the event of a conflict between a European arrest warrant and a request for extradition presented by a third country, the decision on whether the European arrest warrant or the extradition request takes precedence shall be taken by the competent authority of the executing Member State with due consideration of all the circumstances, in particular those referred to in paragraph 1 and those mentioned in the applicable convention.

4. This Article shall be without prejudice to Member States' obligations under the Statute of the International Criminal Court.

Article 17

Time limits and procedures for the decision to execute the European arrest warrant

1. A European arrest warrant shall be dealt with and executed as a matter of urgency.

2. In cases where the requested person consents to his surrender, the final decision on the execution of the European arrest warrant should be

taken within a period of 10 days after consent has been given.

3. In other cases, the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person.

4. Where in specific cases the European arrest warrant cannot be executed within the time limits laid down in paragraphs 2 or 3, the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.

5. As long as the executing judicial authority has not taken a final decision on the European arrest warrant, it shall ensure that the material conditions necessary for effective surrender of the person remain fulfilled.

6. Reasons must be given for any refusal to execute a European arrest warrant.

7. Where in exceptional circumstances a Member State cannot observe the time limits provided for in this Article, it shall inform Eurojust, giving the reasons for the delay. In addition, a Member State which has experienced repeated delays on the part of another Member State in the execution of European arrest warrants shall inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.

Article 18

Situation pending the decision

1. Where the European arrest warrant has been issued for the purpose of conducting a criminal prosecution, the executing judicial authority must:

⁹ Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63, 6.3.2002, p. 1).

(a) either agree that the requested person should be heard according to Article 19;

(b) or agree to the temporary transfer of the requested person.

2. The conditions and the duration of the temporary transfer shall be determined by mutual agreement between the issuing and executing judicial authorities.

3. In the case of temporary transfer, the person must be able to return to the executing Member State to attend hearings concerning him or her as part of the surrender procedure.

Article 19

Hearing the person pending the decision

1. The requested person shall be heard by a judicial authority, assisted by another person designated in accordance with the law of the Member State of the requesting court.

2. The requested person shall be heard in accordance with the law of the executing Member State and with the conditions determined by mutual agreement between the issuing and executing judicial authorities.

3. The competent executing judicial authority may assign another judicial authority of its Member State to take part in the hearing of the requested person in order to ensure the proper application of this Article and of the conditions laid down.

Article 20

Privileges and immunities

1. Where the requested person enjoys a privilege or immunity regarding jurisdiction or execution in the executing Member State, the time limits referred to in Article 17 shall not start running unless, and counting from the day when, the executing judicial authority is informed of the fact that the privilege or immunity has been waived.

The executing Member State shall ensure that the material conditions necessary for effective surrender are fulfilled when the person no longer enjoys such privilege or immunity.

2. Where power to waive the privilege or immunity lies with an authority of the executing Member State, the executing judicial authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing judicial authority to request it to exercise that power.

Article 21

Competing international obligations

This Framework Decision shall not prejudice the obligations of the executing Member State where the requested person has been extradited to that Member State from a third State and where that person is protected by provisions of the arrangement under which he or she was extradited concerning speciality. The executing Member State shall take all necessary measures for requesting forthwith the consent of the State from which the requested person was extradited so that he or she can be surrendered to the Member State which issued the European arrest warrant. The time limits

referred to in Article 17 shall not start running until the day on which these speciality rules cease to apply. Pending the decision of the State from which the requested person was extradited, the executing Member State will ensure that the material conditions necessary for effective surrender remain fulfilled.

Article 22

Notification of the decision

The executing judicial authority shall notify the issuing judicial authority immediately of the decision on the action to be taken on the European arrest warrant.

Article 23

Time limits for surrender of the person

1. The person requested shall be surrendered as soon as possible on a date agreed between the authorities concerned.
2. He or she shall be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant.
3. If the surrender of the requested person within the period laid down in paragraph 2 is prevented by circumstances beyond the control of any of the Member States, the executing and issuing judicial authorities shall immediately contact each other and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.
4. The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for

believing that it would manifestly endanger the requested person's life or health. The execution of the European arrest warrant shall take place as soon as these grounds have ceased to exist. The executing judicial authority shall immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

5. Upon expiry of the time limits referred to in paragraphs 2 to 4, if the person is still being held in custody he shall be released.

Article 24

Postponed or conditional surrender

1. The executing judicial authority may, after deciding to execute the European arrest warrant, postpone the surrender of the requested person so that he or she may be prosecuted in the executing Member State or, if he or she has already been sentenced, so that he or she may serve, in its territory, a sentence passed for an act other than that referred to in the European arrest warrant.
2. Instead of postponing the surrender, the executing judicial authority may temporarily surrender the requested person to the issuing Member State under conditions to be determined by mutual agreement between the executing and the issuing judicial authorities. The agreement shall be made in writing and the conditions shall be binding on all the authorities in the issuing Member State.

Article 25

Transit

1. Each Member State shall, except when it avails itself of the possibility of refusal when the transit of a national or a resident is requested for the purpose of the execution of a custodial sentence or detention order, permit the transit through its territory of a requested person who is being surrendered provided that it has been given information on:

(a) the identity and nationality of the person subject to the European arrest warrant;

(b) the existence of a European arrest warrant;

(c) the nature and legal classification of the offence;

(d) the description of the circumstances of the offence, including the date and place.

Where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the Member State of transit, transit may be subject to the condition that the person, after being heard, is returned to the transit Member State to serve the custodial sentence or detention order passed against him in the issuing Member State.

2. Each Member State shall designate an authority responsible for receiving transit requests and the necessary documents, as well as any other official correspondence relating to transit requests. Member States shall communicate this designation to the General Secretariat of the Council.

3. The transit request and the information set out in paragraph 1 may be addressed to the authority

designated pursuant to paragraph 2 by any means capable of producing a written record. The Member State of transit shall notify its decision by the same procedure.

4. This Framework Decision does not apply in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs, the issuing Member State shall provide the authority designated pursuant to paragraph 2 with the information provided for in paragraph 1.

5. Where a transit concerns a person who is to be extradited from a third State to a Member State this Article will apply *mutatis mutandis*. In particular the expression "European arrest warrant" shall be deemed to be replaced by "extradition request".

CHAPTER 3

EFFECTS OF THE SURRENDER

Article 26

Deduction of the period of detention served in the executing Member State

1. The issuing Member State shall deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed.

2. To that end, all information concerning the duration of the detention of the requested person on the basis of the European arrest warrant shall be transmitted by the executing judicial authority or the central authority designated under Article 7 to the issuing judicial authority at the time of the surrender.

Article 27

Possible prosecution for other offences

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. Except in the cases referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.

3. Paragraph 2 does not apply in the following cases:

(a) when the person having had an opportunity to leave the territory of the Member State to which he or she has been surrendered has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;

(b) the offence is not punishable by a custodial sentence or detention order;

(c) the criminal proceedings do not give rise to the application of a measure restricting personal liberty;

(d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure

may give rise to a restriction of his or her personal liberty;

(e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the speciality rule, in accordance with Article 13;

(f) when the person, after his/her surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his/her surrender. Renunciation shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;

(g) where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.

4. A request for consent shall be submitted to the executing judicial authority, accompanied by the information mentioned in Article 8(1) and a translation as referred to in Article 8(2). Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision. Consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4. The decision shall be taken no later than 30 days after receipt of the request.

For the situations mentioned in Article 5 the issuing Member State must give the guarantees provided for therein.

Article 28

Surrender or subsequent extradition

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States which have given the same notification, the consent for the surrender of a person to a Member State other than the executing Member State pursuant to a European arrest warrant issued for an offence committed prior to his or her surrender is presumed to have been given, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. In any case, a person who has been surrendered to the issuing Member State pursuant to a European arrest warrant may, without the consent of the executing Member State, be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant issued for any offence committed prior to his or her surrender in the following cases:

(a) where the requested person, having had an opportunity to leave the territory of the Member State to which he or she has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it;

(b) where the requested person consents to be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant. Consent shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's national law. It shall be drawn up in such a way as to make clear that the person concerned has given it voluntarily and in full awareness of the consequences. To that end, the

requested person shall have the right to legal counsel;

(c) where the requested person is not subject to the speciality rule, in accordance with Article 27(3)(a), (e), (f) and (g).

3. The executing judicial authority consents to the surrender to another Member State according to the following rules:

(a) the request for consent shall be submitted in accordance with Article 9, accompanied by the information mentioned in Article 8(1) and a translation as stated in Article 8(2);

(b) consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision;

(c) the decision shall be taken no later than 30 days after receipt of the request;

(d) consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4.

For the situations referred to in Article 5, the issuing Member State must give the guarantees provided for therein.

4. Notwithstanding paragraph 1, a person who has been surrendered pursuant to a European arrest warrant shall not be extradited to a third State without the consent of the competent authority of the Member State which surrendered the person. Such consent shall be given in accordance with the Conventions by which that Member State is bound, as well as with its domestic law.

Article 29

Handing over of property

1. At the request of the issuing judicial authority or on its own initiative, the executing judicial authority shall, in accordance with its national law, seize and hand over property which:

- (a) may be required as evidence, or
 - (b) has been acquired by the requested person as a result of the offence.
2. The property referred to in paragraph 1 shall be handed over even if the European arrest warrant cannot be carried out owing to the death or escape of the requested person.
3. If the property referred to in paragraph 1 is liable to seizure or confiscation in the territory of the executing Member State, the latter may, if the property is needed in connection with pending criminal proceedings, temporarily retain it or hand it over to the issuing Member State, on condition that it is returned.
4. Any rights which the executing Member State or third parties may have acquired in the property referred to in paragraph 1 shall be preserved. Where such rights exist, the issuing Member State shall return the property without charge to the executing Member State as soon as the criminal proceedings have been terminated.

Article 30

Expenses

1. Expenses incurred in the territory of the executing Member State for the execution of a European arrest warrant shall be borne by that Member State.

2. All other expenses shall be borne by the issuing Member State.

CHAPTER 4

GENERAL AND FINAL PROVISIONS

Article 31

Relation to other legal instruments

1. Without prejudice to their application in relations between Member States and third States, this Framework Decision shall, from 1 January 2004, replace the corresponding provisions of the following conventions applicable in the field of extradition in relations between the Member States:

(a) the European Convention on Extradition of 13 December 1957, its additional protocol of 15 October 1975, its second additional protocol of 17 March 1978, and the European Convention on the suppression of terrorism of 27 January 1977 as far as extradition is concerned;

(b) the Agreement between the 12 Member States of the European Communities on the simplification and modernisation of methods of transmitting extradition requests of 26 May 1989;

(c) the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union;

(d) the Convention of 27 September 1996 relating to extradition between the Member States of the European Union;

(e) Title III, Chapter 4 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders.

2. Member States may continue to apply bilateral or multilateral agreements or arrangements in force when this Framework Decision is adopted in so far as such agreements or arrangements allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants.

Member States may conclude bilateral or multilateral agreements or arrangements after this Framework Decision has come into force in so far as such agreements or arrangements allow the prescriptions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants, in particular by fixing time limits shorter than those fixed in Article 17, by extending the list of offences laid down in Article 2(2), by further limiting the grounds for refusal set out in Articles 3 and 4, or by lowering the threshold provided for in Article 2(1) or (2).

The agreements and arrangements referred to in the second subparagraph may in no case affect relations with Member States which are not parties to them.

Member States shall, within three months from the entry into force of this Framework Decision, notify the Council and the Commission of the existing agreements and arrangements referred to in the first subparagraph which they wish to continue applying.

Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in the second subparagraph, within three months of signing it.

3. Where the conventions or agreements referred to in paragraph 1 apply to the territories of Member States or to territories for whose external relations a Member State is responsible to which this Framework Decision does not apply, these instruments shall continue to govern the relations existing between those territories and the other Members States.

Article 32

Transitional provision

1. Extradition requests received before 1 January 2004 will continue to be governed by existing instruments relating to extradition. Requests received after that date will be governed by the rules adopted by Member States pursuant to this Framework Decision. However, any Member State may, at the time of the adoption of this Framework Decision by the Council, make a statement indicating that as executing Member State it will continue to deal with requests relating to acts committed before a date which it specifies in accordance with the extradition system applicable before 1 January 2004. The date in question may not be later than 7 August 2002. The said statement will be published in the Official Journal of the European Communities. It may be withdrawn at any time.

Article 33

Provisions concerning Austria and Gibraltar

1. As long as Austria has not modified Article 12(1) of the "Auslieferungs- und Rechtshilfegesetz" and, at the latest, until 31 December 2008, it may allow its executing judicial authorities to refuse the enforcement of a European arrest warrant if the requested person is an

Austrian citizen and if the act for which the European arrest warrant has been issued is not punishable under Austrian law.

2. This Framework Decision shall apply to Gibraltar.

Article 34

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 31 December 2003.

2. Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. When doing so, each Member State may indicate that it will apply immediately this Framework Decision in its relations with those Member States which have given the same notification.

The General Secretariat of the Council shall communicate to the Member States and to the Commission the information received pursuant to Article 7(2), Article 8(2), Article 13(4) and Article 25(2). It shall also have the information published in the Official Journal of the European Communities.

3. On the basis of the information communicated by the General Secretariat of the Council, the Commission shall, by 31 December 2004 at the latest, submit a report to the European Parliament and to the Council on the operation of this Framework Decision, accompanied, where necessary, by legislative proposals.

4. The Council shall in the second half of 2003 conduct a review, in particular of the practical application, of the provisions of this Framework Decision

by the Member States as well as the functioning of the Schengen Information System.

Article 35

Entry into force

This Framework Decision shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

Done at Luxembourg, 13 June 2002.

For the Council

The President

M. Rajoy Brey

ANNEX

EUROPEAN ARREST WARRANT¹⁰

This warrant has been issued by a competent judicial authority. I request that the person mentioned below be arrested and surrendered for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

¹⁰ This warrant must be written in, or translated into, one of the official languages of the executing Member State, when that State is known, or any other language accepted by that State.

(a) Information regarding the identity of the requested person:

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Date of birth:

Place of birth:

Residence and/or known address:

Language(s) which the requested person understands (if known):

.....

Distinctive marks/description of the requested person:

.....

Photo and fingerprints of the requested person, if they are available and can be transmitted, or contact details of the person to be contacted in order to obtain such information or a DNA profile (where this evidence can be supplied but has not been included)

(b) Decision on which the warrant is based:

1. Arrest warrant or judicial decision having the same effect:

Type:

2. Enforceable judgement:

.....

Reference:

(c) **Indications on the length of the sentence:**

1. **Maximum length of the custodial sentence or detention order which may be imposed for the offence(s):**

.....
.....

2. **Length of the custodial sentence or detention order imposed:**

.....

Remaining sentence to be served:

.....
.....

(d) **Decision rendered in absentia and:**

— the person concerned has been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia,

or

— the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia but has the following legal guarantees after surrender (such guarantees can be given in advance)

Specify the legal guarantees

.....
.....
.....

(e) Offences:

This warrant relates to in total: offences.

Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person:

.....

Nature and legal classification of the offence(s) and the applicable statutory provision/code:

.....

I. If applicable, tick one or more of the following offences punishable in the issuing Member State by a custodial sentence or detention order of a maximum of at least 3 years as defined by the laws of the issuing Member State:

- participation in a criminal organisation;
- terrorism;
- trafficking in human beings;
- sexual exploitation of children and child pornography;
- illicit trafficking in narcotic drugs and psychotropic substances;
- illicit trafficking in weapons, munitions and explosives;
- corruption;
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of European Communities' financial interests;
- laundering of the proceeds of crime;
- counterfeiting of currency, including the euro;
- computer-related crime;
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- facilitation of unauthorised entry and residence;
- murder, grievous bodily injury;
- illicit trade in human organs and tissue;
- kidnapping, illegal restraint and hostage-taking;
- racism and xenophobia;
- organised or armed robbery;
- illicit trafficking in cultural goods, including antiques and works of art;
- swindling;
- racketeering and extortion;
- counterfeiting and piracy of products;
- forgery of administrative documents and trafficking therein;
- forgery of means of payment;
- illicit trafficking in hormonal substances and other growth promoters;
- illicit trafficking in nuclear or radioactive materials;
- trafficking in stolen vehicles;
- rape;
- arson;
- crimes within the jurisdiction of the International Criminal Court;
- unlawful seizure of aircraft/ships;
- sabotage.

II. Full descriptions of offence(s) not covered by section I above:

.....

(f) Other circumstances relevant to the case (optional information):

(NB: This could cover remarks on extraterritoriality, interruption of periods of time limitation and other consequences of the offence)

.....
.....

(g) This warrant pertains also to the seizure and handing over of property which may be required as evidence:

This warrant pertains also to the seizure and handing over of property acquired by the requested person as a result of the offence:

Description of the property (and location) (if known):

.....
.....
.....

(h) The offence(s) on the basis of which this warrant has been issued is(are) punishable by/has(have) led to a custodial life sentence or lifetime detention order:

— the legal system of the issuing Member State allows for a review of the penalty or measure imposed — on request or at least after 20 years — aiming at a non-execution of such penalty or measure.

and/or

— the legal system of the issuing Member State allows for the application of measures of clemency to which the person is entitled under the law or practice of the issuing Member State, aiming at non-execution of such penalty or measure.

(i) The judicial authority which issued the warrant:

Official name:

Name of its representative ⁽¹⁾:

.....

Post held (title/grade):

.....

File reference:

Address:

.....

Tel: (country code) (area/city code) (...)

Fax: (country code) (area/city code) (...)

E-mail:

Contact details of the person to contact to make necessary practical arrangements for the surrender:

.....

⁽¹⁾ In the different language versions a reference to the 'holder' of the judicial authority will be included.

Where a central authority has been made responsible for the transmission and administrative reception of European arrest warrants:

Name of the central authority:

.....

Contact person, if applicable (title/grade and name):

.....

Address:

.....

Tel: (country code) (area/city code) (...)

.....

Fax: (country code) (area/city code) (...)

.....

E-mail:

.....

Signature of the issuing judicial authority and/or its representative:

.....

Name:

.....

Post held (title/grade):

.....

Date:

.....

Official stamp (if available)

2. Part 1 Extradition to Category 1 Territories, Extradition Act 2003

Part 1

Extradition to category 1 territories

Introduction

1 Extradition to category 1 territories

(1) This Part deals with extradition from the United Kingdom to the territories designated for the purposes of this Part by order made by the Secretary of State.

(2) In this Act references to category 1 territories are to the territories designated for the purposes of this Part.

(3) A territory may not be designated for the purposes of this Part if a person found guilty in the territory of a criminal offence may be sentenced to death for the offence under the general criminal law of the territory.

2 Part 1 warrant and certificate

(1) This section applies if the designated authority receives a Part 1 warrant in respect of a person.

(2) A Part 1 warrant is an arrest warrant which is issued by a judicial authority of a category 1 territory and which contains—

- (a) the statement referred to in subsection (3) and the information referred to in subsection (4), or
- (b) the statement referred to in subsection (5) and the information referred to in subsection (6).

(3) The statement is one that—

(a) the person in respect of whom the Part 1 warrant is issued is accused in the category 1 territory of the

commission of an offence specified in the warrant, and

(b) the Part 1 warrant is issued with a view to his arrest and extradition to the category 1 territory for the purpose of being prosecuted for the offence.

(4) The information is—

- (a) particulars of the person's identity;
- (b) particulars of any other warrant issued in the category 1 territory for the person's arrest in respect of the offence;
- (c) particulars of the circumstances in which the person is alleged to have committed the offence, including the conduct alleged to constitute the offence, the time and place at which he is alleged to have committed the offence and any provision of the law of the category 1 territory under which the conduct is alleged to constitute an offence;
- (d) particulars of the sentence which may be imposed under the law of the category 1 territory in respect of the offence if the person is convicted of it.

(5) The statement is one that—

- (a) the person in respect of whom the Part 1 warrant is issued is alleged to be unlawfully at large after conviction of an offence specified in the warrant by a court in the category 1 territory, and
- (b) the Part 1 warrant is issued with a view to his arrest and extradition to the category 1 territory for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence.

(6) The information is—

- (a) particulars of the person's identity;
- (b) particulars of the conviction;
- (c) particulars of any other warrant issued in the category 1 territory for the person's arrest in respect of the offence;

(d) particulars of the sentence which may be imposed under the law of the category 1 territory in respect of the offence, if the person has not been sentenced for the offence;

(e) particulars of the sentence which has been imposed under the law of the category 1 territory in respect of the offence, if the person has been sentenced for the offence.

(7) The designated authority may issue a certificate under this section if it believes that the authority which issued the Part 1 warrant has the function of issuing arrest warrants in the category 1 territory.

(8) A certificate under this section must certify that the authority which issued the Part 1 warrant has the function of issuing arrest warrants in the category 1 territory.

(9) The designated authority is the authority designated for the purposes of this Part by order made by the Secretary of State.

(10) An order made under subsection (9) may—

- (a) designate more than one authority;
- (b) designate different authorities for different parts of the United Kingdom.

Arrest

3 Arrest under certified Part 1 warrant

(1) This section applies if a certificate is issued under section 2 in respect of a Part 1 warrant issued in respect of a person.

(2) The warrant may be executed by a constable or a customs officer in any part of the United Kingdom.

(3) The warrant may be executed by a service policeman, but only if the

service policeman would have power to arrest the person under the appropriate service law if the person had committed an offence under that law.

(4) If a service policeman has power to execute the warrant under subsection (3), he may execute the warrant in any place where he would have power to arrest the person under the appropriate service law if the person had committed an offence under that law.

(5) The warrant may be executed even if neither the warrant nor a copy of it is in the possession of the person executing it at the time of the arrest.

(6) The appropriate service law is—
(a) the Army Act 1955 (3 & 4 Eliz. 2 c. 18), if the person in respect of whom the warrant is issued is subject to military law;

(b) the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19), if that person is subject to air-force law;

(c) the Naval Discipline Act 1957 (c. 53), if that person is subject to that Act.

4 Person arrested under Part 1 warrant

(1) This section applies if a person is arrested under a Part 1 warrant.

(2) A copy of the warrant must be given to the person as soon as practicable after his arrest.

(3) The person must be brought as soon as practicable before the appropriate judge.

(4) If subsection (2) is not complied with and the person applies to the judge to be discharged, the judge may order his discharge.

(5) If subsection (3) is not complied with and the person applies to the judge to be discharged, the judge must order his discharge.

(6) A person arrested under the warrant must be treated as continuing in legal custody until he is brought before the appropriate judge under subsection (3) or he is discharged under subsection (4) or (5).

5 Provisional arrest

(1) A constable, a customs officer or a service policeman may arrest a person without a warrant if he has reasonable grounds for believing—

(a) that a Part 1 warrant has been or will be issued in respect of the person by an authority of a category 1 territory, and
(b) that the authority has the function of issuing arrest warrants in the category 1 territory.

(2) A constable or a customs officer may arrest a person under subsection (1) in any part of the United Kingdom.

(3) A service policeman may arrest a person under subsection (1) only if the service policeman would have power to arrest the person under the appropriate service law if the person had committed an offence under that law.

(4) If a service policeman has power to arrest a person under subsection (1), the service policeman may exercise the power in any place where he would have power to arrest the person for an offence under the appropriate service law if the person had committed an offence under that law.

(5) The appropriate service law is—
(a) the Army Act 1955 (3 & 4 Eliz. 2 c. 18), if the person to be arrested is subject to military law;
(b) the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19), if that person is subject to air-force law;
(c) the Naval Discipline Act 1957 (c. 53), if that person is subject to that Act.

6 Person arrested under section 5

(1) This section applies if a person is arrested under section 5.

(2) The following must occur within the required period—

(a) the person must be brought before the appropriate judge;
(b) the documents specified in subsection (4) must be produced to the judge.

(3) The required period is 48 hours starting with the time when the person is arrested.

(4) The documents are—

(a) a Part 1 warrant in respect of the person;
(b) a certificate under section 2 in respect of the warrant.

(5) A copy of the warrant must be given to the person as soon as practicable after his arrest.

(6) If subsection (2) is not complied with and the person applies to the judge to be discharged, the judge must order his discharge.

(7) If subsection (5) is not complied with and the person applies to the judge to be discharged, the judge may order his discharge.

(8) The person must be treated as continuing in legal custody until he is brought before the appropriate judge under subsection (2) or he is discharged under subsection (6) or (7).

(9) Subsection (10) applies if—

(a) a person is arrested under section 5 on the basis of a belief that a Part 1 warrant has been or will be issued in respect of him;
(b) the person is discharged under subsection (6) or (7).

(10) The person must not be arrested again under section 5 on the basis of a belief relating to the same Part 1 warrant.

The initial hearing

7 Identity of person arrested

(1) This section applies if—

(a) a person arrested under a Part 1 warrant is brought before the appropriate judge under section 4(3), or
(b) a person is arrested under section 5 and section 6(2) is complied with in relation to him.

(2) The judge must decide whether the person brought before him is the person in respect of whom—

(a) the warrant referred to in subsection (1)(a) was issued, or
(b) the warrant referred to in section 6(4) was issued.

(3) The judge must decide the question in subsection (2) on a balance of probabilities.

(4) If the judge decides the question in subsection (2) in the negative he must order the person's discharge.

(5) If the judge decides that question in the affirmative he must proceed under section 8.

(6) In England and Wales, the judge has the same powers (as nearly as may be) as a magistrates' court would have if the proceedings were the summary trial of an information against the person.

(7) In Scotland—

(a) the judge has the same powers (as nearly as may be) as if the proceedings were summary proceedings in respect of an offence alleged to have been committed by the person; but
(b) in his making any decision under subsection (2) evidence from a single source shall be sufficient.

(8) In Northern Ireland, the judge has the same powers (as nearly as may be) as a magistrates' court would have if the proceedings were the hearing and determination of a complaint against the person.

(9) If the judge exercises his power to adjourn the proceedings he must remand the person in custody or on bail.

(10) If the judge remands the person in custody he may later grant bail.

8 Remand etc.

(1) If the judge is required to proceed under this section he must—

(a) fix a date on which the extradition hearing is to begin;
(b) inform the person of the contents of the Part 1 warrant;
(c) give the person the required information about consent;
(d) remand the person in custody or on bail.

(2) If the judge remands the person in custody he may later grant bail.

(3) The required information about consent is—

(a) that the person may consent to his extradition to the category 1 territory in which the Part 1 warrant was issued;
(b) an explanation of the effect of consent and the procedure that will apply if he gives consent;
(c) that consent must be given before the judge and is irrevocable.

(4) The date fixed under subsection (1) must not be later than the end of the permitted period, which is 21 days starting with the date of the arrest referred to in section 7(1)(a) or (b).

(5) If before the date fixed under subsection (1) (or this subsection) a party to the proceedings applies to the judge for a later date to be fixed and the judge believes it to be in the interests of

justice to do so, he may fix a later date; and this subsection may apply more than once.

(6) Subsections (7) and (8) apply if the extradition hearing does not begin on or before the date fixed under this section.

(7) If the person applies to the judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay.

(8) If no application is made under subsection (7) the judge must order the person's discharge on the first occasion after the date fixed under this section when the person appears or is brought before the judge, unless reasonable cause is shown for the delay.

3. Arrest, Extradition Act 2003

Arrest

71 Arrest warrant following extradition request

(1) This section applies if the Secretary of State sends documents to the appropriate judge under section 70.

(2) The judge may issue a warrant for the arrest of the person whose extradition is requested if the judge has reasonable grounds for believing that—

- (a) the offence in respect of which extradition is requested is an extradition offence, and
- (b) there is evidence falling within subsection (3).

(3) The evidence is—

- (a) evidence that would justify the issue of a warrant for the arrest of a person accused of the offence within the judge's jurisdiction, if the person whose extradition is requested is accused of the commission of the offence;
- (b) evidence that would justify the issue of a warrant for the arrest of a person unlawfully at large after conviction of the offence within the judge's jurisdiction, if the person whose extradition is requested is alleged to be unlawfully at large after conviction of the offence.

(4) But if the category 2 territory to which extradition is requested is designated for the purposes of this section by order made by the Secretary of State, subsections (2) and (3) have effect as if "evidence" read "information".

(5) A warrant issued under this section may—

- (a) be executed by any person to whom it is directed or by any constable or customs officer;

(b) be executed even if neither the warrant nor a copy of it is in the possession of the person executing it at the time of the arrest.

(6) If a warrant issued under this section in respect of a person is directed to a service policeman, it may be executed in any place where the service policeman would have power to arrest the person under the appropriate service law if the person had committed an offence under that law.

(7) In any other case, a warrant issued under this section may be executed in any part of the United Kingdom.

(8) The appropriate service law is—

- (a) the Army Act 1955 (3 & 4 Eliz. 2 c. 18), if the person in respect of whom the warrant is issued is subject to military law;
- (b) the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19), if that person is subject to air-force law;
- (c) the Naval Discipline Act 1957 (c. 53), if that person is subject to that Act.

72 Person arrested under section 71

(1) This section applies if a person is arrested under a warrant issued under section 71.

(2) A copy of the warrant must be given to the person as soon as practicable after his arrest.

(3) The person must be brought as soon as practicable before the appropriate judge.

(4) But subsection (3) does not apply if—

- (a) the person is granted bail by a constable following his arrest, or

(b) the Secretary of State decides under section 126 that the request for the person's extradition is not to be proceeded with.

(5) If subsection (2) is not complied with and the person applies to the judge to be discharged, the judge may order his discharge.

(6) If subsection (3) is not complied with and the person applies to the judge to be discharged, the judge must order his discharge.

(7) When the person first appears or is brought before the appropriate judge, the judge must—

- (a) inform him of the contents of the request for his extradition;
- (b) give him the required information about consent;
- (c) remand him in custody or on bail.

(8) The required information about consent is—

- (a) that the person may consent to his extradition to the category 2 territory to which his extradition is requested;
- (b) an explanation of the effect of consent and the procedure that will apply if he gives consent;
- (c) that consent must be given in writing and is irrevocable.

(9) If the judge remands the person in custody he may later grant bail.

(10) Subsection (4)(a) applies to Scotland with the omission of the words "by a constable".

73 Provisional warrant

(1) This section applies if a justice of the peace is satisfied on information in writing and on oath that a person within subsection (2)—

- (a) is or is believed to be in the United Kingdom, or
- (b) is or is believed to be on his way to the United Kingdom.

(2) A person is within this subsection if—

- (a) he is accused in a category 2 territory of the commission of an offence, or
- (b) he is alleged to be unlawfully at large after conviction of an offence by a court in a category 2 territory.

(3) The justice may issue a warrant for the arrest of the person (a provisional warrant) if he has reasonable grounds for believing that—

- (a) the offence of which the person is accused or has been convicted is an extradition offence, and
- (b) there is written evidence falling within subsection (4).

(4) The evidence is—

- (a) evidence that would justify the issue of a warrant for the arrest of a person accused of the offence within the justice's jurisdiction, if the person in respect of whom the warrant is sought is accused of the commission of the offence;
- (b) evidence that would justify the issue of a warrant for the arrest of a person unlawfully at large after conviction of the offence within the justice's jurisdiction, if the person in respect of whom the warrant is sought is alleged to be unlawfully at large after conviction of the offence.

(5) But if the category 2 territory is designated for the purposes of this section by order made by the Secretary of State, subsections (3) and (4) have effect as if "evidence" read "information".

(6) A provisional warrant may—

- (a) be executed by any person to whom it is directed or by any constable or customs officer;
- (b) be executed even if neither the warrant nor a copy of it is in the possession of the person executing it at the time of the arrest.

(7) If a warrant issued under this section in respect of a person is directed to a service policeman, it may be executed in any place where the service policeman would have power to arrest the person under the appropriate service law if the person had committed an offence under that law.

(8) In any other case, a warrant issued under this section may be executed in any part of the United Kingdom.

(9) The appropriate service law is—

(a) the Army Act 1955 (3 & 4 Eliz. 2 c. 18), if the person in respect of whom the warrant is issued is subject to military law;

(b) the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19), if that person is subject to air-force law;

(c) the Naval Discipline Act 1957 (c. 53), if that person is subject to that Act.

(10) The preceding provisions of this section apply to Scotland with these modifications—

(a) in subsection (1) for “justice of the peace is satisfied on information in writing and on oath” substitute “sheriff is satisfied, on an application by a procurator fiscal,”;

(b) in subsection (3) for “justice” substitute “sheriff”;

(c) in subsection (4) for “justice’s”, in paragraphs (a) and (b), substitute “sheriff’s”.

(11) Subsection (1) applies to Northern Ireland with the substitution of “a complaint” for “information”.

74 Person arrested under provisional warrant

(1) This section applies if a person is arrested under a provisional warrant.

(2) A copy of the warrant must be given to the person as soon as practicable after his arrest.

(3) The person must be brought as soon as practicable before the appropriate judge.

(4) But subsection (3) does not apply if—

(a) the person is granted bail by a constable following his arrest, or

(b) in a case where the Secretary of State has received a valid request for the person’s extradition, the Secretary of State decides under section 126 that the request is not to be proceeded with.

(5) If subsection (2) is not complied with and the person applies to the judge to be discharged, the judge may order his discharge.

(6) If subsection (3) is not complied with and the person applies to the judge to be discharged, the judge must order his discharge.

(7) When the person first appears or is brought before the appropriate judge, the judge must—

(a) inform him that he is accused of the commission of an offence in a category 2 territory or that he is alleged to be unlawfully at large after conviction of an offence by a court in a category 2 territory;

(b) give him the required information about consent;

(c) remand him in custody or on bail.

(8) The required information about consent is—

(a) that the person may consent to his extradition to the category 2 territory in which he is accused of the commission of an offence or is alleged to have been convicted of an offence;

(b) an explanation of the effect of consent and the procedure that will apply if he gives consent;

(c) that consent must be given in writing and is irrevocable.

(9) If the judge remands the person in custody he may later grant bail.

(10) The judge must order the person's discharge if the documents referred to in section 70(9) are not received by the judge within the required period.

(11) The required period is—
(a) 45 days starting with the day on which the person was arrested, or
(b) if the category 2 territory is designated by order made by the Secretary of State for the purposes of this section, any longer period permitted by the order.

(12) Subsection (4)(a) applies to Scotland with the omission of the words "by a constable".

The extradition hearing

75 Date of extradition hearing: arrest under section 71

(1) When a person arrested under a warrant issued under section 71 first appears or is brought before the appropriate judge, the judge must fix a date on which the extradition hearing is to begin.

(2) The date fixed under subsection (1) must not be later than the end of the permitted period, which is 2 months starting with the date on which the person first appears or is brought before the judge.

(3) If before the date fixed under subsection (1) (or this subsection) a party to the proceedings applies to the judge for a later date to be fixed and the judge believes it to be in the interests of justice to do so, he may fix a later date; and this subsection may apply more than once.

(4) If the extradition hearing does not begin on or before the date fixed under this section and the person applies to the judge to be discharged, the judge must order his discharge.

76 Date of extradition hearing: arrest under provisional warrant

(1) Subsection (2) applies if—
(a) a person is arrested under a provisional warrant, and
(b) the documents referred to in section 70(9) are received by the appropriate judge within the period required under section 74(10).

(2) The judge must fix a date on which the extradition hearing is to begin.

(3) The date fixed under subsection (2) must not be later than the end of the permitted period, which is 2 months starting with the date on which the judge receives the documents.

(4) If before the date fixed under subsection (2) (or this subsection) a party to the proceedings applies to the judge for a later date to be fixed and the judge believes it to be in the interests of justice to do so, he may fix a later date; and this subsection may apply more than once.

(5) If the extradition hearing does not begin on or before the date fixed under this section and the person applies to the judge to be discharged, the judge must order his discharge.

4. Summary of The UK Extradition Process for Detainees

Extradition: Written Notice To Detained Person Including Fair Processing Notice

The section in capital letters is to be read to the detained person by the Custody Officer before giving the notice to the detained person.

YOU HAVE THE RIGHT TO:

1. SPEAK TO AN INDEPENDENT SOLICITOR FREE OF CHARGE
2. HAVE SOMEONE TOLD THAT YOU HAVE BEEN ARRESTED
3. CONSULT THE CODES OF PRACTICE COVERING POLICE POWERS AND PROCEDURES
4. CONSULT THE CODES OF PRACTICE COVERING POLICE POWERS AND PROCEDURES FOR EXTRADITION

YOU MAY DO ANY OF THESE THINGS NOW, BUT IF YOU DO NOT, YOU MAY STILL DO SO AT ANY TIME WHILST DETAINED AT THE POLICE STATION

You do not have to say anything, but anything you do say may be given in evidence.

You will not be interviewed about the extradition offence.

More information is given below. The following 4 continuing rights may be exercised at any stage during the period in custody:

1. The right to consult privately with a solicitor. Free independent legal advice is available. (Section 172 (3)(d) of the Extradition Act 2003)

You can speak to a solicitor at the police station at any time, day or night. It will cost you nothing.

Access to legal advice can only be delayed in certain exceptional circumstances (see Annex B of PACE Code of Practice C)

If you do not know a solicitor, or you cannot contact your own solicitor, ask for the duty solicitor. He or she is nothing to do with the police. Or you can ask to see a list of local solicitors.

You can talk to a solicitor in private on the telephone and the solicitor can come to see you at the police station.

In extradition cases, the police will not interview you about the extradition offence

If you want to see a solicitor, tell the custody officer at once. You can ask for legal advice at any time during your detention. Even if you do tell the police that you do not want a solicitor, you may change your mind at any time.

Your right to legal advice does not entitle you to delay procedures under the Road Traffic Act 1988 which require the provision of breath, blood or urine specimens.

2. The right to have someone informed of your arrest and detention (under Section 172 (3)(c) of the Extradition Act 2003);

You may on request have one person known to you or who is likely to take an interest in your welfare, informed at public expense as soon as practicable of your whereabouts. If this person cannot be contacted, you may choose up to 2 alternatives. If they too cannot be contacted, the Custody Officer has discretion on the number of further attempts required made to make contact.

This right can only be delayed in exceptional circumstances (Annex B PACE Code of Practice C)

3. and 4. The right to consult the PACE Codes of Practice and the Extradition Codes of Practice.

Either or both of the Codes of Practice will be made available to you on request. These Codes govern police procedures.

The right does not entitle you to unreasonably delay any necessary action.

The right does not entitle you to delay procedures under the Road Traffic Act 1988 which require the provision of breath, blood or urine specimens.

Custody Record

The Custody Officer will keep a record of your detention. On request, when you leave police detention or are taken before a court, you or your legal representative or the appropriate adult shall be supplied with a copy of the Custody Record as soon as practicable. This entitlement lasts for 12 months after your release from police detention.

Fair Processing Notice

Fair processing in respect of the use, retention and disclosure of personal data taken under the Data Protection Act 1998.

On written request, you shall be told as soon as is practicable:

- of the identity of the data controller or have this made easily available to you (this may be an individual e.g. Chief Constable, or a registered body);
- the purpose(s) for which the data will be processed and to whom it may be passed. Under extradition proceedings, the purpose will include establishing identity, maintaining the Custody Record, statistics and monitoring - refer to Extradition Codes C 3.3 and D 1.2. The information may be passed between law enforcement agencies, both here and abroad, and within Her Majesty's Government.

Your rights under use, disclosure and retention of photographs, fingerprints and samples are explained in the Extradition Codes of Practice, Code D 3.13 to 3.18 and 4.17 to 4.19.

Individuals who make a subject access request are entitled to a copy of the information held about them, however, this right does not entitle you to this information where exemptions apply under section 29 (1) of the Data Protection Act or other exemptions apply under Part 4 of that Act. E.g. access would be

likely to prejudice the prevention or detection of crime or the apprehension or prosecution of offenders

The rights do not entitle you to unreasonably delay any necessary action in connection with your case.

The police are not obliged to contact the Information Commissioner on your behalf.

Further information can be obtained from the Information Commissioner on **Enquiry Line** Telephone: 01625 545 745 or by Email: data@informationcommissioner.gov.uk

SUMMARY OF THE UK EXTRADITION PROCESS

Note: this form is not an exhaustive account of the extradition process, and is not a statement of the law, but is designed to help you to understand why you have been arrested and the main stages of the extradition process.

If you require a more detailed explanation of the process or have further questions, you should seek advice from your legal adviser.

PART 1: Persons arrested under Section 3 of the Extradition Act 2003

1) You have been arrested under Section 3 of the Extradition Act 2003.

2) *Either (where person is accused of offences in the Requesting State):*

Your extradition is sought by [Category 1 territory] in relation to an [offence(s)] which took place on [date/time] at [location]

Or (Where person has been convicted for offences and is alleged to be unlawfully at large):

Your extradition is sought by [Category 1 territory] for the purpose of [being sentenced] or [serving a sentence of imprisonment] in relation to [offence specified on the warrant].

3) You will be held in police custody until the initial extradition hearing.

4) There are two main stages to the extradition process.

5) The first is an initial hearing before a district judge. This will take place as soon as practicable.

6) At the initial hearing the judge will either remand you in custody or grant you bail.

7) The second hearing is the main extradition hearing. This will usually take place before a district judge within 21 days of your arrest.

8) At the extradition hearing, the judge will decide whether there are any reasons why you should not be extradited and then either order your extradition to [the Category 1 territory] or discharge you.

9) You may appeal against the judge's decision, within 7 days. If you do not appeal, you will be returned to [the Category 1 territory] within 10 days of the extradition hearing.

10) You have the right to consent to your extradition. If you wish to consent, you should consult your legal advisor on the implications. You may only give consent before the appropriate judge.

SUMMARY OF THE UK EXTRADITION PROCESS

PART 1: Provisional Arrest under Section 5 of the Extradition Act 2003

Note: this form is not an exhaustive account of the extradition process, and is not a statement of the law, but is designed to help you to understand why you have been arrested and the main stages of the extradition process.

If you require a more detailed explanation of the process or have further questions, you should seek advice from your legal adviser.

1) You have been provisionally arrested under Section 5 of the Extradition Act 2003.

2) *Either (where person is accused of offences in the Requesting State):*

Your extradition is sought by [Category 1 territory] in relation to an [offence(s)]

Or (where person has been convicted in the Requesting State is alleged to be unlawfully at large):

Your extradition is sought by [Category 1 territory] for the purpose of [being sentenced] or [serving a sentence of imprisonment].

3) If you are held in police custody for more than 48 hours after your arrest, pending receipt of a certified Part 1 warrant, you may apply to be discharged.

4) You have the right to be given a copy of the warrant as soon as is practicable.

5) There are two main stages to the extradition process.

6) The first is an initial hearing before a district judge. This will take place within 48 hours of your arrest.

7) At the initial hearing the judge will either remand you in custody or grant you bail.

8) The second hearing is the main extradition hearing. This will take place before a district judge within 21 days of your arrest.

9) At the extradition hearing the judge will decide whether there are any reasons why you should not be extradited and then either order your extradition to [the Category 1 territory] or discharge you.

10) You may appeal against the judge's decision, within 7 days. If you do not appeal, you will be returned to [the Category 1 territory] within 10 days of the extradition hearing.

11) You have the right to consent to your extradition. If you wish to consent you should consult your legal advisor on the implications. You may only give consent before the appropriate judge.

SUMMARY OF THE UK EXTRADITION PROCESS

PART 2: Persons Arrested under Section 71 of the Extradition Act 2003

Note: this form is not an exhaustive account of the extradition process, and is not a statement of the law, but is designed to help you to understand why you have been arrested and the main stages of the extradition process.

If you require a more detailed explanation of the process or have further questions, you should seek advice from your legal adviser.

1) You have been arrested under Section 71 of the Extradition Act 2003.

2) *Either (where person is accused of offences in the Requesting State):*

Your extradition is sought by [Category 2 territory] in relation to [offence(s)] which took place on [date/time] at [location].

Or (where person has been convicted by the Requesting State and is alleged to be unlawfully at large):

Your extradition is sought by [Category 2 territory] for the purpose of [being sentenced] or [serving a sentence of imprisonment] in relation to [offence(s) specified on the warrant]

3) You will be held in police custody until you are brought before a judge. You will be brought before a judge as soon as practicable.

4) There are three main stages to the extradition proceedings

5) At the first stage, you will be brought before a judge as soon as practicable after your arrest. The judge will either remand you in custody or grant you bail.

6) The second stage is the main extradition hearing. This will take place within two months of you being brought before the judge for the first time.

7) At the extradition hearing, the judge will decide whether there are any reasons why you should not be extradited. The judge will then either discharge you or send your case to the Secretary of State for a decision as to whether you should be extradited.

8) If your case is sent to the Secretary of State for a decision, you will have the right of appeal, but the appeal will not be heard until after the Secretary of State has made his decision. If your case is sent to the Secretary of State, you will either be remanded in custody or granted bail.

9) If the Secretary of State orders your extradition to [the Category 2 territory], you have the right to appeal to the High Court against the decisions of the judge and the Secretary of State within 14 days.

10) If you do not appeal, you will be returned to [the Category 2 territory] within 28 days of the order to extradite.

11) You have the right to consent to your extradition. If you wish to consent you should consult your legal advisor on the implications. You may only consent before the appropriate judge.

SUMMARY OF THE UK EXTRADITION PROCESS

PART 2: Provisional Arrest under Section 73 of the Extradition Act 2003

Note: this form is not an exhaustive account of the extradition process, and is not a statement of the law, but is designed to help you to understand why you have been arrested and the main stages of the extradition process.

If you require a more detailed explanation of the process or have further questions, you should seek advice from your legal adviser.

1) You have been provisionally arrested under Section 73 of the Extradition Act 2003.

Either (where person is accused of offences in the Requesting State):

Your extradition is sought by [Category 2 territory] in relation to [offence(s)] which took place on [date/time] at [location].

Or (where person has been convicted by the Requesting State and is alleged to be unlawfully at large):

Your extradition is sought by [Category 2 territory] for the purpose of [being sentenced] or [serving a sentence of imprisonment] in relation to [offence(s) specified on the warrant]

2) You will be held in police custody until you are brought before a judge. You will be brought before a judge as soon as practicable.

3) There are three main stages to the extradition proceedings

4) At the first stage, you will be brought before a judge as soon as practicable after your arrest. The judge will either remand you in custody or grant you bail.

5) Provided the judge has received all the necessary documentation relating to your case, within any applicable time limits, the judge will fix a date for the main extradition hearing. The main extradition hearing is the second stage of the proceedings.

6) The main extradition hearing will take place within 2 months of the judge receiving the necessary documentation.

7) At the extradition hearing the judge will decide whether there are any reasons why you should not be extradited. The judge will then either discharge you or send your case to the Secretary of State for a decision as to whether you will be extradited.

8) If your case is sent to the Secretary of State for a decision, you will have the right of appeal, but the appeal will not be heard until after the Secretary of State has made his decision. If your case is sent to the Secretary of State, you will either be remanded in custody or granted bail.

9) If the Secretary of State orders your extradition to [the Category 2 territory], you have the right to appeal to the High Court against the decisions of the judge and the Secretary of State within 14 days.

10) If you do not appeal, you will be returned to [the Category 2 territory] within 28 days of the order to extradite.

11) You have the right to consent to your extradition. If you wish to consent you should consult your legal advisor on the implications. You may only give consent before the appropriate judge.

5. Part 1 Cases

EXTRADITION ACT 2003

PART 1 CASES

Presented by Ravi Dogra, Victor Lissack, Roscoe & Coleman

Introduction

1. The act allows for each of the UK's extradition partners to be in one of two categories. The act is divided into five parts. Part 1 contains the fast-track extradition arrangements for Category 1 territories. It implements the European Arrest Warrant (EAW). Once this is issued it can be executed in any other member state in order to secure the defendant's rapid return to the requesting state.
2. This paper deals with arrests under Part 1 of the Act. Part 1 deals with Category 1 countries. A judicial authority, in other words a court, in the Category 1 jurisdiction will have issued a EAW. The defendant will have been arrested pursuant to this warrant and will be in custody to the Magistrates Court awaiting extradition. All European Union member states have been or will in time be designated as Category 1 territories as they implement the EAW. Designation is by The Extradition Act 2003 (Designation of Part 1 Territories) Order 2003 SI 2003/3333).
3. It will therefore be possible for a country to move from one category to the other when appropriate, depending on the extradition procedures the UK negotiates with each extradition partner. The only restriction is in section 1(3) of the Act and provides that a territory may not be designated for the purposes of Part 1 if the country implements the death penalty.
4. Therefore for the practical purposes that this paper is intended, the solicitor dealing with a first appearance under Part 1 will be advising a defendant under arrest pursuant to a EAW. There is no requirement for the requesting state to show a prima facie case. In contrast, prima facie evidence is required in Category 2 cases governed by Part 2 of the Act unless the requesting state is exempt from such a requirement by the Secretary of State in an order. The U.S.A and Australia are obvious examples of countries who do not have to establish a prima facie case, with Azerbaijan, Ukraine and South Africa being less obvious examples.

Part 1 Warrant

5. The most likely form to be encountered for practical purposes, is the EAW. This is a common form of arrest warrant which, after issue in one state, can be executed in any other member state of the E.U, subject to local certification procedures, in order to secure the defendant's rapid return to the requesting state.
6. The Part 1 warrant must contain either the statement referred to in section 2(3) E.A 2003 and the information referred to in section 2(4) where there is an unconvicted defendant **accused** of offences, or the statement referred to in section 2(5) E.A 2003 and the information referred to in section 2(6) where there is defendant

convicted of offences. For practical purposes this is the first piece of information that should be sought from the papers when considering them prior to taking instructions as this will plainly be relevant to discharging the warrant which is the aim of the defence absent the defendant consenting to extradition.

Accusation cases

7. Section 2(3) refers to a statement that the person in respect of whom the Part 1 warrant is issued is accused in the Category 1 territory of the commission of an offence specified in the warrant, and the Part 1 warrant is issued with a view to arrest and extradition to the category 1 territory for the purpose of being prosecuted for the offence.
8. Section 2(4) refers to the following information;
 - (a) Particulars of the person's identity.
 - (b) Particulars of any warrant issued in the category 1 territory for the person's arrest in respect of the offence.
 - (c) Particulars of the circumstances in which the person is alleged to have committed the offence, including the conduct alleged to constitute the offence and the time and place at which he is alleged to have committed the offence.
 - (d) Particulars of the sentence which may be imposed under the law of the Category 1 territory in respect of the offence if the person is convicted of it.

Conviction cases

9. Section 2(5) refers to a statement that the person in respect of whom the Part 1 warrant is issued is alleged to be unlawfully at large after conviction of an offence specified in the warrant by a court in the Category 1 territory, and the part 1 warrant is issued with a view to his arrest and extradition to the Category 1 territory for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence.
10. Section 2(6) refers to the following information;
 - (a) Particulars of the person's identity.
 - (b) Particulars of the conviction.
 - (c) Particulars of any other warrant issued in the Category 1 territory for the person's arrest in respect of the offence.
 - (d) Particulars of the sentence which may be imposed under the law of the Category 1 territory in respect of the offence, if the person has not been sentenced for the offence.
 - (e) Particulars of the sentence which has been imposed under the law of the Category 1 territory in respect of the offence, if the person has been sentenced for the offence.

Arrest

11. The warrant is put into effect by an arrest. For the first time, in the absence of a warrant, there are provisional arrest powers which enable an arrest of a person without a warrant if there is reason to believe that a Part 1 warrant has been or will be issued – section 5 EA 2003, but he must then be brought before a District Judge within 48 hours and the documents specified in s 6(4) which include a certified part 1 warrant must be produced.
12. Following an arrest under a certified Part 1 warrant the person must then be brought before a district judge as soon as is practicable. If there is any objective basis upon

which the timescale within which the defendant is produced can be challenged then this should be raised with the District Judge. If the statutory requirement to be brought before a District Judge as soon as is reasonably practicable is not complied with and the person applies to the judge to be discharged, the judge must order the discharge.

Initial Hearing

13. This takes place once a provisional arrest is furthered by the mandatory production of a Part 1 warrant within 48 hours of arrest (otherwise the provisional warrant will fail to take effect as the defendant must be discharged) or where there is a Part 1 warrant that has been executed.

14. Sections 7 and 8 EA 2003 determine the judge's duties in Part 1 cases.

Identity : section 7

15. This is required under section 7(1). The judge must determine on a balance of probabilities (s7(3)), whether the person before him is the person in respect of whom the Part 1 warrant has been issued (s7(2)). If he is not then the defendant must be discharged. If he is then the district judge decides the issues arising under section 8.

16. Generally there is no issue as to identity. Often, the person will have confirmed this to the arresting officers. However, where identity is to be an issue then an adjournment may be necessary for the defendant to adduce evidence about it. The defendant is entitled to do so (Re Anthony, unreported, 27 June 1995, CO/1657/94). Section 7(6) provides that the judge has the same powers (as nearly as may be) as a Magistrates Court would have were the proceedings a summary trial of an information (MCA 1980, s10(1) is the power to adjourn proceedings).

Section 8 matters.

17. Once the judge is satisfied on a balance of probabilities that the defendant is the person to whom the Part 1 warrant relates then he is required by s7(5) to proceed under section 8. The following is required;

(a) Fix a date on which the extradition hearing is to begin. This must not be later than 21 days starting with the date of arrest. However section 8(5) provides that if before the date fixed for the extradition hearing a party applies to the judge for a later date to be fixed, and the judge believes it is in the interests of justice to do so, he may fix a later date. More than one extension can be granted. In practice this going to be common, the more complex and/or voluminous the material to be considered and prepared. A defendant in custody will also have an impact on preparation time. Article 5(4) guarantees detained persons the right to adequate time and facilities for the preparation of a challenge to the legality of their detention.

(b) Inform the defendant of the contents of the Part 1 warrant;

(c) Give the defendant the required information about consent. If a defendant consents to his extradition then that must be given before the judge, be recorded in writing and is irrevocable. The solicitor must take care to advise the defendant about this. The defendant who consents can be tried in the

category 1 territory for an offence committed before his extradition and it would appear this extends to any offence. The defendant is remanded in custody and extradition must be ordered within the period of 10 days starting with the day on which consent is given. If the 10 day period is not complied with then the defendant must be discharged if he so applies unless reasonable cause is shown for the delay.

(d) Remand the defendant on bail or in custody.

Bail.

18. Defendants arrested for the purposes of extradition now have the right to bail accorded to all criminal defendants, a change effected by section 198 EA 2003, except where it is alleged that the person is unlawfully at large after conviction of the offence.
19. The usual bail considerations apply and instructions should be taken accordingly. The prosecution can appeal to the crown court against a grant of bail. However I cannot find any power that enables the defendant to appeal to the crown court against a refusal of bail and any challenge would have to be to the High Court, RSC Ord 79 r9, contained in Sch 1 to the Civil Procedure Rules 1998 (SI 1998/3132).

Extradition Hearings under Part 1 – a summary

20. The judge must first decide whether the offence specified in the Part 1 warrant is an extradition offence. If not then the defendant has to be discharged.
21. If it is then the judge must go on to consider whether any of the bars to extradition specified in section 11 are applicable.
22. If none of them are, and the defendant is alleged to be unlawfully at large after conviction, the judge must then consider whether the defendant falls to be discharged under section 20 (convictions in absence).
23. If section 20 does not apply, or the restrictions in it are not made out, the judge must then consider whether the extradition would violate the defendant's rights under the Human rights Act 1998 (s21).
24. If it would not, he must order the defendant's extradition and the hearing is at an end. Subject to an appeal he may then be extradited.

Extradition Offence

25. Only those accused or convicted of an extradition offence in the requesting state can be extradited. It does not have to be an offence in the U.K. The EA 2003 removes dual criminality in relation to category 1 territories which are part of the EAW scheme in relation to the offences specified in the EAW and listed in schedule 2. There are 32 such offences.

Persons not sentenced or unlawfully at large

26. The following conditions must be satisfied by Category 1 territories in accusation cases or where the person has not been sentenced and is unlawfully at large after conviction (s64(2));

- (a) The conduct occurs in the Category 1 territory and no part of it occurs in the UK.
 - (b) A certificate is issued by an appropriate authority of the Category 1 territory that shows that the conduct falls within the European framework list.
 - (c) The certificate shows that the conduct is punishable by at least 3 years imprisonment in the Category 1 territory.
27. However the conduct also constitutes an extradition offence where in the case of a category 1 territory the conduct occurs in that territory and would constitute an offence in the UK and it is punishable in the Category 1 territory with at least 12 months imprisonment. Therefore where dual criminality can be established then the minimum sentence that can be imposed falls from 3 years to 12 months (s64(3)).
28. Where the conduct constitutes an extra-territorial offence against law of the category 1 territory then it amounts to an extradition offence if (sections 64(4)(5) and (6));
- (a) The conduct occurs outside the Category 1 territory.
 - (b) The conduct is punishable in the Category 1 territory with at least 12 months imprisonment.
 - (c) In corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the relevant part of the UK punishable with at least 12 months imprisonment.
29. Special provision is made in sections 64(6) and (7) for war crimes, genocide etc which are unlikely to trouble anyone attending at a first hearing. The legislation is in any event self explanatory.

Persons sentenced for the offence.

30. Section 65 determines this. The conditions are as above, save for the qualifying term of imprisonment. In EAW cases where dual criminality does not have to be established the minimum term imposed has to have been 12 months custody. Where dual criminality can be established then the minimum term is 4 months where the conduct took place within the requesting state.
31. Where the conduct is extra-territorial, the conditions are in section 65(4). The conduct constitutes an extradition offence when it occurs outside the category 1 territory, a sentence of at least 4 months imprisonment or another form of detention (a form of wording used throughout the statute to cover young offenders institutes and the like) has been imposed and in corresponding circumstances the conduct would constitute an extra-territorial offence in the UK punishable with at least 12 months imprisonment or the equivalent. The other possible variations on this theme are covered in sections 65(5), where no part of the conduct occurs in the UK and 65(6) which deals with war crimes etc.

Bars to extradition.

32. The bars to extradition are specified in section 11(1)(a) to (f) and defined in sections 12-21. These will not be argued at the initial hearing but the solicitor should have a working knowledge of the bars so as to advise the defendant.

The Rule against Double Jeopardy – section 12

33. This operates if and only if it appears that the defendant would be entitled to be discharged under any rule of law relating to previous acquittals or convictions on the assumption;

(a) That the conduct constituting the offence constituted an offence in that part of the UK where the judge exercises jurisdiction.

(b) That the person was charged with that offence in that part of the UK.

Extraneous considerations – section 13

34. The jurisdiction to decline to extradite a defendant because he is accused or has been convicted of a political offence is a long standing principle of extradition law. Extradition is barred if and only if;

(a) The part 1 warrant though purporting to be issued on account of the extradition offence is in fact issued for the purposes of prosecuting or punishing him on account of his race, religion, nationality, gender, sexual orientation, or political opinions.

(b) If extradited he might be prejudiced at trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, gender, sexual orientation or political opinions.

Passage of time – section 14.

35. Extradition is barred if it would be unjust or oppressive to extradite him by reason of passage of time, since he is alleged to have committed the offence or since he is alleged to have become unlawfully at large (as the case may be).

36. The leading case is *Kakis* [1978] 1 WLR 779. Unjust is directed primarily to the risk of prejudice to the accused in the conduct of the trial itself. Oppressive is directed to hardship to the accused resulting from changes in his circumstances that have occurred during the period to be taken into consideration. There is room for overlap here and with other bars. It is a matter of judgement how the case is presented.

37. The relevant period runs from the date of the offence to the date of the challenge. Proof is on a balance of probabilities. The defendant cannot rely on the passage of time caused by him fleeing the country if he was aware of the investigation, or concealing his whereabouts or crime or evading arrest. However if the requesting authority can be shown to be inexcusably dilatory in taking steps to bring the person to justice then this can serve to establish the necessary injustice and oppressiveness. A sense of false security becomes a relevant consideration if the defendant is led to believe he will not be extradited and that changes.

38. This is broader than the common law domestic abuse of process jurisdiction. This is because discharge can be granted in extradition cases where no question as to fairness of the trial arises but it would nevertheless be oppressive to return the defendant.

Age – section 15.

39. Extradition of a person who would have been under the age of criminal responsibility at the time the alleged offence was committed is now prohibited. The court must assume that the offence was committed by the defendant in the UK and that the conduct amounts to an offence in the UK. In England and Wales the age is 10 so anyone under that age cannot be guilty of any offence.

Hostage taking considerations – section 16.

40. Derived from Article 9 of the International Convention against the Taking of Hostages. If the defendant might be prejudiced because communication between him and the appropriate authorities might not be possible and the extradition offence also constitutes an offence under s1 Taking of Hostages act 1982 or an attempt to commit such an offence.

Speciality – section 17.

41. This is a rule that is intended to ensure that a person extradited is not dealt with in the requesting state for any offence other than that for which he was extradited. However this has been widely relaxed and the extent of this bar is clearly stated in statute. It should not trouble anyone at the initial hearing.

Extradition barred by reason of earlier extradition to the UK – sections 18 and 19.

42. The statute is simply worded and this prohibition is closely related to the rule on speciality. If a person is extradited to the UK then the country from where he is extradited would need to consent to a further extradition to a third territory.

Convictions in absence – section 20.

43. This is intended to ensure that defendants who were convicted in their absence but who did not have an opportunity to appear at their trial are not extradited unless they are guaranteed a fair trial in their presence in the category 1 requesting state.

Human Rights – section 20.

44. This topic is one that everyone will be familiar with and can be simply read in Archbold, Blackstones Guide to the Extradition Act 2003 or any other text book.

Other bars to extradition.

45. Section 25 physical or mental condition. The condition upon which this operates is that at any stage of the proceedings the judge can discharge the defendant if his physical or mental condition is such that it would unjust or oppressive to extradite him. There is an overlap with section 14 and it is matter of judgement how this is advanced taking into consideration the degree of ill health.
46. Abuse of process and bad faith. This is difficult to establish especially where there is no requirement to show a prima facie case. The cases need to be read in order to learn this area.
47. Sovereign, Diplomatic and Consular Immunity. Speaks for itself.

6. Part 2 Cases

EXTRADITION ACT 2003 – PART 2 APPLICATIONS

Part 2 of the EA 2003 refers to the procedure and hearing(s) at which the appropriate judge is asked to deal with a request for extradition to a category 2 territory (Section 140(1)).

The judge's functions may be more elaborate than in Part 1 hearing because Section 84 EA 2003 can require prima facie evidence **except** where a requesting category 2 territory has been designated by the Secretary of State under Section 84(7).

Procedure

The district judge must first consider the sufficiency of documents.:-

1. The Secretary of State has to issue a certificate when he receives a valid extradition request from a category 2 country which has been made in the approved way.
2. The Secretary of State is then required to send the following documents to the district judge; the request, the certificate and a copy of any relevant Order in Council.

The district judge therefore must ensure

- that the documents are in order,
- confirm the particulars of the person whose extradition is requested,
- confirm the particulars of the offence specified in the request and
- in the case of a person accused of an offence confirm that a warrant for his arrest was issued in the category 2 territory and finally
- in the case of a person alleged to be unlawfully at large **after conviction** of an offence a certificate issued in the category 2 territory of the conviction and (if he has been sentenced) of the sentence.

If the documents are deficient then the defendant must be discharged.

If satisfied that the documentation is in order, the judge must go on to decide the three questions specified in Section 78(4).

1. The identity of the person brought before the judge needs to be proved on the balance of probabilities.
2. The judge needs to determine whether the offence specified in the request is an extradition offence.
3. The judge needs to ascertain that copies of the documents sent to the court by the Secretary of State have been served on the person detained.

Extradition Offence.

Sections 137 and 138 define extradition offence in relation to category 2 territories for accused persons and convicted persons respectively.

Accused applications

Section 137(2) comprises conduct within the territory of the requesting state.

- The conduct has occurred within the requesting state
- It would also constitute an offence under UK law punishable with imprisonment or another form of detention for a term of 12 months or more in the UK and
- The conduct is so punishable under the law of the category 2 territory.

Sections 137(3),(4) and (5) deal with conduct outside the requesting state on a roughly similar basis.

Convicted applications

Section 138 applies to persons convicted and sentenced for an offence. In summary:-

- The person must have been sentenced following a conviction and is said to be unlawfully at large, and
- The conduct constitutes an extradition offence in relation to the category 2 territory if having occurred in that territory the conduct would constitute an offence under UK law punishable with imprisonment or another form of detention for a term of 12 months or more in the UK and
- A sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment need already to have been imposed in the category 2 territory in respect of conduct.

Sections 138(3),(4) and (5) deal with conduct outside the requesting state on a roughly similar basis.

Bars

Bars to extradition appear to be the same as for category 1 territory.

Prima facie evidence

There are a number of countries which have been designated for the purpose of the Extradition Act 2003 as such that they do not have to establish a prima facie case. However where there is an obligation Section 84 sets out the procedure which, in general terms requires the judge to make a finding on the same basis as if he were considering the strength of the Crown's case on either a summary trial or an old-style committal. Hearsay evidence can be admissible and the defendant is entitled to give evidence and call witnesses in extradition hearings where evidence is required.

Human Rights

Human Rights law applies as in criminal law and in category 1 territories

HOME OFFICE WEBSITE

Extradition Act 2003- Part 2

This page covers extradition relations with category 2 territories governed by Part 2 of the 2003 Act.

The main elements of Part 2 of the Extradition Act 2003 are:

- removal of the duplicated and overlapping roles of the courts and ministers found in the 1989 Act
- a streamlined appeals procedure
- a reduced role for the Secretary of State and removal of his broad discretion

Extradition from the United Kingdom requires decisions by both the Secretary of State and the courts.

The overall time taken to complete a case can vary considerably depending, for instance, on its complexity. Independence of the judiciary means that the Secretary of State has no influence over the time a case takes to clear the judicial stages

Territories under Part 2

Territories designated under Part 2 are either members of the European Convention on Extradition; the London Scheme for Extradition within the Commonwealth; or else they are parties to bilateral extradition treaties with the UK. The countries involved are:

Albania, Andorra, Antigua and Barbuda, Argentina, Armenia, Australia, Azerbaijan, The Bahamas, Bangladesh, Barbados, Belize, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei, Canada, Chile, Colombia, Cook Islands, Croatia, Cuba, Dominica, Ecuador, El Salvador, Fiji, The Gambia, Georgia, Ghana, Grenada, Guatemala, Guyana, Hong Kong Special Administrative Region, Haiti, Iceland, India, Iraq, Israel, Jamaica, Kenya, Kiribati, Lesotho, Liberia, Liechtenstein, Macedonia (FYR), Malawi, Malaysia, Maldives, Mauritius, Mexico, Moldova, Monaco, Montenegro, Nauru, New Zealand, Nicaragua, Nigeria, Norway, Panama, Papua New Guinea, Paraguay, Peru, Russian Federation, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Serbia, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, Swaziland, Switzerland, Tanzania, Thailand, Tonga, Trinidad and Tobago, Turkey, Tuvalu, Uganda, Ukraine, Uruguay, The United States of America, Vanuatu, Western Samoa, Zambia and Zimbabwe.

A copy of the Statutory Instrument designating these territories as category 2 territories can be found on the Office of Public Sector Information website. The relevant SI is 2003 No. 3334.

Extradition Requests

Under Part 2 of the 2003 Act, requests to the United Kingdom should be made to the Secretary of State. The Secretary of State then issues a certificate and sends the papers to the court. The court then issues a warrant for the requested person's arrest.

The documentation can only be certified if the requirements of section 70 of the 2003 Act are met. In cases where the requested person has been convicted, the documentation must also include a statement that the person is 'unlawfully at large', i.e. has been convicted and is liable to immediate arrest and detention.

Requesting states are advised to submit a draft request to the Crown Prosecution Service to ensure potential difficulties are resolved before the request is finally submitted.

Documentation required

Generally the information required to accompany the request will include:

1. particulars of the person whose return is requested
2. particulars of the offence of which he is accused or was convicted
3. in the case of a person accused of an offence, a warrant or a duly authenticated copy of a warrant for his arrest issued in the requesting state, or for a provisional arrest, details of such a warrant
4. in the case of a person unlawfully at large after conviction of an offence, a certificate or a duly authenticated copy of a certificate of the conviction and the sentence, or for provisional arrest, details of the conviction
5. evidence or information that would justify the issue of a warrant for arrest in the UK, within the jurisdiction of a judge of the court that would hold the extradition hearing

Evidence required

Some countries are not required to provide prima facie evidence in support of their request for extradition. These countries are (as of 1 January 2007):

Albania, Andorra, Armenia, Australia, Azerbaijan, Canada, Croatia, Georgia, Iceland, Israel, Liechtenstein, Macedonia FYR, Moldova, Montenegro, New Zealand, Norway, Russian Federation, Serbia, South Africa, Switzerland, Turkey, Ukraine and the United States of America.

Preliminary Hearing

After the person has been arrested, he is brought before the court as soon as is practicable and the judge sets a date for the extradition hearing.

Extradition Hearing

The judge must satisfy himself that the request meets the requirements of the 2003 Act, including dual criminality and where appropriate, prima facie evidence of guilt; and that none of the bars to extradition apply (the rule against double jeopardy; extraneous considerations; passage of time or hostage-taking considerations).

Finally, he is required to decide whether the person's extradition would be compatible with the convention rights within the meaning of the Human Rights Act 1998.

If he decides all of these questions in the affirmative, he must send the case to the Secretary of State for the latter's decision whether the person is to be extradited. Otherwise, he must discharge the person.

Secretary of State

Where a case is sent to him, the Secretary of State must consider whether surrender is prohibited because:

1. The person could face the death penalty: This is an absolute prohibition unless the Secretary of State receives an adequate written assurance from the requesting state that the death penalty will not be imposed, or will not be carried out, if imposed

2. there are no speciality arrangements with the requesting country: The condition of “speciality” requires that the person must be dealt with in the requesting state only for the offences in respect of which the person is extradited (except in certain limited circumstances)
3. the person was earlier extradited to the UK: This might require the Secretary of State to obtain the consent of the earlier extraditing country, before the person can be extradited on to the requesting state.

In this event, the defence has to make any representations within six weeks of the case being sent to the Secretary of State (42 days, including the day the case was sent). The Secretary of State has to make his own decision within two calendar months of the day the case is sent to him, or else the person may apply to be discharged.

However, if the representations are complex and require enquiries being made of the requesting state, the Secretary of State may apply to the High Court for an extension of the decision date, of any length but usually of no more than two months – it is a matter for the court as to whether and for how long this is granted, although it has not to date refused any such application. More than one extension may be sought in any one case; and granted if it appears necessary.

If the Secretary of State does find that surrender is prohibited, he must order the discharge of the person. If none of the three prohibitions apply, or appropriate assurances have been given, the Secretary of State must order the person to be extradited.

APPEALS

High Court

A requested person may appeal within 14 days to the High Court if:

1. the district judge sends the case to the Secretary of State
2. the Secretary of State orders his extradition

A requesting state may appeal within 14 days to the High Court against the discharge of the requested person by:

1. the judge at the extradition hearing
2. the Secretary of State (after the case has been sent to him by the District Judge).

House of Lords

A decision of the High Court in an extradition case may be appealed against in the House of Lords by either a requested person (or if a person is discharged by the High Court, by a requesting state) provided that leave to appeal has been granted.

An appeal to the House of Lords can only be made on a point of law of general public importance and where it is agreed by the High Court that the point is one which should be considered by the House of Lords. Section 114 of the 2003 Act sets out the details and time limits for such an appeal.

Surrender

Unless there is an appeal the person whose extradition has been ordered should be extradited within 28 days of the Secretary of State making his decision. Where there is an appeals process, the 28 days will begin once all the legal remedies have been exhausted.

If there are exceptional circumstances, this time limit can be extended, although if the person applies to the District judge for discharge, reasonable cause must be shown for the delay.

Robert Roscoe

7. Application for Representation Orders

Application for a Representation Order for the purposes of Appeals under the Extradition Act, 2003.

An appellant should submit a Form CDS 14 (as also used in the Magistrates Court), preferably at the same time as the appeal is lodged. The appellant's solicitors must pay the fee at present £200 on issue. The appellant will be covered by the Representation Order in the lower Court for the preparation and filing of the Appellant's Notice and Grounds.

Note: the Criminal Defence Service Act, 2006 only affects the issue of granting Representation Orders in the Magistrates Court. Issue in the High Court continues to be covered by the Criminal Defence Service (General) Regulations 2001 (Stones 1-5693) insofar as they apply.

Any Representation Order granted by the Court will only be backdated to the date of receipt of the application for legal aid (Regulation 6 (1)). However the Court will not consider any application for a Representation Order until the appeal has been lodged. Applications for legal aid lodged before the Appellant's Notice is lodged will be returned.

If the appellant was in receipt of a Representation Order in the lower Court, a copy of this should also be lodged.

Power to grant representation order

1. ACCESS TO JUSTICE ACT 1999

s.12 establishes the **Criminal Defence Service** for purpose of securing that individuals involved in....criminal proceedings have access to such advice, assistance and representation as the interests of justice require. The Legal Services Commission is no longer responsible for the grant of public funding in relation to appeals by case stated in connection with a criminal cause or matter.

“Representation” means representation for the purposes of the proceedings and includes the assistance which is usually given by a representative in the steps preliminary or incidental to any proceedings and, subject to any time limits which may be prescribed, advice and assistance as to any appeal - s.26

s.12(2) defines **“criminal proceedings”**

- (a) Proceedings before any court for dealing with an individual accused of an offence
- (b)

S.182 Extradition Act, 2003, amends S.12(2) to include extradition in its definition of criminal proceedings.

The **test for the grant of representation** is the interest of justice test (as under the Legal Aid Act). The criteria for the grant of representation are set out in the Access to Justice 1999, Schedule 3:

Factors to be taken into account:-

- (a) likely to lose liberty or livelihood, or suffer serious damage to reputation
- (b) proceedings involve consideration of substantial question of law
- (c) whether individual may be unable to understand proceedings
- (d) whether proceedings may involve tracing, interviewing or cross examination of witnesses
- (e) in the interests of another person.

NB

1. If there is more than one appellant and they were separately represented at the lower Court, the Court will need to know why they continue to need to be represented by separate solicitors and/or Counsel. Part B 1c of the CDS14 should always be completed fully, as it cannot be assumed that legal aid will be granted for more than one Counsel.
2. A Representation Order is normally granted only for junior Counsel. If you seek to have both leading and/or junior Counsel, reasons must be given in writing.
3. If you wish to obtain expert reports, or authority for other exceptional costs, application should be made to this Court in writing, (not to the Costs Committee, which only covers the Crown Court) with a rough estimate of the costs. The Court will not authorise a specific prior authority, but will indicate whether it thinks that such expenditure is reasonably necessary for the conduct of the case. The solicitor must still then justify these disbursements on assessment. The solicitor may incur disbursements without seeking approval of the Court, but must then justify them on taxation.
4. **ORDERS FOR COSTS**
It is not necessary to obtain an order for community legal aid assessment where there is a Representation Order as this is the authority for taxation.
It is not possible to recover costs out of Central Funds where there is a Representation Order – S.21(4)A Prosecution of Offences Act, 1985
5. **HOUSE OF LORDS**
The House of Lords has no power to grant a Representation Order.
Any application for your Representation Order to be extended to cover an application to the House of Lords for leave if a point of law of general public importance is certified should be made by a letter at the time you submit your application for a certified point, confirming that there has been no change in your client's means.

The Court will then normally make an order in the form attached, whatever representation you had at the Divisional Court level.
6. **PAYMENT**
All bills should be sent to the Supreme Court Costs Office.

Any queries – contact Simon Slidders on 0207 947 7317 (27/09/2007)

8. Time Limits

CIVIL PROCEDURE RULES (WHITE BOOK) PART 52 PRACTICE DIRECTION

Appeals under the Extradition Act 2003

- 22.6A (1) In this paragraph, 'the Act' means the Extradition Act 2003.
- (2) Appeals to the High Court under the Act must be brought in the Administrative Court of the Queen's Bench Division.
- (3) Where an appeal is brought under section 26 or 28 of the Act –
- (a) the appellant's notice must be filed and served before the expiry of 7 days, starting with the day on which the order is made;
 - (b) the appellant must endorse the appellant's notice with the date of the person's arrest;
 - (c) the High Court must begin to hear the substantive appeal within 40 days of the person's arrest; and
 - (d) the appellant must serve a copy of the appellant's notice on the Crown Prosecution Service, if they are not a party to the appeal, in addition to the persons to be served under rule 52.4(3) and in accordance with that rule.
- (4) The High Court may extend the period of 40 days under paragraph (3)(c) if it believes it to be in the interests of justice to do so.
- (5) Where an appeal is brought under section 103 of the Act, the appellant's notice must be filed and served before the expiry of 14 days, starting with the day on which the Secretary of State informs the person under section 100(1) or (4) of the Act of the order he has made in respect of the person.
- (6) Where an appeal is brought under section 105 of the Act, the appellant's notice must be filed and served before the expiry of 14 days, starting with the day on which the order for discharge is made.
- (7) Where an appeal is brought under section 108 of the Act the appellant's notice must be filed and served before the expiry of 14 days, starting with the day on which the Secretary of State informs the person that he has ordered his extradition.
- (8) Where an appeal is brought under section 110 of the Act the appellant's notice must be filed and served before the expiry of 14 days, starting with the day on which the Secretary of State informs the person acting on behalf of a category 2 territory, as defined in section 69 of the Act, of the order for discharge.
- (Section 69 of the Act provides that a category 2 territory is that designated for the purposes of Part 2 of the Act).
- (9) Subject to paragraph (10), where an appeal is brought under section 103, 105, 108 or 110 of the Act, the High Court must begin to hear the substantive appeal within 76 days of the appellant's notice being filed.
- (10) Where an appeal is brought under section 103 of the Act before the Secretary of State has decided whether the person is to be extradited
- (a) the period of 76 days does not start until the day on which the Secretary of State informs the person of his decision; and
 - (b) the Secretary of State must, as soon as practicable after he informs the person of his decision, inform the High Court
 - (i) of his decision; and

(ii) of the date on which he informs the person of his decision.

- (11) The High Court may extend the period of 76 days if it believes it to be in the interests of justice to do so.
- (12) Where an appeal is brought under section 103, 105, 108 or 110 of the Act, the appellant must serve a copy of the appellant's notice on
 - (a) the Crown Prosecution Service; and
 - (b) the Home Office,

if they are not a party to the appeal, in addition to the persons to be served under rule 52.4(3) and in accordance with that rule.

22.6A(3)a

The time limits for filing appeals reflect those set out in the Act, at S.26 (4) and S.103 (9) and are therefore statutory, and cannot be extended by the Court under the Civil Procedure Rules. Your attention is drawn particularly to the cases of In re AMOAKO (2006) EWHC 1572 (Admin) also reported at (2006) 4 All ER 230; District Judge of Vilnius v Barcys (2007) EWHC 615. (Admin); and Mendy v CPS (2007) EWHC 1765 (Admin) .

(NB the time limits apply to serving as well as filing.)

The 7 and 14 days start from the date of decision. Therefore if the District Judge makes an order on an EAW on Monday, the last day for filing is on Friday.

If the DJ makes an order on Tuesday, and there is a Bank Holiday on the following Monday, the last day for filing is a Friday. If the District Judge makes an order on Wednesday in the week before Easter, then the last day for filing is that Thursday! , as the Court Office is not open until Easter Wednesday.

WHO TO SERVE

Under CPR 52PD 17.5 – the appellant's notice must be filed on the respondent and the Tribunal against whose decision the appeal is brought – in this case the City of Westminster Magistrates Court. A full set of papers must be served upon the Respondent, but the Magistrates Court has indicated that service of the Appellant's Notice and Grounds is sufficient for them.

In European Arrest Warrant cases, service is always on the CPS for the respondent.

In Part 2 Cases, please note that 22.6A(12) requires that both the CPS and the Home Office (should be done on Treasury Solicitors under CPR Part 19 and Crown Proceedings Act, 1947) are served whether or not the appeal is against the decision of the District Judge or the SSHD.

In all cases therefore the appellant should initially lodge at least 6 copies of the Appellant's Notice (three of which will be retained) returning 3 for service on the Magistrates Court , CPS (and SSHD if Part 2 appeal).

22.6A(3)b

The date of arrest should be endorsed at Section 5 of the Appellant's Notice.

22.6A(3)c

In many cases, the 40 days will have already expired by the time the District Judge has made his decision. However every effort will be made to list the appeals as soon as possible. They will immediately enter the Warned List and can expect to be listed within a very short period (sometimes less than 21 days). A Judge will consider how long to extend the time usually within a week (under (3), and any application to extend time for the hearing of the appeal should be lodged with the appellant's notice, if the case will not be immediately ready for hearing. Skeleton arguments should be filed with the Grounds if possible. Applications for legal aid should also be lodged with the Appellant's Notice if possible.

9. Disposing of Applications/Appeals by Consent

DISPOSING OF APPLICATIONS OR APPEALS BY CONSENT CPR PART 52PD 12

Dismissal of applications or appeals by consent

- 12.1 These paragraphs do not apply where any party to the proceedings is a child or patient.
- 12.2 Where an appellant does not wish to pursue an application or an appeal, he may request the appeal court for an order that his application or appeal be dismissed. Such a request must contain a statement that the appellant is not a child or patient. If such a request is granted it will usually be on the basis that the appellant pays the costs of the application or appeal.
- 12.3 If the appellant wishes to have the application or appeal dismissed without costs, his request must be accompanied by a consent signed by the respondent or his legal representative stating that the respondent is not a child or patient and consents to the dismissal of the application or appeal without costs.
- 12.4 Where a settlement has been reached disposing of the application or appeal, the parties may make a joint request to the court stating that none of them is a child or patient, and asking that the application or appeal be dismissed by consent. If the request is granted the application or appeal will be dismissed.

Allowing unopposed appeals or applications on paper

- 13.1 The appeal court will not normally make an order allowing an appeal unless satisfied that the decision of the lower court was wrong, but the appeal court may set aside or vary the order of the lower court with consent and without determining the merits of the appeal, if it is satisfied that there are good and sufficient reasons for doing so. Where the appeal court is requested by all parties to allow an application or an appeal the court may consider the request on the papers. The request should state that none of the parties is a child or patient and set out the relevant history of the proceedings and the matters relied on as justifying the proposed order and be accompanied by a copy of the proposed order.

NB there is no provision in the Rules on Appeal for withdrawing the appeal without a consent order to dismiss.

