Draft Regulations laid before Parliament under secion 112(7) of the Anti-terrorism, Crime and Security Act 2001 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2002 No.

EXTRADITION

The European Union Extradition Regulations 2002

Made - - - - 2002
Coming into force on a date to be notified in the London, Edinburgh and Belfast Gazettes

Whereas the Convention drawn up on the basis of Article K.3 of the Treaty on European Union on Simplified Extradition Procedure between the Member States of the European Union (referred to in these Regulations as "the 1995 Convention")(**1**), the terms of which are set out in Schedule 1 to these Regulations, was opened for signature in Brussels on 10th March 1995 and was signed by the United Kingdom on that date;

And whereas the United Kingdom has made the reservation, declarations and statements set out in Schedule 2 to these Regulations;

And whereas the States listed in Schedule 3 to these Regulations are parties to the Convention and have made the reservations, declarations and statements set out in Schedule 4 to these Regulations;

And whereas the Convention drawn up on the basis of Article K.3 of the Treaty on European Union relating to Extradition between the Member States of the European Union (referred to in these Regulations as "the 1996 Convention")(**2**) the terms of which are set out in Schedule 5 to these Regulations, was opened for signature in Dublin on 27th September 1996 and was signed by the United Kingdom on that date;

And whereas the United Kingdom has made the declarations and statements set out in Schedule 6 to these Regulations;

And whereas the States listed in Schedule 7 to these Regulations are parties to the Convention and have made the reservations, declarations and statements set out in Schedule 8 to these Regulations;

And whereas the 1995 Convention and the 1996 Convention are third pillar measures for the purposes of section 111(1) of the Anti-terrorism, Crime and Security Act 2001 (**3**) by virtue of section 111(2)(a) and (b) of that Act;

And whereas the said section 111(1) provides that an authorised Minister may by regulations make provision for the purpose of implementing any obligation of the United Kingdom created or arising by or under any third pillar measure, or enabling any such obligation to be implemented, or for the purpose of enabling any rights enjoyed or to be enjoyed by the United Kingdom under or by virtue

(**1**) Cm. 2958.
(**2**) Cm. 3533.
(**3**) 2001 c. 24.

of any third pillar measure to be exercised, or for the purpose of dealing with matters arising out of or related to any such obligation or rights;

And whereas, under section 112(1) and (3) of the said Act, the Secretary of State is an authorised Minister for the purposes of the said section 111(1);

And whereas a draft of these Regulations has been laid before and approved by a resolution of each House of Parliament;

Now, therefore, in exercise of the powers conferred upon him by the said section 111(1) and (3), the Secretary of State hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the European Union Extradition Regulations 2002 and shall come into force on a date to be notified in the London, Edinburgh and Belfast Gazettes.

(2) In these Regulations "the Act" means the Extradition Act 1989(**4**).

Application of the 1989 Act

2.—(1) The Act is amended as set out in Schedule 9 to these Regulations.

(2) These Regulations apply only to requests for return made by a foreign state to the United Kingdom or by the United Kingdom to a foreign state after the coming into force of the Regulations.

(3) Where a state has made a declaration under Article 6(3) of the 1996 Convention, in the application of the Act by virtue of the European Convention on Extradition Order 2001 (**5**), Article 5 of the European Convention on Extradition shall not apply, and extradition shall not be refused to that state in respect of an offence which is connected with excise, value added tax or customs.

Home Office
2002

Minister of State

(**4**) 1989 c. 33.
(**5**) S.I.2001/962.

SCHEDULE 1

Preamble

THE CONVENTION ON SIMPLIFIED EXTRADITION PROCEDURE BETWEEN MEMBER STATES OF THE EUROPEAN UNION ("THE 1995 CONVENTION")

The High Contracting Parties to this Convention, Member States of the European Union,

Referring to the Council Act of 10 March 1995,

Desiring to improve judicial co-operation between the Member States in criminal matters, with regard both to proceedings and the execution of sentences,

Recognising the importance of extradition in judicial co-operation in order to achieve these objectives,

Convinced of the need to simplify extradition procedures to the extent that this is compatible with their fundamental legal principles, including the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms,

Noting that, in a large number of extradition proceedings, the person claimed consents to his surrender,

Noting that it is desirable to reduce to a minimum , in such cases, the time necessary for the extradition and any period of detention for extradition purposes,

Considering that, as a result, application of the European Convention on Extradition of 13 December 1957 should be made easier by simplifying and improving extradition procedures,

Considering that the provisions of the European Convention on Extradition remain applicable for all matters not covered by this Convention,

Have agreed the following provisions:

ARTICLE 1

GENERAL PROVISIONS

1. The aim of this Convention is to facilitate the application, between the Member States of the European Union, of the European Convention on Extradition, by supplementing its provisions.

2. Paragraph 1 shall not affect the application of more favourable provisions in the bilateral and multilateral agreements in force between Member States.

ARTICLE 2

OBLIGATION TO SURRENDER PERSONS

Member States undertake to surrender to each other under simplified procedures as provided for by this Convention persons sought for the purpose of extradition, subject to consent of such persons and the agreement of the requested State given in accordance with this Convention.

ARTICLE 3

CONDITIONS FOR SURRENDER

1. Pursuant to Article 2, any person who is the subject of a request for provisional arrest in accordance with Article 16 of the European Convention on Extradition shall be surrendered in accordance with Articles 4 to 11 and Article 12(1) of the present Convention.

2. The surrender referred to in paragraph 1 shall not be subject to submission of a request for extradition or the documents required by Article 12 of the European Convention on Extradition.

ARTICLE 4

INFORMATION TO BE PROVIDED

1. The following information from the requesting State shall be regarded as adequate for the information of the arrested person for the purpose of applying Articles 6 and 7 and for the competent authority referred to in Article 5(2):

(a) the identity of the person sought;

(b) the authority requesting the arrest;

(c) the existence of an arrest warrant or other document having the same legal effect or of an enforceable judgment;

(d) the nature and legal description of the offence;

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

(f) in so far as possible, the consequences of the offence.

2. Notwithstanding paragraph 1, further information may be requested if the information provided for in the said paragraph is insufficient to allow the competent authority of the requested State to give agreement to the surrender.

ARTICLE 5

CONSENT AND AGREEMENT

1. The consent of the arrested person shall be given in accordance with Articles 6 and 7.

2. The competent authority of the requested State shall give its agreement in accordance with its national procedures.

ARTICLE 6

INFORMATION TO BE GIVEN TO THE PERSON

Where a person wanted for the purpose of extradition is arrested on the territory of another Member State, the competent authority shall inform that person, in accordance with its national law, of the request relating to him and of the possibility of his consent to his surrender to the requesting State under the simplified procedure.

ARTICLE 7

ESTABLISHING CONSENT

1. The consent of the arrested person and, if appropriate, his express renunciation of entitlement to the speciality rule, shall be given before a competent judicial authority of the requested State in accordance with the national law of that 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 arrested person shall have the right to legal counsel.

3. Consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be recorded; the recording procedure shall be in accordance with the national law of the requested State.

4. Consent and, where appropriate, renunciation, as referred to in paragraph 1, may not be revoked. Upon deposit of their instruments of ratification, acceptance, approval or accession, Member States may indicate, in a declaration, that consent and, where appropriate, renunciation may be revoked, in accordance with the rules applicable under national law. In this case, the period

between the notification of consent and that of its revocation shall not be taken into consideration in establishing the periods provided for in Article 16(4) of the European Convention on Extradition.

ARTICLE 8

NOTIFICATION OF CONSENT

1. The Requested State shall immediately notify the requesting State of the consent of the person. So that the requesting State may submit, where applicable, a request for extradition, the requested State shall notify it, no later than 10 days after provisional arrest, whether or not the person has given his consent.

2. Notification referred to in paragraph 1 shall be made directly between the competent authorities.

ARTICLE 9

RENUNCIATION OF ENTITLEMENT TO THE SPECIALITY RULE

Each Member State may declare, upon deposit of its instrument of ratification, acceptance, approval or accession, or at any other time, that the rules laid down in Article 14 of the European Convention on Extradition do not apply where the person, in accordance with Article 7 of the present Convention:

(a) consents to extradition; or

(b) consents to extradition and expressly renounces his entitlement to the speciality rule.

ARTICLE 10

NOTIFICATION OF THE EXTRADITION DECISION

1. Notwithstanding the rules laid down in Article 18(1) of the European Convention on Extradition, the extradition decision taken pursuant to the simplified procedure and the information concerning the simplified extradition procedure shall be notified directly between the competent authority of the requested State and the authority of the requesting State which has requested provisional arrest.

2. The decision referred to in paragraph 1 shall be notified at the latest within 20 days of the date on which the person consented.

ARTICLE 11

DEADLINE FOR SURRENDER

1. Surrender shall take place within 20 days of the date on which the extradition decision was notified under the conditions laid down in Article 10(2).

2. After the deadline laid down in paragraph 1, if the person is being held, he shall be released on the territory of the requested State.

3. Should surrender of the person within the deadline laid down in paragraph 1 be prevented by circumstances beyond its control, the authority concerned referred to in Article 10(1) shall so inform the other authority. The two authorities shall agree on a new surrender date. In that event, surrender will take place within 20 days of the new date thus agreed. If the person in question is still being held after expiry of this period, he shall be released.

4. Paragraphs 1, 2 and 3 of this Article shall not apply in cases where the requested State wishes to make use of Article 19 of the European Convention on Extradition.