

**PART 17**  
**EXTRADITION**

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## SECTION 1: GENERAL RULES

**When this Part applies**

- 17.1.**—(1) This Part applies to extradition under Part 1 or Part 2 of the Extradition Act 2003(a).  
(2) Section 2 of this Part applies to proceedings in a magistrates' court, and in that Section—  
(a) rules 17.3 to 17.7, 17.15 and 17.16 apply to extradition under Part 1 of the Act;  
(b) rules 17.3, 17.4 and 17.8 to 17.16 apply to extradition under Part 2 of the Act.  
(3) Section 3 of this Part applies where—  
(a) a party wants to appeal to the High Court against an order by the magistrates' court or by the Secretary of State;  
(b) a party to an appeal to the High Court wants to appeal further to the Supreme Court under—  
(i) section 32 of the Act (appeal under Part 1 of the Act), or  
(ii) section 114 of the Act (appeal under Part 2 of the Act).

*[Note. The Extradition Act 2003 provides for the extradition of a person accused or convicted of a crime to the territory within which that person is accused or was convicted.]*

*Under Part 1 of the Act (sections 1 to 68), the magistrates' court may give effect to a warrant for arrest issued by an authority in a territory designated for the purposes of that Part, including a Member State of the European Union.*

*Under Part 2 of the Act (sections 69 to 141), the magistrates' court and the Secretary of State may give effect to a request for extradition made under a treaty between the United Kingdom and the requesting territory.*

*There are rights of appeal to the High Court from decisions of the magistrates' court and of the Secretary of State: see Section 3 of this Part.]*

**Meaning of 'magistrates' court', 'presenting officer' and 'defendant'**

- 17.2.** In this Part, and for the purposes of this Part in other rules—  
(a) 'magistrates' court' means a District Judge (Magistrates' Courts) exercising the powers to which Section 2 of this Part applies;  
(b) 'presenting officer' means an officer of the National Crime Agency, a police officer, a prosecutor or other person representing an authority or territory seeking the extradition of a defendant;  
(c) 'defendant' means a person arrested under Part 1 or Part 2 of the Extradition Act 2003.

*[Note. Under sections 67 and 139 of the Extradition Act 2003(b), a District Judge (Magistrates' Courts) must be designated for the purposes of the Act to exercise the powers to which Section 2 of this Part applies.]*

## SECTION 2: EXTRADITION PROCEEDINGS IN A MAGISTRATES' COURT

**Exercise of magistrates' court's powers**

**17.3.**—(1) The general rule is that the magistrates' court must exercise its powers at a hearing in public, but that is subject to any power it has to—

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- (a) 2003 c. 41.  
(b) 2003 c. 41; sections 67 and 139 were amended by section 15 of, and paragraphs 352 and 353 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4) and section 42 of, and paragraph 15 of Schedule 13 to, the Police and Justice Act 2006 (c. 48).

- (a) impose reporting restrictions;
- (b) withhold information from the public; or
- (c) order a hearing in private.

(2) The general rule is that the court must exercise its powers in the defendant's presence, but it may do so in the defendant's absence where—

- (a) the court discharges the defendant; or
- (b) the defendant is represented and the defendant's presence is impracticable by reason of his or her—
  - (i) ill health, or
  - (ii) disorderly conduct.

(3) The court may exercise its power to adjourn—

- (a) if either party asks, or on its own initiative; and
- (b) in particular—
  - (i) to allow there to be obtained information that the court requires,
  - (ii) following a provisional arrest under Part 1 of the Extradition Act 2003, pending receipt of the warrant,
  - (iii) following a provisional arrest under Part 2 of the Act, pending receipt of the extradition request,
  - (iv) if the court is informed that the defendant is serving a custodial sentence in the United Kingdom,
  - (v) if it appears to the court that the defendant is not fit to be extradited, unless the court discharges the defendant for that reason,
  - (vi) where a court dealing with a warrant to which Part 1 of the Act applies is informed that another such warrant has been received in the United Kingdom, or
  - (vii) where a court dealing with a warrant to which Part 1 of the Act applies is informed of a request for the temporary transfer of the defendant to the territory to which the defendant's extradition is sought.

(4) The court must exercise its power to adjourn if informed that the defendant has been charged with an offence in the United Kingdom.

(5) The general rule is that, before exercising a power to which this Part applies, the court must give each party an opportunity to make representations, unless that party is absent deliberately.

*[Note. See sections 8A, 8B, 9, 21B, 22, 23, 25 and 44 of the Extradition Act 2003(a) (powers in relation to extradition under Part 1 of the Act) and sections 76A, 76B, 77, 88, 89 and 91 of the Act(b) (powers in relation to extradition under Part 2 of the Act).*

*Under sections 206A to 206C of the 2003 Act(c), the court may require a defendant to attend by live link a preliminary hearing to which rule 17.5, 17.9 or 17.11 applies, and any hearing for the purposes of rule 17.12.*

*Part 3 contains rules about case management which apply at an extradition hearing and during preparation for that hearing. The rules in this Part must be read in conjunction with those rules.*

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- (a) 2003 c. 41; sections 8A and 8B were inserted by section 69 of the Policing and Crime Act 2009 (c. 26). Sections 9 and 44 were amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48). Section 21B is inserted by section 159 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), with effect from a date to be appointed. Section 22 was amended by section 71 of the Policing and Crime Act 2009 (c. 26). Section 23 was amended by paragraph 7 of Schedule 13 to the Police and Justice Act 2006 (c. 48) and section 71 of the Policing and Crime Act 2009 (c. 26).
  - (b) 2003 c. 41; sections 76A and 76B were inserted by section 70 of the Policing and Crime Act 2009 (c. 26). Section 77 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48). Section 88 was amended by section 71 of the Policing and Crime Act 2009 (c. 26). Section 89 was amended by paragraph 7 of Schedule 13 to the Police and Justice Act 2006 (c. 48) and section 71 of the Policing and Crime Act 2009 (c. 26).
  - (c) 2003 c. 41; sections 206A, 206B and 206C were inserted by section 78 of the Policing and Crime Act 2009 (c. 26).

*Part 16 contains rules about reporting and access restrictions.]*

### **Duty of magistrates' court officer**

**17.4.** The magistrates' court officer must—

- (a) as soon as practicable, serve notice of the court's decision to extradite or discharge—
  - (i) on the defendant,
  - (ii) on the designated authority which certified the arrest warrant, where Part 1 of the Extradition Act 2003 applies,
  - (iii) on the Secretary of State, where Part 2 of the Act applies; and
- (b) give the court such assistance as it requires.

### EXTRADITION UNDER PART 1 OF THE EXTRADITION ACT 2003

### **Preliminary hearing after arrest**

**17.5.**—(1) This rule applies where the defendant is first brought before the court after—

- (a) arrest under a warrant to which Part 1 of the Extradition Act 2003 applies; or
- (b) provisional arrest under Part 1 of the Act.

(2) The presenting officer must—

- (a) serve on the court officer—
  - (i) the arrest warrant, and
  - (ii) a certificate, given by the authority designated by the Secretary of State, that the warrant was issued by an authority having the function of issuing such warrants in the territory to which the defendant's extradition is sought; or
- (b) apply at once for an extension of time within which to serve that warrant and that certificate.

(3) An application under paragraph (2)(b) must—

- (a) explain why the requirement to serve the warrant and certificate at once could not reasonably be complied with; and
- (b) include—
  - (i) any written material in support of that explanation, and
  - (ii) representations about bail pending service of those documents.

(4) When the presenting officer serves the warrant and certificate, in the following sequence the court must—

- (a) decide whether the defendant is the person in respect of whom the warrant was issued;
- (b) explain, in terms the defendant can understand (with help, if necessary)—
  - (i) the allegation made in the warrant, and
  - (ii) that the defendant may consent to extradition, and how that may be done and with what effect;
- (c) arrange for an extradition hearing to begin—
  - (i) no more than 21 days after the defendant's arrest, or
  - (ii) if either party so applies, at such a later date as the court decides is in the interests of justice;
- (d) consider any ancillary application, including an application about bail pending the extradition hearing; and
- (e) give any direction as is appropriate to the needs of the case about the introduction of evidence at the extradition hearing.

*[Note. See sections 4, 6, 7 and 8 of the Extradition Act 2003(a).*

*Under section 6 of the Act, following a provisional arrest pending receipt of a warrant the defendant must be brought before the court within 48 hours, and the warrant and certificate must be served within that same period. If they are not so served, the court may extend the time for service by a further 48 hours.*

*Under section 45 of the Act(b), a defendant's consent to extradition must be given before the court, must be recorded in writing, and is irrevocable. Consent may not be given unless the defendant has a legal representative with him or her when giving consent, or the defendant has failed or refused to apply for legal aid, or legal aid has been refused or withdrawn.*

*Part 19 contains rules about bail.]*

### **Extradition hearing**

**17.6.**—(1) This rule applies at the extradition hearing arranged by the court under rule 17.5.

(2) In the following sequence, the court must decide—

- (a) whether the offence specified in the warrant is an extradition offence;
- (b) whether a bar to extradition applies, namely—
  - (i) the rule against double jeopardy,
  - (ii) absence of prosecution decision,
  - (iii) extraneous considerations,
  - (iv) the passage of time,
  - (v) the defendant's age,
  - (vi) speciality,
  - (vii) earlier extradition or transfer to the United Kingdom, or
  - (viii) forum;
- (c) where the warrant alleges that the defendant is unlawfully at large after conviction, whether conviction was in the defendant's presence and if not—
  - (i) whether the defendant was absent deliberately,
  - (ii) if the defendant was not absent deliberately, whether the defendant would be entitled to a retrial (or to a review of the conviction, amounting to a retrial);
- (d) whether extradition would be—
  - (i) compatible with the defendant's human rights, and
  - (ii) proportionate;
- (e) whether it would be unjust or oppressive to extradite the defendant because of his or her physical or mental condition;
- (f) after deciding each of (a) to (e) above, before progressing to the next, whether to order the defendant's discharge;
- (g) whether to order the temporary transfer of the defendant to the territory to which the defendant's extradition is sought.

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(a) 2003 c. 41; section 6 was amended by section 77 of the Policing and Crime Act 2009 (c. 26). Section 7 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48) and section 77 of the Policing and Crime Act 2009 (c. 26). Section 8 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48). It is further amended by section 155 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), with effect from a date to be appointed.

(b) 2003 c. 41; section 45 was amended by paragraphs 62 and 63 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It is further amended by section 163 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), with effect from a date to be appointed.

(3) If the court discharges the defendant, the court must consider any ancillary application, including an application about—

- (a) reporting restrictions; or
- (b) costs.

(4) If the court does not discharge the defendant, the court must—

- (a) exercise its power to order the defendant's extradition;
- (b) explain, in terms the defendant can understand (with help, if necessary), that the defendant may appeal to the High Court within the next 7 days; and
- (c) consider any ancillary application, including an application about—
  - (i) bail pending extradition,
  - (ii) reporting restrictions, or
  - (iii) costs.

(5) If the court orders the defendant's extradition, the court must order its postponement where—

- (a) the defendant has been charged with an offence in the United Kingdom; or
- (b) the defendant has been sentenced to imprisonment or detention in the United Kingdom.

*[Note. See sections 10, 11, 20, 21, 21B, 25, 26, 36A, 36B, 64 and 65 of the Extradition Act 2003(a).]*

*Part 16 contains rules about reporting restrictions. Part 76 contains rules about costs.]*

#### **Discharge where warrant withdrawn**

**17.7.**—(1) This rule applies where the authority that certified the warrant gives the court officer notice that the warrant has been withdrawn—

- (a) after the start of the hearing under rule 17.5; and
- (b) before the court orders the defendant's extradition or discharge.

(2) The court must exercise its power to discharge the defendant.

*[Note. See section 41 of the Extradition Act 2003.]*

### EXTRADITION UNDER PART 2 OF THE EXTRADITION ACT 2003

#### **Issue of arrest warrant**

**17.8.**—(1) This rule applies where the Secretary of State serves on the court officer—

- (a) an extradition request to which Part 2 of the Extradition Act 2003 applies;
- (b) a certificate given by the Secretary of State that the request was received in the way approved for the request; and
- (c) a copy of any Order in Council which applies to the request.

(2) In the following sequence, the court must decide—

- (a) whether the offence in respect of which extradition is requested is an extradition offence; and

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(a) 2003 c. 41; section 11 was amended by paragraphs 3 and 4 of Schedule 13 to the Police and Justice Act 2006 (c. 48) and by paragraphs 1 and 2 of Schedule 20 to the Crime and Courts Act 2013 (c. 22). It is further amended by sections 156, 157 and 158 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), with effect from dates to be appointed. Section 21 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48). Section 21B is inserted by section 159 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), section 26 is amended by section 160 of that Act, sections 36A and 36B are inserted by section 161 of that Act and sections 64 and 65 are substituted by section 164 of that Act, all with effect from dates to be appointed.

- (b) whether there is sufficient evidence, or (where the Secretary of State has so ordered, for this purpose) information, to justify the issue of a warrant of arrest.
- (3) The court may issue an arrest warrant—
  - (a) without giving the parties an opportunity to make representations; and
  - (b) without a hearing, or at a hearing in public or in private.

[*Note. See sections 70, 71, 137 and 138 of the Extradition Act 2003(a).*]

### **Preliminary hearing after arrest**

**17.9.**—(1) This rule applies where a defendant is first brought before the court after arrest under a warrant to which rule 17.8 applies.

- (2) In the following sequence, the court must—
  - (a) explain, in terms the defendant can understand (with help, if necessary)—
    - (i) the content of the extradition request, and
    - (ii) that the defendant may consent to extradition, and how that may be done and with what effect;
  - (b) arrange for an extradition hearing to begin—
    - (i) no more than 2 months later, or
    - (ii) if either party so applies, at such a later date as the court decides is in the interests of justice;
  - (c) consider any ancillary application, including an application about bail pending the extradition hearing; and
  - (d) give any direction as is appropriate to the needs of the case about the introduction of evidence at the extradition hearing.

[*Note. See sections 72 and 75 of the Extradition Act 2003(b).*]

*Under section 127 of the 2003 Act(c) a defendant's consent to extradition must be given before the court, must be recorded in writing, and is irrevocable. Consent may not be given unless the defendant has a legal representative with him or her when giving consent, or the defendant has failed or refused to apply for legal aid, or legal aid has been refused or withdrawn.*

*Part 19 contains rules about bail.*]

### **Issue of provisional arrest warrant**

**17.10.**—(1) This rule applies where a presenting officer wants a justice of the peace to issue a provisional arrest warrant under Part 2 of the Extradition Act 2003, pending receipt of an extradition request.

- (2) The presenting officer must—
  - (a) serve on the court officer an information in writing; and
  - (b) verify the information on oath or affirmation.
- (3) In the following sequence, the justice must decide—
  - (a) whether the alleged offence is an extradition offence; and

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(a) 2003 c. 41; section 70 was amended by paragraphs 1 and 17 of Schedule 13 to the Police and Justice Act 2006 (c. 48). Section 71 was amended by paragraph 202 of Schedule 16 to the Armed Forces Act 2006 (c. 52). Sections 137 and 138 are substituted by section 164 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), with effect from a date to be appointed.

(b) 2003 c. 41; section 72 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48).

(c) 2003 c. 41; section 127 was amended by paragraphs 62 and 64 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

- (b) whether there is sufficient evidence, or (where the Secretary of State has so ordered, for this purpose) information, to justify the issue of a warrant of arrest.

*[Note. See sections 73, 137 and 138 of the Extradition Act 2003(a).]*

#### **Preliminary hearing after provisional arrest**

**17.11.**—(1) This rule applies where a defendant is first brought before the court after arrest under a provisional arrest warrant to which rule 17.10 applies.

(2) The court must—

- (a) explain, in terms the defendant can understand (with help, if necessary)—
- (i) the allegation in respect of which the warrant was issued, and
  - (ii) that the defendant may consent to extradition, and how that may be done and with what effect; and
- (b) consider any ancillary application, including an application about bail pending receipt of the extradition request.

*[Note. See section 74 of the Extradition Act 2003(b). Under section 127 of the Act, a defendant's consent to extradition must be given before the court, must be recorded in writing, and is irrevocable. Consent may not be given unless the defendant has a legal representative with him or her when giving consent, or the defendant has failed or refused to apply for legal aid, or legal aid has been refused or withdrawn.]*

#### **Arrangement of extradition hearing after provisional arrest**

**17.12.**—(1) This rule applies when the Secretary of State serves on the court officer—

- (a) a request for extradition in respect of which a defendant has been arrested under a provisional arrest warrant to which rule 17.10 applies;
- (b) a certificate given by the Secretary of State that the request was received in the way approved for the request; and
- (c) a copy of any Order in Council which applies to the request.

(2) Unless a time limit for service of the request has expired, the court must—

- (a) arrange for an extradition hearing to begin—
- (i) no more than 2 months after service of the request, or
  - (ii) if either party so applies, at such a later date as the court decides is in the interests of justice;
- (b) consider any ancillary application, including an application about bail pending the extradition hearing; and
- (c) give any direction as is appropriate to the needs of the case about the introduction of evidence at the extradition hearing.

*[Note. See section 76 of the Extradition Act 2003.]*

#### **Extradition hearing**

**17.13.**—(1) This rule applies at the extradition hearing arranged by the court under rule 17.9 or rule 17.12.

(2) In the following sequence, the court must decide—

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- (a) 2003 c. 41; section 73 was amended by paragraph 203 of Schedule 16 to the Armed Forces Act 2006 (c. 52). Sections 137 and 138 are substituted by section 164 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), with effect from a date to be appointed.
- (b) 2003 c. 41; section 74 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48).



- (a) whether the documents served on the court officer by the Secretary of State include—
    - (i) those listed in rule 17.8(1) or rule 17.12(1), as the case may be,
    - (ii) particulars of the person whose extradition is requested,
    - (iii) particulars of the offence specified in the request, and
    - (iv) as the case may be, a warrant for the defendant's arrest, or a certificate of the defendant's conviction and (if applicable) sentence, issued in the requesting territory;
  - (b) whether the defendant is the person whose extradition is requested;
  - (c) whether the offence specified in the request is an extradition offence;
  - (d) whether the documents served on the court officer by the Secretary of State have been served also on the defendant;
  - (e) whether a bar to extradition applies, namely—
    - (i) the rule against double jeopardy,
    - (ii) extraneous considerations,
    - (iii) the passage of time,
    - (iv) hostage-taking considerations, or
    - (v) forum;
  - (f) where the request accuses the defendant of an offence, whether there is evidence which would be sufficient to make a case requiring an answer by the defendant if the extradition proceedings were a trial (unless the Secretary of State has otherwise ordered, for this purpose);
  - (g) where the request accuses the defendant of being unlawfully at large after conviction, whether the defendant was—
    - (i) convicted in his or her presence, or
    - (ii) absent deliberately;
  - (h) where the request accuses the defendant of being unlawfully at large after conviction, and the defendant was absent but not deliberately—
    - (i) whether the defendant would be entitled to a retrial (or to a review of the conviction amounting to a retrial), and
    - (ii) if so, whether there is evidence which would be sufficient to make a case requiring an answer by the defendant if the extradition proceedings were a trial (unless the Secretary of State has otherwise ordered, for this purpose);
  - (i) whether extradition would be compatible with the defendant's human rights;
  - (j) whether it would be unjust or oppressive to extradite the defendant because of his or her physical or mental condition;
  - (k) after deciding each of (a) to (j) above, before progressing to the next, whether to order the defendant's discharge.
- (3) If the court discharges the defendant, the court must consider any ancillary application, including an application about—
- (a) reporting restrictions; or
  - (b) costs.
- (4) If the court does not discharge the defendant, the court must—
- (a) exercise its power to send the case to the Secretary of State to decide whether to extradite the defendant;
  - (b) explain, in terms the defendant can understand (with help, if necessary), that—
    - (i) the defendant may appeal to the High Court not more than 14 days after being informed of the Secretary of State's decision, and

- (ii) any such appeal brought before the Secretary of State's decision has been made will not be heard until after that decision; and
  - (c) consider any ancillary application, including an application about—
    - (i) bail pending extradition,
    - (ii) reporting restrictions, or
    - (iii) costs.
- (5) If the Secretary of State orders the defendant's extradition, the court must order its postponement where—
- (a) the defendant has been charged with an offence in the United Kingdom; or
  - (b) the defendant has been sentenced to imprisonment or detention in the United Kingdom.

*[Note. See sections 78, 79, 84, 85, 86, 87, 91, 92, 103, 118A, 118B, 137 and 138 of the Extradition Act 2003(a).]*

*Part 16 contains rules about reporting restrictions. Part 76 contains rules about costs.]*

### **Discharge where extradition request withdrawn**

**17.14.**—(1) This rule applies where the Secretary of State gives the court officer notice that the extradition request has been withdrawn—

- (a) after the start of the hearing under rule 17.9 or 17.11; and
- (b) before the court—
  - (i) sends the case to the Secretary of State to decide whether to extradite the defendant, or
  - (ii) discharges the defendant.

(2) The court must exercise its power to discharge the defendant.

*[Note. See section 122 of the Extradition Act 2003.]*

## EVIDENCE AT EXTRADITION HEARING

### **Introduction of additional evidence**

**17.15.**—(1) Where a party wants to introduce evidence at an extradition hearing under the law that would apply if that hearing were a trial, the relevant Part of these Rules applies with such adaptations as the court directs.

(2) If the court admits as evidence the written statement of a witness—

- (a) each relevant part of the statement must be read or summarised aloud; or
- (b) the court must read the statement and its gist must be summarised aloud.

(3) If a party introduces in evidence a fact admitted by another party, or the parties jointly admit a fact, a written record must be made of the admission.

*[Note. The admissibility of evidence that a party introduces is governed by rules of evidence.]*

*Under section 202 of the Extradition Act 2003(b), the court may receive in evidence—*

- (a) a warrant to which Part 1 of the Act applies;

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(a) 2003 c. 41; section 79 was amended by paragraphs 4 and 5 of Schedule 20 to the Crime and Courts Act 2013 (c. 22). Section 103 is amended by section 160 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), sections 118A and 118B are inserted by section 161 of that Act and sections 137 and 138 are substituted by section 164 of that Act, all with effect from dates to be appointed.

(b) 2003 c. 41; section 202 was amended by paragraph 26 of Schedule 13 to the Police and Justice Act 2006 (c. 48).

- (b) any other document issued in a territory to which Part 1 of the Act applies, if the document is authenticated as required by the Act;
- (c) a document issued in a territory to which Part 2 of the Act applies, if the document is authenticated as required by the Act.

*Under sections 84 and 86 of the Act, which apply to evidence, if required, at an extradition hearing to which Part 2 of the Act applies, the court may accept as evidence of a fact a statement by a person in a document if oral evidence by that person of that fact would be admissible, and the statement was made to a police officer, or to someone else responsible for investigating offences or charging offenders.*

*Under section 205 of the Act, section 9 (proof by written witness statement) and section 10 (proof by formal admission) of the Criminal Justice Act 1967(a) apply to extradition proceedings as they apply in relation to proceedings for an offence.]*

#### DISCHARGE AFTER FAILURE TO COMPLY WITH A TIME LIMIT

#### **Defendant's application to be discharged**

**17.16.**—(1) This rule applies where a defendant wants to be discharged—

- (a) because of a failure—
  - (i) to give the defendant a copy of any warrant under which the defendant is arrested as soon as practicable after arrest,
  - (ii) to bring the defendant before the court as soon as practicable after arrest under a warrant,
  - (iii) to bring the defendant before the court no more than 48 hours after provisional arrest under Part 1 of the Extradition Act 2003;
- (b) following the expiry of a time limit for—
  - (i) service of a warrant to which Part 1 of the 2003 Act applies, after provisional arrest under that Part of the Act (48 hours, under section 6 of the Act(b), unless the court otherwise directs),
  - (ii) service of an extradition request to which Part 2 of the Act applies, after provisional arrest under that Part of the Act (45 days, under section 74 of the Act(c), unless the Secretary of State has otherwise ordered for this purpose),
  - (iii) receipt of an undertaking that the defendant will be returned to complete a sentence in the United Kingdom, where the court required such an undertaking (21 days, under section 37 of the Act(d)),
  - (iv) making an extradition order, after the defendant has consented to extradition under Part 1 of the Act (10 days, under section 46 of the Act(e)),
  - (v) extradition, where an extradition order has been made under Part 1 of the Act and any appeal by the defendant has failed (10 days, under sections 35, 36 and 47 of the Act(f), unless the court otherwise directs),

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(a) 1967 c. 80; section 9 was amended by section 56 of, and paragraph 49 of Schedule 8 to, the Courts Act 1971 (c. 23), section 168 of, and paragraph 6 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 69 of the Criminal Procedure and Investigations Act 1996 (c. 25), regulation 9 of, and paragraph 4 of Schedule 5 to, S.I. 2001/1090, paragraph 43 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 26 of, and paragraph 7 of Schedule 2 to, the Armed Forces Act 2011 (c. 18). It is further amended by section 72 of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54) and section 65 of, and paragraph 1 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from dates to be appointed.

(b) 2003 c. 41; section 6 was amended by section 77 of the Policing and Crime Act 2009 (c. 26).

(c) 2003 c. 41; section 74 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48).

(d) 2003 c. 41; section 37 was amended by paragraphs 9 and 10 of Schedule 13 to the Police and Justice Act 2006 (c. 48).

(e) 2003 c. 41; section 46 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48).

(f) 2003 c. 41; section 35 was amended by paragraph 9 of Schedule 13 to the Police and Justice Act 2006 (c. 48). Section 36 was amended by section 40 of, and paragraph 81 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

- (vi) extradition, where an extradition order has been made under Part 2 of the Act and any appeal by the defendant has failed (28 days, under sections 117 and 118 of the Act(**a**)),
  - (vii) the resumption of extradition proceedings, where those proceedings were adjourned pending disposal of another extradition claim which has concluded (21 days, under section 180 of the Act),
  - (viii) extradition, where extradition has been deferred pending the disposal of another extradition claim which has concluded (21 days, under section 181 of the Act), or
  - (ix) re-extradition, where the defendant has been returned to the United Kingdom to serve a sentence before serving a sentence overseas (as soon as practicable, under section 187 of the Act(**b**)); or
- (c) because an extradition hearing does not begin on the date arranged by the court.
- (2) Unless the court otherwise directs—
- (a) such a defendant must apply in writing and serve the application on—
    - (i) the court officer, and
    - (ii) the prosecutor;
  - (b) the application must explain the grounds on which it is made; and
  - (c) the court officer must arrange a hearing as soon as practicable, and in any event no later than the second business day after an application is served.

[*Note. See sections 4(4) & (5), 6(6) & (7), 8(7) & (8)(c), 35(5), 36(8), 37(7), 46(8)(d), 47(4), 72(5) & (6), 74(5), (6) & (10), 75(4), 76(5), 117(3), 118(7), 180(4) & (5), 181(4) & (5) and 187(3) of the Extradition Act 2003.*]

### SECTION 3: APPEAL TO THE HIGH COURT

[*Note. Under Part 1 of the Extradition Act 2003—*

- (a) a defendant may appeal to the High Court against an order for extradition made by the magistrates' court; and
- (b) the authority requesting the defendant's extradition may appeal to the High Court against an order for the defendant's discharge,

(see sections 26 and 28 of the Act(**e**)).

*Under Part 2 of the 2003 Act—*

- (a) a defendant may appeal to the High Court against an order by the magistrates' court sending a case to the Secretary of State for a decision whether to extradite the defendant;
- (b) a defendant may appeal to the High Court against an order for extradition made by the Secretary of State; and
- (c) the territory requesting the defendant's extradition may appeal to the High Court against an order for the defendant's discharge by the magistrates' court or by the Secretary of State,

(see sections 103, 105, 108 and 110 of the Act(**f**)).

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- (a) 2003 c. 41; section 118 was amended by section 40 of, and paragraph 81 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).
  - (b) 2003 c. 41; section 187 was amended by paragraph 15 of Schedule 13 to the Police and Justice Act 2006 (c. 48).
  - (c) 2003 c. 41; section 8 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48).
  - (d) 2003 c. 41; section 46 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48).
  - (e) 2003 c. 41; sections 26 and 28 are amended by section 160 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), with effect from a date to be appointed.
  - (f) 2003 c. 41; section 108 was amended by paragraphs 10 and 12 of Schedule 20 to the Crime and Courts Act 2013 (c. 22). Section 108 is further amended, and sections 103, 105 and 110 are amended, by section 160 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), with effect from a date to be appointed.

*In each case the appellant needs the High Court's permission to appeal (in the 2003 Act, described as 'leave to appeal').]*

### Exercise of the High Court's powers

**17.17.**—(1) The general rule is that the High Court must exercise its powers at a hearing in public, but—

- (a) that is subject to any power the court has to—
  - (i) impose reporting restrictions,
  - (ii) withhold information from the public, or
  - (iii) order a hearing in private;
- (b) despite the general rule, the court may determine without a hearing—
  - (i) an application for permission to appeal to the High Court (but a renewed such application must be determined at a hearing),
  - (ii) an application for permission to appeal from the High Court to the Supreme Court,
  - (iii) an application for permission to reopen a decision under rule 17.27 (Reopening the determination of an appeal), or
  - (iv) an application concerning bail; and
- (c) despite the general rule the court may, without a hearing—
  - (i) give case management directions, or
  - (ii) reject a notice or application and, if applicable, dismiss an application for permission to appeal, where rule 17.31 (Payment of High Court fees) applies and the party who served the notice or application fails to comply with that rule.

(2) If the High Court so directs, a party may attend a hearing by live link.

(3) The general rule is that where the High Court exercises its powers at a hearing it may do so only if the defendant attends, in person or by live link, but, despite the general rule, the court may exercise its powers in the defendant's absence if—

- (a) the defendant waives the right to attend;
- (b) subject to any appeal to the Supreme Court, the result of the court's order would be the discharge of the defendant; or
- (c) the defendant is represented and—
  - (i) the defendant is in custody, or
  - (ii) the defendant's presence is impracticable by reason of his or her ill health or disorderly conduct.

(4) If the High Court gives permission to appeal to the High Court—

- (a) unless the court otherwise directs, the decision indicates that the court gives the appellant permission to appeal on each ground identified by the appeal notice;
- (b) unless the court otherwise directs, the decision indicates that the court finds reasonably arguable each ground on which the court gives permission to appeal; and
- (c) the court must give such directions as are required for the preparation and hearing of the appeal, including a direction as to whether the appeal must be heard by a single judge of the High Court or by a divisional court.

(5) If the High Court decides without a hearing an application for permission to appeal from the High Court to the Supreme Court, the High Court must announce its decision at a hearing in public.

(6) The High Court may—

- (a) shorten a time limit or extend it (even after it has expired), unless that is inconsistent with other legislation;

- (b) allow or require a party to vary or supplement a notice that that party has served;
- (c) direct that a notice or application be served on any person;
- (d) allow a notice or application to be in a different form to one set out in the Practice Direction, or to be presented orally.

(7) A party who wants an extension of time within which to serve a notice or make an application must—

- (a) apply for that extension of time when serving that notice or making that application; and
- (b) give the reasons for the application for an extension of time.

*[Note. The time limits for serving an appeal notice are prescribed by the Extradition Act 2003: see rule 17.19.]*

### Case management in the High Court

**17.18.**—(1) The High Court and the parties have the same duties and powers as under Part 3 (Case management), subject to paragraph (3).

(2) A master of the High Court, a deputy master, or a court officer nominated for the purpose by the Lord Chief Justice—

- (a) must fulfil the duty of active case management under rule 3.2, and in fulfilling that duty may exercise any of the powers of case management under—
  - (i) rule 3.5 (the court’s general powers of case management),
  - (ii) rule 3.10(3) (requiring a certificate of readiness), and
  - (iii) rule 3.11 (requiring a party to identify intentions and anticipated requirements) subject to the directions of a judge of the High Court; and
- (b) must nominate a case progression officer under rule 3.4.

(3) Rule 3.6 (Application to vary a direction) does not apply to a decision to give or to refuse—

- (a) permission to appeal; or
- (b) permission to reopen a decision under rule 17.27 (Reopening the determination of an appeal).

### Service of appeal notice

**17.19.**—(1) A party who wants to appeal to the High Court must serve an appeal notice on—

- (a) in every case—
  - (i) the High Court officer,
  - (ii) the other party, and
  - (iii) the Director of Public Prosecutions, unless the Director already has the conduct of the proceedings;
- (b) the designated authority which certified the arrest warrant, where Part 1 of the Extradition Act 2003 applies; and
- (c) the Secretary of State, where the appeal is against—
  - (i) an order by the Secretary of State, or
  - (ii) an order by the magistrates’ court sending a case to the Secretary of State.

(2) A defendant who wants to appeal must serve the appeal notice—

- (a) not more than 7 days after the day on which the magistrates’ court makes an order for the defendant’s extradition, starting with that day, where that order is under Part 1 of the Extradition Act 2003;

- (b) not more than 14 days after the day on which the Secretary of State informs the defendant of the Secretary of State's decision, starting with that day, where under Part 2 of the Act—
  - (i) the magistrates' court sends the case to the Secretary of State for a decision whether to extradite the defendant, or
  - (ii) the Secretary of State orders the defendant's extradition.

(3) An authority or territory seeking the defendant's extradition which wants to appeal against an order for the defendant's discharge must serve the appeal notice—

- (a) not more than 7 days after the day on which the magistrates' court makes that order, starting with that day, if the order is under Part 1 of the Extradition Act 2003;
- (b) not more than 14 days after the day on which the magistrates' court makes that order, starting with that day, if the order is under Part 2 of the Act;
- (c) not more than 14 days after the day on which the Secretary of State informs the territory's representative of the Secretary of State's order, starting with that day, where the order is under Part 2 of the Act.

*[Note. See sections 26, 28, 103, 105, 108 and 110 of the Extradition Act 2003(a). The time limits for serving an appeal notice are prescribed by those sections. They may be neither shortened nor extended, but—*

- (a) *if a defendant applies out of time for permission to appeal to the High Court the court must not for that reason refuse to consider the application if the defendant did everything reasonably possible to ensure that the notice was given as soon as it could be; and*
- (b) *a defendant may apply out of time for permission to appeal to the High Court on human rights grounds against an order for extradition made by the Secretary of State.*

*Under section 3 of the Prosecution of Offences Act 1985(b), the Director of Public Prosecutions may conduct extradition proceedings (but need not do so).]*

### Form of appeal notice

**17.20.**—(1) An appeal notice constitutes—

- (a) an application to the High Court for permission to appeal to that court; and
- (b) an appeal to that court, if the court gives permission.

(2) An appeal notice must be in writing.

(3) In every case, the appeal notice must—

- (a) specify—
  - (i) the date of the defendant's arrest under Part 1 or Part 2 of the Extradition Act 2003, and
  - (ii) the decision about which the appellant wants to appeal, including the date of that decision;

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(a) 2003 c. 41; section 108 was amended by paragraphs 10 and 12 of Schedule 20 to the Crime and Courts Act 2013 (c. 22). Section 108 is further amended, and sections 26, 28, 103, 105 and 110 are amended, by section 160 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), with effect from a date to be appointed.

(b) 1985 c. 23; section 3 was amended by section 15 of, and paragraph 13 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), paragraph 39 of Schedule 7 to the Police Act 1996 (c. 16), section 134 of, and paragraph 48 of Schedule 9 to, the Police Act 1997 (c. 50), section 164 of the Immigration and Asylum Act 1999 (c. 33), paragraph 10 of Schedule 7 to the Police Reform Act 2002 (c. 30), sections 86 and 92 of, and Schedule 3 to, the Anti-social Behaviour Act 2003 (c. 38), section 190 of the Extradition Act 2003 (c. 41), section 7 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19), section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), sections 59, 140 and 174 of, and paragraph 47 of Schedule 4 and Part 2 of Schedule 17 to, the Serious Organised Crime and Police Act 2005 (c. 15), sections 7, 8 and 52 of, and paragraph 15 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38), section 74 of, and paragraph 149 of Schedule 8 to, the Serious Crime Act 2007 (c. 27), paragraph 171 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13), section 15 of, and paragraph 30 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22) and article 3 of, and paragraphs 1 and 2 of the Schedule to, S.I. 2014/834.

- (b) identify each ground of appeal on which the appellant relies;
  - (c) summarise the relevant facts;
  - (d) identify any document or other material that the appellant thinks the court will need to decide the appeal; and
  - (e) include or attach a list of those on whom the appellant has served the appeal notice.
- (4) If a defendant serves an appeal notice after the expiry of the time limit specified in rule 17.19 (Service of appeal notice)—
- (a) the notice must explain what the defendant did to ensure that it was served as soon as it could be; and
  - (b) where the appeal is on human rights grounds against an order for extradition made by the Secretary of State, the notice must explain why—
    - (i) the appeal is necessary to avoid real injustice, and
    - (ii) the circumstances are exceptional and make it appropriate to consider the appeal.
- (5) Unless the High Court otherwise directs, the appellant may amend the appeal notice—
- (a) by serving on those listed in rule 17.19(1) the appeal notice as so amended;
  - (b) not more than 10 business days after service of the appeal notice.
- (6) Where the appeal is against an order by the magistrates' court—
- (a) if the grounds of appeal are that the magistrates' court ought to have decided differently a question of fact or law at the extradition hearing, the appeal notice must—
    - (i) identify that question,
    - (ii) explain what decision the magistrates' court should have made, and why, and
    - (iii) explain why the magistrates' court would have been required not to make the order under appeal, if that question had been decided differently;
  - (b) if the grounds of appeal are that there is an issue which was not raised at the extradition hearing, or that evidence is available which was not available at the extradition hearing, the appeal notice must—
    - (i) identify that issue or evidence,
    - (ii) explain why it was not then raised or available,
    - (iii) explain why that issue or evidence would have resulted in the magistrates' court deciding a question differently at the extradition hearing, and
    - (iv) explain why, if the court had decided that question differently, the court would have been required not to make the order it made.
- (7) Where the appeal is against an order by the Secretary of State—
- (a) if the grounds of appeal are that the Secretary of State ought to have decided differently a question of fact or law, the appeal notice must—
    - (i) identify that question,
    - (ii) explain what decision the Secretary of State should have made, and why, and
    - (iii) explain why the Secretary of State would have been required not to make the order under appeal, if that question had been decided differently;
  - (b) if the grounds of appeal are that there is an issue which was not raised when the case was being considered by the Secretary of State, or that information is available which was not then available, the appeal notice must—
    - (i) identify that issue or information,
    - (ii) explain why it was not then raised or available,
    - (iii) explain why that issue or information would have resulted in the Secretary of State deciding a question differently, and



- (iv) explain why, if the Secretary of State had decided that question differently, the order under appeal would not have been made.

*[Note. The Practice Direction sets out a form of appeal notice for use in connection with this rule.]*

### **Respondent's notice**

**17.21.**—(1) A party on whom an appellant serves an appeal notice under rule 17.19 may serve a respondent's notice, and must do so if—

- (a) that party wants to make representations to the High Court; or
- (b) the court so directs.

(2) Such a party must serve any such notice on—

- (a) the High Court officer;
- (b) the appellant;
- (c) the Director of Public Prosecutions, unless the Director already has the conduct of the proceedings; and
- (d) any other person on whom the appellant served the appeal notice.

(3) Such a party must serve any such notice not more than 5 business days after service on that party of, as appropriate—

- (a) the appeal notice;
- (b) an appellant's notice renewing an application for permission to appeal;
- (c) a direction to serve a respondent's notice.

(4) A respondent's notice must—

- (a) give the date or dates on which the respondent was served with, as appropriate—
  - (i) the appeal notice,
  - (ii) the appellant's notice renewing the application for permission to appeal,
  - (iii) the direction to serve a respondent's notice;
- (b) identify each ground of opposition on which the respondent relies and the ground of appeal to which each such ground of opposition relates;
- (c) summarise any relevant facts not already summarised in the appeal notice; and
- (d) identify any document or other material that the respondent thinks the court will need to decide the appeal.

*[Note. Under rule 17.17, the High Court may extend or shorten the time limit under this rule.]*

### **Renewing an application for permission to appeal**

**17.22.**—(1) This rule applies where the High Court—

- (a) refuses permission to appeal to the High Court; or
- (b) gives permission to appeal to the High Court, but not on every ground identified by the appeal notice.

(2) Unless the court makes that decision at a hearing, the appellant may renew the application by serving notice on—

- (a) the High Court officer;
- (b) the respondent; and
- (c) any other person on whom the appellant served the appeal notice,

not more than 5 business days after service of notice of the court's decision on the appellant.

(3) Where the court refuses permission to appeal, the renewal notice must explain the grounds for the renewal.

(4) Where the court gives permission to appeal, but not on every ground identified by the appeal notice, the renewal notice must specify the excluded ground or grounds on which the appellant wants to rely and explain the grounds for the renewal.

*[Note. Under rule 17.17, the High Court may extend or shorten the time limit under this rule.]*

### Appeal hearing

**17.23.**—(1) Unless the High Court otherwise directs, where the appeal to the High Court is under Part 1 of the Extradition Act 2003 the hearing of the appeal must begin no more than 40 days after the defendant's arrest.

(2) Unless the High Court otherwise directs, where the appeal to the High Court is under Part 2 of the 2003 Act the hearing of the appeal must begin no more than 76 days after the later of—

- (a) service of the appeal notice; or
- (b) the day on which the Secretary of State informs the defendant of the Secretary of State's order, in a case in which—
  - (i) the appeal is by the defendant against an order by the magistrates' court sending the case to the Secretary of State, and
  - (ii) the appeal notice is served before the Secretary of State decides whether the defendant should be extradited.

(3) If the effect of the decision of the High Court on the appeal is that the defendant is to be extradited—

- (a) the High Court must consider any ancillary application, including an application about—
  - (i) bail pending extradition,
  - (ii) reporting restrictions,
  - (iii) costs;
- (b) the High Court is the appropriate court to order a postponement of the defendant's extradition where—
  - (i) the defendant has been charged with an offence in the United Kingdom, or
  - (ii) the defendant has been sentenced to imprisonment or detention in the United Kingdom.

(4) If the effect of the decision of the High Court on the appeal is that the defendant is discharged, the High Court must consider any ancillary application, including an application about—

- (a) reporting restrictions;
- (b) costs.

*[Note. Under sections 31 and 113 of the Extradition Act 2003(a), if the appeal hearing does not begin within the period prescribed by this rule or ordered by the High Court the appeal must be taken to have been dismissed by decision of the High Court.*

*Under section 103 of the Extradition Act 2003(b), a defendant's appeal against an order by the magistrates' court sending the case to the Secretary of State must not be heard until after the Secretary of State has decided whether to order the defendant's extradition.*

*Part 16 contains rules about reporting restrictions. Part 76 contains rules about costs.*

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(a) 2003 c. 41.

(b) 2003 c. 41; section 103 is amended by section 160 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), with effect from a date to be appointed.

*See sections 36A, 36B, 118A and 118B Extradition Act 2003(a). Where there is an appeal against an order for extradition, rules may provide that the appeal court may exercise the power under those sections to postpone the extradition.]*

### **Discontinuing an appeal**

**17.24.**—(1) This rule applies where—

- (a) an appellant has served an appeal notice under rule 17.19;
- (b) the High Court has given permission to appeal to the High Court; and
- (c) the court has not determined the appeal.

(2) If the appellant wants to discontinue the appeal, the appellant must notify—

- (a) the High Court officer;
- (b) the respondent;
- (c) the Director of Public Prosecutions, unless the Director already has the conduct of the proceedings; and
- (d) any other person on whom the appellant served the appeal notice.

(3) The parties to the appeal must serve on the High Court officer—

- (a) a joint notice consenting to the dismissal of the appeal; and
- (b) a joint notice of any agreement between the parties about costs.

(4) Where a defendant who is on bail pending appeal discontinues that appeal—

- (a) the defendant must surrender to custody as directed by the magistrates' court officer; and
- (b) any conditions of bail apply until then.

*[Note. See sections 36 and 118 of the Extradition Act 2003(b).*

*The Practice Direction sets out a form of notice of discontinuance for use in connection with this rule.*

*Part 76 contains rules about costs.]*

### **Application for permission to appeal to the Supreme Court**

**17.25.**—(1) This rule applies where a party to an appeal to the High Court wants to appeal to the Supreme Court.

(2) Such a party must—

- (a) apply orally to the High Court for permission to appeal immediately after the court's decision; or
- (b) apply in writing and serve the application on the High Court officer and every other party not more than 14 days after that decision.

(3) Such a party must—

- (a) identify the point of law of general public importance that the appellant wants the High Court to certify is involved in the decision;
- (b) serve on the High Court officer a written statement of that point of law; and
- (c) give reasons why—
  - (i) that point of law ought to be considered by the Supreme Court, and

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(a) 2003 c. 41; sections 36A, 36B, 118A and 118B are inserted by section 161 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), with effect from a date to be appointed.

(b) 2003 c. 41; sections 36 and 118 were amended by section 40 of, and paragraph 81 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(ii) the High Court ought to give permission to appeal.

(4) As well as complying with paragraph (3), a defendant's application for permission to appeal to the Supreme Court must include or attach any application for the following, with reasons—

- (a) bail pending appeal;
- (b) permission to attend any hearing in the Supreme Court, if the appellant is in custody.

*[Note. See sections 32 and 114 of the Extradition Act 2003(a). Those sections prescribe the time limit for serving an application for permission to appeal to the Supreme Court. It may be neither shortened nor extended.]*

#### **Determination of detention pending appeal to the Supreme Court against discharge**

**17.26.** On an application for permission to appeal to the Supreme Court against a decision of the High Court which, but for that appeal, would have resulted in the defendant's discharge, the High Court must—

- (a) decide whether to order the detention of the defendant; and
- (b) determine any application for—
  - (i) bail pending appeal,
  - (ii) permission to attend any hearing in the Supreme Court,
  - (iii) a representation order.

*[Note. See sections 33A and 115A of the Extradition Act 2003(b).*

*For the grant of legal aid for proceedings in the Supreme Court, see sections 14, 16 and 19 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(c).]*

#### **Reopening the determination of an appeal**

**17.27.**—(1) This rule applies where a party wants the High Court to reopen a decision of that court which determines an appeal or an application for permission to appeal.

(2) Such a party must—

- (a) apply in writing for permission to reopen that decision, as soon as practicable after becoming aware of the grounds for doing so; and
- (b) serve the application on the High Court officer and every other party.

(3) The application must—

- (a) specify the decision which the applicant wants the court to reopen; and
- (b) give reasons why—
  - (i) it is necessary for the court to reopen that decision in order to avoid real injustice,
  - (ii) the circumstances are exceptional and make it appropriate to reopen the decision, and
  - (iii) there is no alternative effective remedy.

(4) The court must not give permission to reopen a decision unless each other party has had an opportunity to make representations.

#### **Declaration of incompatibility with a Convention right**

**17.28.**—(1) This rule applies where a party—

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- (a) 2003 c. 41; sections 32 and 114 were amended by paragraph 81 of Schedule 9 to the Constitutional Reform Act 2005 (c. 4) and section 42 of, and paragraph 8 of Schedule 13 to, the Police and Justice Act 2006 (c. 48).
  - (b) 2003 c. 41; sections 33A and 115A were inserted by section 42 of, and paragraphs 8 and 35 of Schedule 13 to, the Police and Justice Act 2006 (c. 48).
  - (c) 2012 c. 10.

- (a) wants the High Court to make a declaration of incompatibility with a Convention right under section 4 of the Human Rights Act 1998(a); or
  - (b) raises an issue that appears to the High Court may lead to the court making such a declaration.
- (2) If the High Court so directs, the High Court officer must serve notice on—
- (a) the relevant person named in the list published under section 17(1) of the Crown Proceedings Act 1947(b); or
  - (b) the Treasury Solicitor, if it is not clear who is the relevant person.
- (3) That notice must include or attach details of—
- (a) the legislation affected and the Convention right concerned;
  - (b) the parties to the appeal; and
  - (c) any other information or document that the High Court thinks relevant.
- (4) A person who has a right under the 1998 Act to become a party to the appeal must—
- (a) serve notice on—
    - (i) the High Court officer, and
    - (ii) the other parties,if that person wants to exercise that right; and
  - (b) in that notice—
    - (i) indicate the conclusion that that person invites the High Court to reach on the question of incompatibility, and
    - (ii) identify each ground for that invitation, concisely outlining the arguments in support.
- (5) The High Court must not make a declaration of incompatibility—
- (a) less than 21 days after the High Court officer serves notice under paragraph (2); and
  - (b) without giving any person who serves a notice under paragraph (4) an opportunity to make representations at a hearing.

### Duties of court officers

- 17.29.**—(1) The magistrates' court officer must—
- (a) keep any document or object exhibited in the proceedings in the magistrates' court, or arrange for it to be kept by some other appropriate person, until—
    - (i) 6 weeks after the conclusion of those proceedings, or
    - (ii) the conclusion of any proceedings in the High Court that begin within that 6 weeks;
  - (b) provide the High Court with any document, object or information for which the High Court officer asks, within such period as the High Court officer may require; and
  - (c) arrange for the magistrates' court to hear as soon as practicable any application to that court for bail pending appeal.
- (2) A person who, under arrangements made by the magistrates' court officer, keeps a document or object exhibited in the proceedings in the magistrates' court must—
- (a) keep that exhibit until—
    - (i) 6 weeks after the conclusion of those proceedings, or
    - (ii) the conclusion of any proceedings in the High Court that begin within that 6 weeks, unless the magistrates' court or the High Court otherwise directs; and

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(a) 1998 c. 42; section 4 was amended by section 40 of, and paragraph 66 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and section 67 of, and paragraph 43 of Schedule 6 to, the Mental Capacity Act 2005 (c. 9).

(b) 1947 c. 44; section 17 was amended by article 3(2) of S.I. 1968/1656.

- (b) provide the High Court with any such document or object for which the High Court officer asks, within such period as the High Court officer may require.
- (3) The High Court officer must—
- (a) give as much notice as reasonably practicable of each hearing to—
- (i) the parties,
  - (ii) the defendant’s custodian, if any, and
  - (iii) any other person whom the High Court requires to be notified;
- (b) serve a record of each order or direction of the High Court on—
- (i) the parties,
  - (ii) any other person whom the High Court requires to be notified;
- (c) if the High Court’s decision determines an appeal or application for permission to appeal, serve a record of that decision on—
- (i) the defendant’s custodian, if any,
  - (ii) the magistrates’ court officer, and
  - (iii) the designated authority which certified the arrest warrant, where Part 1 of the Extradition Act 2003 applies;
- (d) where rule 17.24 applies (Discontinuing an appeal), arrange for the High Court to consider the parties’ joint notice under that rule;
- (e) treat the appeal as if it had been dismissed by the High Court where—
- (i) the hearing of the appeal does not begin within the period required by rule 17.23 (Appeal hearing) or ordered by the High Court, or
  - (ii) on an appeal by a requesting territory under section 105 of the Extradition Act 2003(a), the High Court directs the magistrates’ court to decide a question again and the magistrates’ court comes to the same conclusion as it had done before.

[Note. See section 106 of the Extradition Act 2003(b).]

### Constitution of the High Court

**17.30.**—(1) A master of the High Court, a deputy master, or a court officer nominated for the purpose by the Lord Chief Justice, may exercise any power of the High Court to which the rules in this Section apply, except the power to—

- (a) give or refuse permission to appeal;
- (b) determine an appeal;
- (c) reopen a decision which determines an appeal or an application for permission to appeal;
- (d) grant or withhold bail; or
- (e) impose or vary a condition of bail.

(2) Despite paragraph (1), such a master, deputy master or court officer may exercise one of the powers listed in paragraph (1)(b), (d) or (e) if making a decision to which the parties have agreed in writing.

(3) A renewed application for permission to appeal to the High Court may be determined by—

- (a) a single judge of the High Court other than the judge who first refused permission, or
- (b) a divisional court.

(4) An appeal may be determined by—

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(a) 2003 c. 41; section 105 is amended by section 160 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), with effect from a date to be appointed.

(b) 2003 c. 41; section 106 was amended by section 42 of, and paragraph 8 of Schedule 13 to, the Police and Justice Act 2006 (c. 48).

- (a) a single judge of the High Court; or
- (b) a divisional court.

*[Note. See sections 19 and 66 of the Senior Courts Act 1981(a).]*

### **Payment of High Court fees**

**17.31.**—(1) This rule applies where a party serves on the High Court officer a notice or application in respect of which a court fee is payable under legislation that requires the payment of such a fee.

(2) Such a party must pay the fee, or satisfy the conditions for any remission of the fee, when so serving the notice or application.

(3) If such a party fails to comply with paragraph (2), then unless the High Court otherwise directs—

- (a) the High Court officer must serve on that party a notice requiring payment of the fee due, or satisfaction of the conditions for any remission of that fee, within a period specified in the notice;
- (b) that party must comply with such a requirement; and
- (c) until the expiry of the period specified in the notice, the High Court must not exercise its power—
  - (i) to reject the notice or application in respect of which the fee is payable, or
  - (ii) to dismiss an application for permission to appeal, in consequence of rejecting an appeal notice.

*[Note. Section 92 of the Courts Act 2003(b) and the Civil Proceedings Fees Order 2008(c) require the payment of High Court fees in cases to which this Section of this Part applies. Article 5 and Schedule 2 to the 2008 Order provide for the remission of such fees in some cases.]*

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(a) 1981 c. 54.

(b) 2003 c. 39; section 92 was amended by sections 15 and 59 of, and paragraphs 308 and 345 of Schedule 4 and paragraph 4 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and section 17 of, and paragraph 40 of Schedule 9 and paragraphs 83 and 95 of Schedule 10 to, the Crime and Courts Act 2013.

(c) S. I. 2008/1053; amended by S.I. 2013/1410, 2013/2302.