

# Extradition treaties UK, Thailand, China

You can run, but it's harder to hide

Skipping off to Rio with the loot has long been a staple of real- life drama (Great Train Robber Ronnie Biggs did it) as well as the fictional kind - remember Shallow Grave? But villains are having to seek other boltholes following the signing of an extradition treaty between Britain and Brazil.

Biggs himself is unlikely to be shipped home as a result of the agreement, since Brazilian law does not allow the prosecution of crimes committed more than 20 years ago. The train robber has consulted a British expert on extradition law, Alun Jones QC, and years of legal wrangling in the Brazilian courts could be in prospect.

Even if that fails, Biggs could cross to neighbouring Venezuela, which still has no extradition treaty with Britain, or go slightly further afield to Costa Rica, which has an equable climate, is unusually peaceful and democratic by central American standards and has harboured leading American fugitives, such as the financier Robert Vesco, in the past.

Contrary to its image as the destination of choice for those feeling misunderstood by the law, however, Latin America has few other places of refuge. There may be anarchy in Haiti and Colombia, but they have extradition treaties with Britain, though enforcing them is often difficult. The addition of Brazil brings the number of Britain's extradition partners to 107, including 30 countries which have signed the European Convention on Extradition. Russia is among another five in the process of ratification, which means there is almost nowhere to run to west of the Urals. We even have an extradition deal with San Marino.

Clare Montgomery QC, another specialist in the field, said the number of extraditions from other countries sought by Britain each year had risen from "low double figures" in the 1960s to about 150. The figures were roughly the same in the other direction. "The increase is due to the larger number of extradition treaties we have, as well as wider agreements such as the European Convention," she said. "There is also much more international crime."

Reciprocal arrangements with 47 Commonwealth countries eliminates much of the rest of the world as a hiding place, although there are significant omissions, such as Pakistan. The Home Office will not comment on countries which are not extradition partners, or where it is seeking to negotiate agreements, but a list of nations which have signed treaties with Britain shows that the fugitive has most choice in Africa. Liberia is the only non-Commonwealth country on the continent to have come to an agreement, leaving plenty of scope, from Morocco - probably the closest point of refuge to these islands - to Egypt and Namibia. South Africa was once a tempting bolthole, but jurisdictional difficulties with Britain have eased since the end of apartheid.

If you can't stand the heat, there are few places to go. Belarus and Ukraine have yet to reach extradition agreements with us, but the winters are as appalling as their economies, and they are unlikely to be willing to jeopardise their future European credentials.

Leaving out the central Asian republics and other similarly unappealing corners of the world, the most promising region for the involuntary expatriate is east Asia. Although Thailand is out, one can escape to China, Vietnam, South Korea and - perhaps most surprisingly - Japan.

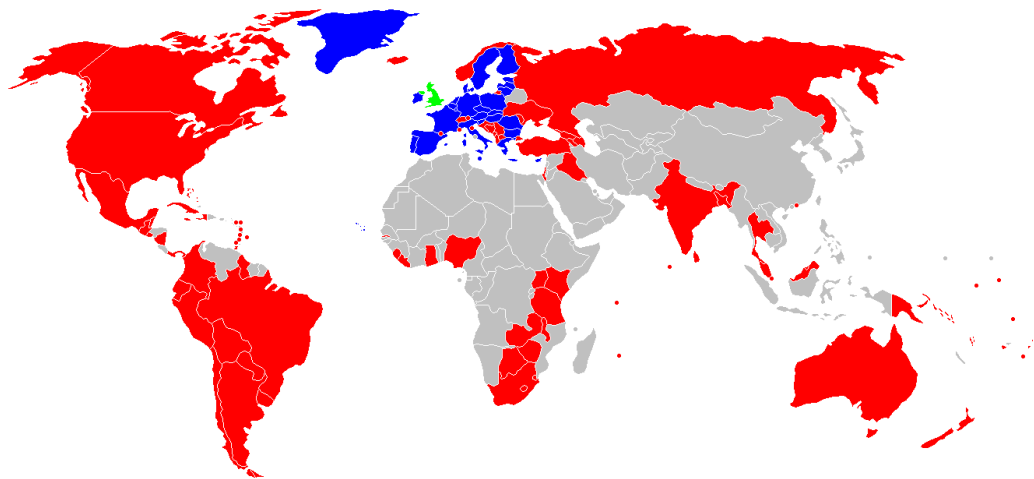
The favourite, however, must be the Philippines. As the late Lord Moynihan knew when he went there to avoid his gambling debts, the pound goes a long way and English is widely spoken. He opened a chain of massage parlours and left behind a couple of half-Filipino sons who unsuccessfully tried to claim his title.

The countries to avoid are those which have agreed to carry out British arrest warrants, although these include Ireland, which has several times found technical flaws in warrants for IRA suspects. It is not enough, however, to flee somewhere which has no formal agreements with London: if the government is sufficiently autocratic and your presence sufficiently inconvenient, you may be deported without legal niceties.

This applies even to northern Cyprus, which Britain refuses to recognise as a country at all. It has attracted the likes of Asil Nadir, founder of the collapsed Polly Peck empire, and, it is believed, Kenneth Noye, a career criminal who helped to launder the proceeds of the Brinks-Mat robbery and is now sought for questioning in connection with last year's "road rage" killing of 21-year-old Stephen Cameron on an M25 slip-road.

"The northern Cypriot authorities do co-operate loosely with their British counterparts when it suits them," said Ms Montgomery. "People have been deported unofficially into the arms of the British police." If you have to leave in a hurry, it seems, better make for Manila or San Jose (capital of Costa Rica, as you may need to know).

Which countries do not have extradition treaties with the United Kingdom?



Answer:

**A**

Abkhazia  
Afghanistan  
Algeria  
American Samoa  
Andorra  
Angola  
Anguilla  
Antigua and Barbuda  
Armenia  
Australia  
Azerbaijan

**B**

Bahamas

Bahrain  
Bangladesh  
Barbados  
Belarus  
Belize  
Benin  
Bermuda  
Bhutan  
Botswana  
Brunei  
Bulgaria  
Burkina Faso  
Burundi

## **C**

Cambodia  
Cameroon  
Canada  
Cape Verde  
Central African Republic  
Chad  
China (PRC) People's Republic of China  
Colombia  
Comoros  
Congo Republic of the Congo  
Congo Democratic Republic of the Congo (Kinshasa)  
Cook Islands  
Costa Rica  
Cote d'Ivoire Cote d'Ivoire - Republic of Cote  
Croatia  
Cyprus  
Cyprus Northern  
Czech Republic

## **D**

Djibouti  
Dominica  
Dominican Republic

## **E**

East Timor  
Egypt  
Equatorial Guinea  
Eritrea  
Estonia  
Ethiopia

**F**

Faroe

Fiji

**G**

Gabon

Gambia

Georgia

Ghana

Grenada

Guam

Guernsey

Guinea

Guinea-Bissau

Guyana

**H**

Honduras

**I**

Indonesia

Iran

Ireland Republic of Ireland

**J**

Jamaica

Japan

Jersey

Jordan

**K**

Kazakhstan

Kenya

Kiribati

Korea - North

Korea - South

Kosovo

Kuwait

Kyrgyzstan

**L**

Laos  
Latvia  
Lebanon  
Lesotho  
Libya  
Liechtenstein  
Lithuania  
Luxembourg

## **M**

Macau  
Macedonia Republic of Macedonia  
Madagascar  
Malawi  
Malaysia  
Maldives  
Mali  
Malta  
Mauritania  
Mauritius  
Moldova Republic of Moldova  
Mongolia  
Montserrat  
Morocco  
Mozambique  
Myanmar

## **N**

Nagorno-Karabakh  
Namibia  
Nauru  
Nepal  
New Caledonia  
New Zealand  
Niger  
Nigeria  
Niue

## **O**

Oman

## **P**

Pakistan  
Palau  
Palestinian territories

Papua New Guinea  
Philippines  
Puerto Rico

## **Q**

Qatar

## **R**

Russia  
Rwanda

## **S**

Saint Kitts and Nevis Saint Kitts and Nevis - Federation of Saint  
Kitts and Nevis (federal state, Commonwealth Realm)  
Saint Lucia  
Saint Vincent and the Grenadines  
Samoa  
S o Tom and Pr ncipe  
Saudi Arabia  
Senegal  
Serbia and Montenegro  
Seychelles  
Sierra Leone  
Singapore  
Slovakia  
Slovenia  
Solomon Islands  
Somalia  
Somaliland Somaliland - Republic of Somaliland (de facto independent  
state inside Somalia)  
South Ossetia South Ossetia - Republic of South Ossetia (de facto  
independent state inside Georgia)  
Sri Lanka  
Sudan  
Suriname  
Norway Svalbard (overseas territory of Norway recognized by international treaty)  
Swaziland  
Syria

## **T**

Taiwan  
Tajikistan  
Tanzania  
Timor East  
Togo

Tokelau  
Transnistria  
Trinidad and Tobago  
Tunisia  
Turkey  
Turkmenistan  
Tuvalu

## **U**

Uganda  
Ukraine  
United Arab  
Uzbekistan

## **V**

Vanuatu  
Vatican City  
Venezuela  
Vietnam

## **W**

Western Sahara Western

## **Y**

Yemen

## **Z**

Zambia  
Zimbabwe

### **WHAT IS THE RELEVANT THAI LAW THAT PROVIDES FOR EXTRADITION?**

The Extradition Act 2551 (C.E. 2008) now applies to all extradition proceedings from Thailand. This Act repeals and replaces the Extradition Act 2472 (C.E. 1929). It must be noted that the Act is subject to the provisions of any treaties concerning extradition between the government of Thailand or any other international agency.

### **WHICH COUNTRIES HAVE EXTRADITION TREATIES WITH THAILAND?**

Currently, the following countries have extradition treaties with Thailand: the US, the UK, Canada, China, Belgium, Philippines, Indonesia, Laos, Cambodia, Malaysia, South Korea, Bangladesh, Fiji, and Australia.

### **WHAT MAKES OFFENCES EXTRADITABLE?**

Generally, offences which are considered by both the country requesting extradition and Thailand to be:

- A crime punishable by death, or
- A crime punishable by imprisonment of one year or more

Extradition for less serious offences will also be considered if they relate to the commission of serious offences as defined above. Note that individual extradition treaties may also provide a list of specific crimes that are considered extraditable, e.g. the Treaty between the UK and Thailand concerning the 'extradition of fugitive criminals.'

### **CAN EXTRADITION BE MADE FOR INCHOATE OFFENCES?**

Extradition can generally be made for offences such as incitement, conspiracy, attempt etc.

### **WHAT ARE THE CONDITIONS FOR EXTRADITION?**

Extradition will generally only be granted if the following conditions are met:

- The extradition would not be otherwise contrary to Thai law
- The offense is not political in nature: The definition of political does not include the murder of, or wilful crime (or any attempts of such crimes) against the safety of a Head of State or their families
- The offense is not exclusively military in nature
- There is no final judgement from a court in the requesting country finding the person who is the subject of the extradition request innocent of the offence; that such person has already served punishment for the offence; that such person is in no other way precluded from prosecution for the offence; that such person has been granted amnesty from prosecution

### **CAN A COUNTRY THAT HAS NO EXTRADITION TREATY REQUEST EXTRADITION?**

Under the principle of reciprocity in extradition, requests for extradition may be made by states which have no treaty of extradition with Thailand, but such states must clearly express a commitment to grant



extradition of fugitives required by Thailand in a similar manner when requested. This being the case, extradition requests will usually be considered from states with no formal treaty on an ad hoc basis.

#### **WHAT IS THE PROCEDURE FOR A REQUEST FOR EXTRADITION?**

In the event the requesting country is a party to an extradition treaty with Thailand, the request is submitted to directly to the Attorney General. If no treaty exists, the request must be submitted through diplomatic channels to the Ministry of Foreign Affairs, who will examine the request to ensure it will not adversely affect relations between the two countries. If they believe this to be the case, they will submit the request to the Attorney General. Assuming there are no deficiencies in the request, the Attorney General will instruct a Public Prosecutor to issue an arrest warrant. Upon arrest, a formal action in court will be commenced.

#### **WHAT MUST A REQUEST FOR EXTRADITION CONTAIN?**

Since Thailand, like most other States when issued with a request for extradition, will make an arrest on the basis that a warrant has been issued in the requesting country, such a warrant should set out (if possible) all the offences for which the subject of the extradition is wanted. Where a defendant has attended court but has subsequently failed to attend and a warrant of arrest is issued, either the original or a certified copy of the warrant (or the judgment of the Court, if the defendant has been convicted) may be used.

The following information should also be included in a request for provisional arrest extradition:

Statement of facts: Usually a very brief summary of facts in order to satisfy a judge that the conduct alleged amounts to an extradition crime

Statement of law: At the preliminary stage all that is set out is the offence and the maximum penalty. No more is needed at this stage, since details will be provided in a later formal request

Particulars of identity: Evidence establishing that the person sought is the person to whom the arrest warrant refers; any information which will assist with identification, e.g. photographs, fingerprints (if available), and information regarding the address or area where the person sought might be located

**<http://www.uncjin.org/Laws/extradit/extindx.htm>**

**TREATY  
BETWEEN  
THE KINGDOM OF THAILAND  
AND  
THE PEOPLE'S REPUBLIC OF CHINA  
ON EXTRADITION**

The Kingdom of Thailand and the People's Republic of China (hereinafter referred to as "the Contracting Parties");

Desirous of promoting, on the basis of mutual respect for sovereignty, equality and mutual benefit, the effective *cooperation* between the two countries in the suppression of crime by concluding a treaty on extradition

Have agreed as follows:

**ARTICLE 1  
Obligation to Extradite**

The Contracting Parties undertake to extradite to each other, in accordance with the provisions of this Treaty, persons found in the territory of one of the Contracting Parties who are wanted for prosecution, trial or for the imposition or execution of punishment in the territory of the other Party for an extraditable offence.

**ARTICLE 2  
Extraditable Offences**

1. For the purposes of this Treaty, extraditable offences are offences which are punishable under the laws of the Contracting Parties by the penalty of imprisonment or other form of detention for a period of *more* than one year or by any heavier penalty.
2. Where the request for extradition relates to a person sentenced to imprisonment or other form of detention by a court of the Requesting Party for any extraditable offence, extradition shall be granted only if a period of at least six months in the sentence remains to be served.
3. For the purposes of this Article, in determining whether an offence is an offence against the laws of both Parties, it shall not matter whether the laws of the Contracting Parties place the conduct constituting the offence within the same category of offence or denominate the offence by the same terminology.
4. When extradition has been granted with respect to an extraditable offence, it may also be granted in respect of any other offence specified in the extradition request that meets all other requirements for extradition except for periods of penalty or detention order set forth in paragraphs 1 and 2 of this Article.

**ARTICLE 3  
Grounds for Mandatory Refusal**

Extradition shall not be granted under this Treaty in any of the following circumstances:

- (1) the Requested Party considers the offence for which the request for extradition is made by the Requesting Party as a political offence. Reference to a political offence shall not include the taking or attempted taking of the life or an attack on the person of a Head of State or a Read of Government or a member of his or her family;
- (2) the Requested Party has well-founded reasons to suppose that the request for extradition made by the Requesting Party aims to institute criminal proceedings against or execute punishment upon the person sought on account of race, religion, nationality or political opinion of that person, or that the position of the person sought in judicial proceedings will be prejudiced for any of the reasons mentioned above;
- (3) the offence for which the request for extradition is made is exclusively an offence under military law of

the Requesting Party and does not constitute an offence under criminal law of that Contracting Party;  
(4) the prosecution or the execution or Punishment for the offence for which extradition has been sought has become barred by reason prescribed under the law of either Contracting Party including a law relating to lapse of time;  
(5) the Requested Party has passed judgment upon the person *sought* in respect of the same offence, before the request for extradition is made.

#### **ARTICLE 4** **Grounds for Discretionary Refusal**

Extradition may be refused under this Treaty in any of the following circumstances:

- (1) the Requested Party in accordance with its law has jurisdiction over the offence *for which* the request for extradition is made and shall institute proceedings against the person sought;
- (2) in exceptional cases, the Requested Party while also taking into account the seriousness of the offence and the interests of the Requesting Party deems that, because of the personal circumstances of the person sought, the extradition would be incompatible with humanitarian consideration;
- (3) the Requested Party is in the process of proceeding against the person sought in respect of the same offence.

#### **ARTICLE 5** **Extradition of Nationals**

1. Each Contracting Party shall have the right to refuse extradition of its own nationals.
2. If extradition is not granted pursuant to 1 paragraph of this Article, the Requested Party shall, at the request of the Requesting Party, submit the case to its competent authority for prosecution. For this purpose, the Requesting Party shall submit documents and evidence relating to the case to the Requested Party.
3. Notwithstanding paragraph 2 of this Article, the Requested Party shall not be required to submit the case to its competent authority for prosecution if the Requested Party has no jurisdiction over the offence.

#### **ARTICLE 6** **Channels of Communication**

For the purposes of this Treaty, the Contracting Parties shall communicate through the diplomatic channels, unless otherwise provided for in this Treaty.

#### **ARTICLE 7** **Request for Extradition and Required Documents**

1. A request for extradition shall be made in writing and shall be accompanied by the followings:
  - (a) documents, statements, or other evidence sufficient to describe the identity and probable *location* of the person sought;
  - (b) a statement of the facts of the case;
  - (c) the provisions of the law describing the essential elements and the designation of the offence for which extradition is requested;
  - (d) the provisions of the law describing the punishment for the offence; and
  - (e) the provisions of the law describing any time limit on the prosecution or the execution of punishment for the offence, if any
2. A request for the extradition relating to a person sought for prosecution also shall be accompanied by:

- (a) a copy of the warrant of arrest issued by a judge or other competent authority of the Requesting Party;
- (b) such evidence as would justify that person's arrest and committal for trial, including evidence establishing that the person sought is the person to whom the warrant of arrest refers.

3. When the request for extradition relates to a person found guilty, in addition to the items required by paragraph 1 of this Article, it shall be accompanied by:

- (a) a copy of the judgment by a Requesting Party;
- (b) evidence providing that the person sought is the person to whom the judgment refers; and
- (c) a statement showing to what extent the sentence has been carried out.

4. All the documents to be presented by the Requesting Party pursuant to the provisions of this Treaty shall be officially signed or sealed and shall be accompanied by a translation in the language of the Requested Party or the English language.

## **ARTICLE 8**

### **Additional Information**

If the Requested Party considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted, that Party may request that additional information be furnished within such time as it specifies. If the Requesting Party fails to submit additional information within that period, it shall be considered as having renounced its request voluntarily. However, the Requesting Party shall not be precluded from making a fresh request for the same purpose.

## **ARTICLE 9**

### **Provisional Arrest**

1. In case of urgency, one Contracting Party may request the other Contracting Party to take provisional arrest against the person sought. Such request may be submitted in writing through the diplomatic channels or through the International Criminal Police Organization (INTERPOL).
2. The request shall contain: a description of the person sought; the location of that person, if known; a brief statement of the facts of the case; a statement of the existence of a warrant of arrest or judgment against that person, as *referred* to in *Article 7*; and a statement that a request for extradition of the person sought will follow.
3. The Requesting Party shall be notified without delay of the result of its request.
4. Provisional arrest shall be terminated U. within a period of sixty days after the arrest of the person sought, the competent authority of the Requested Party has not received the formal request for extradition and the supporting documents *required* by *Article 7*
5. The termination of provisional arrest pursuant to paragraph 4 of this Article shall not prejudice the extradition of the person sought if the extradition request and the supporting documents mentioned. in *Article 7* are delivered at a later date.

## **ARTICLE 10**

### **Surrender of the Person Sought**

1. The Requested Party shall, through the diplomatic *channels*, *notify* without delay the Requesting Party of its decision on the request for extradition.
2. If the extradition has been granted, the Requested Party and the Requesting Party shall decide through consultation on the implementation of the extradition.
3. The Requested Party shall provide reasons for any partial or complete rejection of the request for extradition.
4. The Requesting Party shall be considered as renouncing the request for extradition if it does not accept the person sought within fifteen days after the date on which the implementation of the extradition has

been agreed, unless otherwise provided for in paragraph 5 of this Article. The Requested Party shall set that person at liberty immediately and may refuse extradition for the same offence.

5. If one Contracting Party fails to surrender or accept the person sought within the agreed period for reasons beyond its control, the other Party shall be notified. The Contracting Parties shall decide through consultation on the implementation of the extradition again, and the provisions of paragraph 4 of this Article shall apply.

#### **ARTICLE 11**

#### **Postponed and Temporary Surrender**

1. When the person sought is being proceeded against or is serving a sentence in the Requested Party for an offence other than that for which extradition is requested, the Requested Party may surrender the person sought or postpone surrender until the conclusion of the proceedings or the service of the whole or any part of the sentence imposed. The Requested Party shall inform the Requesting Party of any postponement.

2. To the extent permitted by its law, where a person has been found extraditable, the Requested Party may temporarily surrender the person sought for the purpose of prosecution to the Requesting Party in accordance with conditions to be determined between the Contracting Parties. A person who is returned to the Requested Party following a temporary surrender may be finally surrendered to the Requesting Party to serve any sentence imposed, in accordance with the provisions of this Treaty.

#### **ARTICLE 12**

#### **Requests for Extradition Made by Several States**

If requests for extradition of the same person are made by one Contracting Party and one or more third States, the Requested Party may determine the priority of any of these requests.

#### **ARTICLE 13**

#### **Rule of Specialty**

1. A person extradited under this Treaty shall not be detained, tried, or punished in the territory of the Requesting Party for an offence other than that for which extradition has been granted, nor be extradited by that Party to a third State, unless:

(a) that person has left the territory of the Requesting Party after extradition and has voluntarily returned to it;

(b) that person has not left the territory of the Requesting Party within thirty days after being free to do so; or

(c) the Requested Party has consented to detention, trial, or punishment of that person for an offence other than that for which extradition was granted, or to extradition to a third State. For this purpose, the Requested Party may require the submission of any document or statement mentioned in Article 7, including any statement made by the extradited person with respect to the offence concerned.

2. These stipulations shall not apply to offences committed after extradition.

#### **ARTICLE 14**

#### **Handing over of Property**

1. The Requested Party shall, insofar as its law permits and at the request of the Requesting Party, seize and upon the granting of the extradition hand over property:

(a) which may be required as evidence; or  
(b) which has been acquired as a result of the offence and which, at the time of the arrest, is found in the possession of the person claimed or is subsequently discovered.

2. The property mentioned in paragraph 1 of this Article shall be handed over even if extradition, having been granted, cannot be carried out due to the death, disappearance, or escape of the person claimed.
3. When the said property is liable to seizure or confiscation in the territory of the Requested Party, the Requested Party may, in connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it be returned.
4. Any right which the Requested Party or any State or individual may have acquired in the said property shall be preserved. Where these rights exist, the property shall be returned without charge to the Requested Party at its request as soon as possible after the trial.

#### **ARTICLE 15 Transit**

1. When a person is to be extradited to a Contracting Party from a third State through the territory of the other Contracting Party, the former Contracting Party shall *request* the latter to permit the transit. No such authorization is required where air transportation is used and no landing is scheduled on the territory of the other Contracting Party.
2. The Requested Party shall grant the request for transit made by the other Contracting Party, provided that it is not against its law.

#### **ARTICLE 16 Notification of Result**

The Requesting Party shall notify the Requested Party in time of the information relating to the prosecution against, the trial of and the execution of punishment upon the person sought or the re-extradition of that person to third State.

#### **ARTICLE 17 Assistance and Expenses**

1. The Requested Party shall appear on behalf of the Requesting Party and conduct and carry out any proceedings arising out of a request for extradition.
2. Expenses incurred in the territory of the Requested Party by reason of extradition, up to the moment of surrender of the person to be extradited, shall be borne by that Party.

#### **ARTICLE 18 Relationship with Multilateral Conventions**

This Treaty shall not affect any rights enjoyed and any obligations assumed by the Contracting Parties under any multilateral convention.

#### **ARTICLE 19 Settlement of Disputes**

Any dispute arising from the implementation or interpretation of this Treaty shall be settled by consultation or negotiation.

#### **ARTICLE 20 Ratification, Entry into Force and Duration**

1. This Treaty is subject to ratification. The instruments of ratification shall be exchanged at Bangkok. This Treaty shall enter into force thirty days after the exchange of the instruments of ratification.
2. Either Contracting Party may terminate this Treaty by giving written notice to the other Contracting Party through the diplomatic channels. This Treaty will remain in force until six months after the date on which the other Contracting Party receives such notice. The termination of this Treaty shall not prejudice any extradition proceedings commenced prior to the termination.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective States, have signed this Treaty.

DONE in duplicate at Beijing on this 26th day of August 1993, in the Thai, Chinese and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Kingdom of Thailand	For the People's Republic of China
Squadron Leader .	(Qian Qichen)
(Prasong Soonsiri)	Vice-Premier and
Minister of Foreign Affairs	Minister of Foreign Affairs

#### CERTIFICATE OF THE EXCHANGE OF THE INSTRUMENTS OF RATIFICATION

The Undersigned have met today for the purpose of exchanging the Instruments of Ratification of the Treaty between the Kingdom of Thailand and the People's Republic of China on Extradition, signed at Beijing on the Twenty-sixth Day of August, One thousand Nine hundred and Ninety-three.

These Instruments of Ratification, having been examined and found to be in due form, have been exchanged today.

According to Article 20 of the above-mentioned Treaty, the Treaty shall enter into force thirty days after the exchange of the instruments of ratification, which is on the Seventh Day of March, One thousand Nine hundred and Ninety-nine.

IN WITNESS WHEREOF, the Undersigned have signed the present Certificate.

Done in duplicate, in English, at Bangkok. this Fifth Day of February, One thousand Nine hundred and Ninety-nine.

FOR THE GOVERNMENT OF THE KINGDOM OF THAILAND	FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA
(Surin Pitsuwan)	(Tang Jiaxuan)
Minister of Foreign Affairs of the Kingdom of Thailand	Minister of Foreign Affairs of the People's Republic of China

#### INSTRUMENT OF RATIFICATION

WHEREAS the Treaty between the Kingdom of Thailand and the People's Republic of China on Extradition was signed at Beijing on the 26th day of August 1993 by the duly authorized representatives of the Government of the Kingdom of Thailand and the Government of the People's Republic of China; and

WHEREAS Article 20 of the aforesaid Treaty stipulates that the Treaty is subject to ratification and it shall enter into force thirty days after the exchange of the instruments of ratification;

THE GOVERNMENT OF THE KINGDOM OF THAILAND, having considered the aforesaid Treaty, hereby confirms and ratifies the same and undertakes to faithfully perform and carry out all the stipulations contained therein.

IN WITNESS WHEREOF, this Instrument of Ratification is signed and sealed by the Minister of Foreign Affairs of the Kingdom of Thailand.

DONE at Bangkok, this 28th day of January in the Year Two thousand Five hundred and Forty-two of the Buddhist Era, corresponding to the Year One thousand Nine hundred and Ninety-nine of the Christian Era.

(Surin Pitsuwan)  
Minister of Foreign Affairs of  
the Kingdom of Thailand

#### **Related Articles:**

- ▶ [U.S. - Thailand Treaty of Amity and Economic Relations 2005](#)
- ▶ [U.S. - Thailand Treaty of Amity and Economic Relations 1966](#)
- ▶ [U.S.-Thailand Treaty of Amity and Economic Relations 1966 \(Thai Version\)](#)
- ▶ [สนธิสัญญาทางไมตรีและความสัมพันธ์ทางเศรษฐกิจระหว่างราชอาณาจักรไทยกับสหรัฐอเมริกา พ.ศ.๒๕๐๕](#)
- ▶ [15 May 2006 Circular Letter from the Ministry of Interior Re: Land Acquisition by Juristic Persons with Foreign Shareholders](#)
- ▶ [Accession of the States of Johore, Kedah, Perlis, Kelantan, and Trengganu to the Extradition Treaty between Great Britain and Siam](#)
- ▶ [Treaty of Extradition between Thailand and Great Britain](#)
- ▶ [Supplementary Article to the Treaty between Great Britain and Siam](#)
- ▶ [Treaty of Extradition between The Kingdom of Thailand and The Republic of Korea](#)
- ▶ [Treaty of Extradition between Thailand and United States of America](#)
- ▶ [Treaty between The Kingdom of Thailand and The People's Republic of Bangladesh Relating to Extradition](#)
- ▶ [Treaty between The Government of The Kingdom of Thailand and The Government of The Republic of The Philippines Relating to Extradition](#)
- ▶ [Thai-Malaysian Exchange of Notes Regarding Extradition Treaty](#)
- ▶ [Treaty between The Government of The Kingdom of Thailand and The Government of The-Republic of Indonesia Relating to Extradition](#)

**Treaty of Extradition  
between  
Thailand and Great Britain.  
Signed Bangkok on 4th March 1911**

Hits Majesty the King of Thailand and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, having judged it expedient, with a view to the better administration of justice and to the prevention of crime within their respective territories that persons charged with or convicted of the crimes hereafter enumerated, and being fugitives from justice, should under certain circumstances be reciprocally delivered up; the said High Contracting Parties have named as their plenipotentiaries to conclude a Treaty for this purpose, that is to say :-



His Majesty the King of Thailand H.R.H. Prince Devawongse Yaroprakar, His Minister for Foreign Affairs, etc.;

And His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India Arthur Peel, Esquire, His Envoy Extraordinary and Minister Plenipotentiary at the Court of Bangkok, etc.;

Who, having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

#### **ARTICLE 1**

The High Contracting Parties engage to deliver up to each other persons over whom they respectively exercise jurisdiction who, being accused or convicted of a crime or offence committed in the territory of the one Party, shall be found within the territory of the other Party, under the circumstances and conditions stated in the present Treaty.

#### **ARTICLE 2**

The crimes or offences for which the extradition is to be granted are the following :-

1. Murder, or attempt, or conspiracy to murder.
2. Manslaughter.
3. Assault occasioning actual bodily harm. Malicious wounding or inflicting grievous bodily harm.
4. Counterfeiting or altering money, or uttering counterfeit or altered money.
5. Knowingly making any instrument, tool, or engine adapted or intended for counterfeiting coin.
6. Forgery, counterfeiting, or altering or uttering what is forged or counterfeited, or altered.
7. Embezzlement or larceny.
8. Malicious injury to property, by explosives or otherwise, if the offence be indictable.
9. Obtaining money, goods or valuable securities by false pretences.
10. Receiving money, valuable security, or other property, knowing the same to have been stolen, embezzled, or unlawfully obtained.
11. Crimes against bankruptcy law.
12. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company made criminal by any law for the time being in force.
13. Perjury, or subornation of perjury.
14. Rape.
15. Carnal knowledge, or any attempt to have carnal knowledge of a girl under age of puberty, according to the laws of the respective countries.
16. Indecent assault.
17. Procuring miscarriage, administering drugs, or using instruments with intent to procure the miscarriage of a woman.
18. Abduction.
19. Child stealing.
20. Abandoning children, exposing or unlawfully detaining them.
21. Kidnapping and false imprisonment.
22. Burglary or housebreaking.
23. Arson.
24. Robbery with violence.
25. Any malicious act done with intent to endanger the safety of any person in a railway train.
26. Threats by letter or otherwise, with intent to extort.
27. Piracy by law of nations.
28. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.
29. Assaults on board a ship on the high seas, with intent to destroy life, or do grievous bodily harm.
30. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the

authority of the master.

31. Dealing in slaves in such a manner as to constitute a criminal offence against the laws of both States.

Extradition is to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both contracting Parties.

Extradition may also be granted at the discretion of the State applied to in respect of any other crime for which, according to the law of both of the contracting Parties for the time being in force, the grant can be made,

### **ARTICLE 3**

Either Government may, at its absolute discretion, refuse to deliver up its own subjects to the other Government.

### **ARTICLE 4**

The extradition shall not take place if the person claimed on the part of the Government of Thailand or the person claimed on the part of the Government of the United Kingdom, has already been tried and discharged or punished, or is still under trial in the United Kingdom or in the territory of Thailand respectively for the crime for which his extradition is demanded.

If the person claimed on the part of the Government of Thailand or if the person claimed on the part of the Government of the United Kingdom, should be under examination for any crime in the United Kingdom or in the territory of Thailand respectively, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him.

### **ARTICLE 5**

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is deemed by the Party on whom the demand is made to be one of a political character or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

### **ARTICLE 6**

A person surrendered can in no case be detained or tried in the State to which the surrender has been made for any other crime or on account of any other matters than those for which the extradition shall have taken place until he has been restored or had an opportunity of returning to the State by which he has been surrendered.

This stipulation does not apply to crimes committed after the extradition.

### **ARTICLE 7**

The requisition for extradition shall be made through the diplomatic agents of the High Contracting Parties respectively.

The requisition for the extradition of the accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition for extradition relates to a person already convicted, it must be accompanied by a copy of the judgment passed on the convicted person by the *competent* court of the State that makes the requisition.

A sentence passed in contumacious is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

#### **ARTICLE 8**

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive. The prisoner is then to be brought before a competent Magistrate, who is to examine him and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the same country.

#### **ARTICLE 9**

When either of the contracting Parties considers the case urgent it may apply for the provisional arrest of the criminal and the safe keeping of any objects relating to the offence.

Such request will be granted, provided the existence of a sentence or warrant of arrest is proved, and the nature of the offence of which the fugitive is accused is clearly stated.

The warrant of arrest to which this Article refers should be issued by the competent authorities of the country applying for extradition. The accused shall on arrest be sent as speedily as possible before a competent Magistrate.

#### **ARTICLE 10**

In the examinations, which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of, a conviction, provided the same are authenticated as *Follows* :

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the other State.
2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a Judge, Magistrate, or officer of the other State, to be the original depositions or affirmations, or to be the true copies thereof, as the case may require.
3. A certificate of or judicial document stating the fact a conviction must purport to be certified by a Judge, Magistrate, or officer of the other State.
4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated by the oath of some witness, or by being sealed with the official Seal of the Minister of Justice or some other Minister of the other State; but any other mode of authentication for the time being permitted by the law of the country where the examination is taken may be substituted for the foregoing.

#### **ARTICLE 11**

The extradition shall not take place unless the evidence be found sufficient according to the laws of the State applied to, either to justify the committal of the prisoner for trial; in case the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the courts of the State which makes the requisition, and that the Crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to. The fugitive criminal shall not be surrendered until the expiration of fifteen days from the date of his being committed to prison to await his surrender.

## **ARTICLE 12**

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other powers, his extradition shall be granted to the State whose demand is earliest in date.

## **ARTICLE 13**

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper tribunal thereof shall direct, the fugitive shall be set at liberty.

## **ARTICLE 14**

All articles seized which were in the possession of the person to be surrendered, at the time of his apprehension, shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place, and the said delivery shall extend not merely to the stolen articles, but to every thing that may serve as a proof of the crime.

## **ARTICLE 15**

The High Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered and his conveyance till placed on board the ship; they reciprocally agree to bear such expenses themselves.

## **ARTICLE 16**

The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of His Britannic Majesty, so far as the laws for the time being in force in such Colonies and foreign possessions respectively will allow.

The requisition For the surrender of a fugitive criminal who has taken refuge in any such Colony or foreign possession may be made to the Governor or chief authority of such Colony or possession by any person authorized to act in such Colony or possession as a consular officer of Thailand.

Such requisitions may be disposed of, subject, always, as nearly as may be, and so far as the laws of such Colonies or foreign possessions will allow, to the provisions of this Treaty, by the said Governor or chief authorities, who, however, shall be at liberty either to grant the surrender or to refer the matter to His Britannic Majesty's Government.

His Britannic Majest shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of criminals from Thailand who may take refuge within such Colonies and foreign possessions, on the basis, as nearly as may be, and as far as the laws of such Colonies or foreign possessions will allow, of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of His Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

## **ARTICLE 17**

The present Treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties at any time on giving to the other six months notice of its intention to do so.

The Treaty shall be ratified, and the ratifications shall be exchanged at London as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done in duplicate at Bangkok, the fourth day of March, 1911, in the 129th Year of Ratanakosindr.\*\*\*

(Signed) ARTHUR Peel {L.S.}

(Signed) DEVAWONGSE VAROPRAKAR (L.S.)

\*\*\* Ratifications exchanged in London, 1st August 1912.

### **Related Articles:**

- ▶ [U.S. - Thailand Treaty of Amity and Economic Relations 2005](#)
- ▶ [U.S. - Thailand Treaty of Amity and Economic Relations 1966](#)
- ▶ [U.S.-Thailand Treaty of Amity and Economic Relations 1966 \(Thai Version\)](#)  
สนธิสัญญาทางไมตรีและความสัมพันธ์ทางเศรษฐกิจระหว่างราชอาณาจักรไทยกับสหรัฐอเมริกา พ.ศ.๒๕๐๕
- ▶ [15 May 2006 Circular Letter from the Ministry of Interior Re: Land Acquisition by Juristic Persons with Foreign Shareholders](#)
- ▶ [Accession of the States of Johore, Kedah, Perlis, Kelantan, and Trengganu to the Extradition Treaty between Great Britain and Siam](#)
- ▶ [Supplementary Article to the Treaty between Great Britain and Siam](#)
- ▶ [Treaty owinsgan Extradition between The Kingdom of Thailand and The Republic of Korea](#)
- ▶ [Treaty of Extradition between Thailand and United States of America](#)
- ▶ [Treaty between The Kingdom of Thailand and The People's Republic of Bangladesh Relating to Extradition](#)
- ▶ [Treaty between The Kingdom of Thailand and The People's Republic of China on Extradition](#)
- ▶ [Treaty between The Government of The Kingdom of Thailand and The Government of The Republic of The Philippines Relating to Extradition](#)
- ▶ [Thai-Malaysian Exchange of Notes Regarding Extradition Treaty](#)
- ▶ [Treaty between The Government of The Kingdom of Thailand and The Government of The-Republic of Indonesia Relating to Extradition](#)

But Central America and South America have adopted the Montevideo Convention on extradition.

Therefore the asylum state can either extradite or prosecute.

But in the absence of a treaty, states tend to extradite a person considering the public policy as a moral obligation.

Countries which have extradition treaties with the UK

Albania  
Argentina  
Austria  
Belgium

Bolivia  
Bosnia & Herzegovina  
Brazil  
Chile  
China (Hong Kong Special Administrative Region only)  
Colombia  
Croatia  
Cuba  
Czechoslovakia  
Denmark  
Ecuador  
El Salvador  
Finland  
France  
Germany  
Greece  
Guatemala  
Haiti  
Hungary  
Iceland  
India  
Iraq  
Israel  
Italy  
Liberia  
Luxembourg  
Mexico  
Monaco  
Netherlands  
Nicaragua  
Norway  
Panama  
Paraguay  
Peru  
Poland  
Portugal  
Romania  
San Marino  
Thailand  
Spain  
South Africa (Orange Free State only)  
Sweden  
Switzerland  
Tonga  
USA  
Uruguay  
Yugoslavia FR

Even in the absence of an extradition treaty, countries typically extradite anyone charged with a violent, drug related, or large monetary value crime.

A good recent example of this involved China and the USA, who do not have an extradition treaty with each other. Two Bank of China executives embezzled several million and fled to America. They even had the nerve to file for political asylum in America. China issued an international arrest warrant, the USA arrested the culprits, they were extradited back to China, promptly went on trial, and were executed

#### BRITISH BUSINESSMEN FACE EXTRADITION TO THE PHILIPPINES

26 Nov 2010

Former President Arroyo witnessing the signing of the extradition treaty by Foreign Secretary Alberto Romulo and First Minister Lord Mandelson last year in London, this is now waiting for ratification before the Senate and many requests will be filed as soon as this is completed (PIA)

#### UPDATED - ADDITIONAL FEATURE FROM CHESHIRE NEWSPAPER

Police and law officers in the Philippines and United Kingdom are dusting off old files in anticipation of the formality of the extradition treaty between the two countries which was signed last year. All that is holding it up is the Senate ratifying it and a lot of wanted people in both countries are expected to be paid visits.

Andrew Battman of Caring Careers Training in Oxfordshire (below left) and Adrian Park of Jivaro in Cheshire (below right), both companies involved in NVQ training, have had indictments filed before the Davao Regional Trial Court (RTC) and lawyers there are set to file extradition requests as soon as possible. It is not expected they will be the only ones.

Up until now wanted people in both countries have slept safely in the knowledge that they could not be forced to appear before a court as no treaty existed between the UK and the Philippines. That is now expected to change shortly, and the two British businessmen named above are expected to have their cases filed immediately upon ratification by prosecutors in Davao.

The treaty had been several years in the planning and negotiation and was agreed to primarily because of the number of pedophiles and sex tourists going to PH. The scope of the treaty however encompasses most crimes with a few notable exceptions. That of illegal large scale recruitment and estafa, as mentioned in the Battman and Park cases, are covered.

The salient points of the treaty for extraditable offences are that:

For the purposes of this Article, an offence shall be an extraditable offence if:

(a) the conduct on which the offence is based is punishable under the laws of both States by a maximum sentence of at least twelve (12) months imprisonment or another form of detention, or by a greater punishment;

or

(b) the person whose extradition has been requested has been convicted by a competent court of the Requesting State, a sentence of imprisonment or another form of detention of a term of four (4) months or more has been imposed and the conduct is punishable under the laws of the Requested State by a maximum sentence of at least twelve (12) months imprisonment or another form of detention, or by a greater punishment.

2. An offence shall be an extraditable offence whether or not the laws of the Contracting States place the offence within the same category or describe the offence by a different terminology.

The text in italics above is taken directly from the treaty document: *Philippines No. 1 (2010) Extradition Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Philippines London, 18 September 2009. © Crown Copyright 2010*

To see the complete treaty document. click on the link below:

<http://www.official-documents.gov.uk/document/cm78/7825/7825.pdf>



The only exceptions in the treaty are the normal ones to be expected, that is political and military crimes are not in the remit of the treaty and any crime which could attract the death penalty is specifically excluded.

These charges of large scale illegal recruitment and estafa relate to complaints in Davao relating firstly to Caring Careers Training, its Philippine subsidiary Caring Careers Limited UK Visa Assistance Services (CCL) based in Davao & Cagayan De Oro, and that of Jivaro by Filipino applicants who have paid money and not received visas to enter the UK.

Caring Careers Training has previously been reported on in Balita Pinoy and is under scrutiny in the UK. Run by Andrew Battman, he has refused all calls for an interview and has not replied to texts and e-mails. Jivaro boss Adrian Park said when notified of this news that he vehemently denied any wrongdoing and stated that he had agreed to assist applicants of CCL Davao run by husband & wife team Jay & Jennifer Mariano

This was after October 2009 as the relationship between CCL Davao and Caring Careers Training (CCT) had broken down and the Mariano's had many applicants. An agreement had been made that Park would process the applications. Mr Park stated to Balita Pinoy that he had not been paid by the Mariano's for work he had undertaken and therefore that relationship had broken down.

When contacted by Balita Pinoy, Jay Mariano refuted this assertion stating that he had bank transfer receipts to back up his claims that Jivaro had been paid.

Jivaro boss Adrian Park has also stated that he had originally been contacted by CCT's Andrew Battman in May of 2009 but had declined to work with him citing that he was unimpressed after visiting Battman's Bicester HQ, and that after being contacted several months later by the Mariano's he agreed to a deal whereby he would process the UK side of the applications.

What is clear is that notwithstanding the charges filed in Davao, there is a three cornered fight between Park, Battman and the Mariano's as to who is to blame. What is not at issue is that many applicants have been left out of pocket without getting the much awaited visas to enter the UK. With the recent announcement by the British Home Secretary on the matters of a migration cap, it may be those applicants may only see the sights of London on TV.

The papers filed by the public prosecutor in Davao are reproduced at the end of this article. The prosecutor himself, Edwin Diez, refused to speak on the record on this matter citing the rules of his office, however, Attorney Ferdinand Tagluco of the the Davao legal firm Banzali & Tagluco who filed the original complaints, stated that more complainants were coming forward and that the issue of extradition was one waiting for ratification by the Senate.

The head of the National Bureau of Investigation in Davao, Attorney Max Salvador stated he could not comment on his office's filing of indictments against Adrian Park (which is separate to that of the public

prosecutor), but the issue of extradition in these cases would now be more probable given the attitude of the new Philippine government under President Aquino towards the matter of human trafficking. Basically, the political will is now in place.

The reality would appear to be that whilst most are being very coy on the issue of extradition, the fact it is now being mentioned openly suggests that there may be a race as to gets the first extradition completed from the UK to the Philippines. The resultant publicity would do a prosecutor's career no harm.

Additional story on extradition threat - from a Cheshire Newspaper

Sources within the Philippine Embassy in London have told Balita Pinoy that they are obviously aware of the treaty and are just waiting for ratification by the Senate, and that it is they who will be part of the diplomatic channel filing extradition applications on behalf of the government in Manila. They would not comment on individual cases.

There are many other possible cases that may be filed. These do not just include British nationals, there are many Filipinos living in the UK with or without British citizenship who will be liable for extradition. Two obvious candidates would be Lalaine & Aidan Ubando, former owners of Far East Express and AJ Global money remitters. There is a case at present before the Makati Regional Trial Court, where two of the officers of Far East Express (FEER) based in the Philippines are indicted. The Ubando's are also under indictment but have resolutely decided to remain in the UK. This may well change as an extradition on the charges of syndicated estafa would be well within the purview of this treaty, and that remaining in the UK out of the reach of the Philippine courts is coming to a close.

This treaty is not all a one way affair; there will be many UK nationals as well as Filipinos living in PH who have been safe in the knowledge that the long arm of Scotland Yard does not quite reach to that part of the South China Sea.

In one famous case 15 years ago, no extradition treaty did not mean a felon was able to remain in PH. The case of Brett Tyler, a pedophile murderer, was settled because the Philippine government did not want him there, and using violations of Philippine immigration laws, had him deported to the UK where he was convicted and sentenced to life in jail at the Old Bailey. However this case was an exception as it was very high profile and nauseating being the sex murder of an eight year old boy, and that the visa violations meant the killer could be easily kicked out of the country and into the arms of waiting British police.

The ratification of the treaty will have British police getting their lawyers to file a raft of extradition case, and checking their passports in anticipation of making submissions in Philippine courts.

**Extradition** is the official process whereby one country transfers a suspected or convicted criminal to another country. Between countries, extradition is normally regulated by treaties. Where extradition is compelled by laws, such as among sub-national jurisdictions, the concept may be known more generally as rendition. It is an ancient mechanism, dating back to at least the 13th century BC, when an Egyptian Pharaoh negotiated an extradition treaty with a Hittite King.<sup>[1]</sup> Through the extradition process, a sovereign (the requesting state) typically makes a formal request to another sovereign (the requested state). If the fugitive is found within the territory of the requested state, then the requested state may arrest the fugitive and subject him or her to its extradition process.<sup>[1]</sup> The extradition procedures to which the fugitive will be subjected are dependent on the law and practice of the requested state.<sup>[1]</sup>

## Extradition treaties or agreements

The consensus in international law is that a state does not have any obligation to surrender an alleged criminal to a foreign state as one principle of sovereignty is that every state has legal authority over the people within its borders. Such absence of international obligation and the desire of the right to demand such criminals of other countries have caused a web of extradition treaties or agreements to evolve. When there is no extradition agreement in place, or when applicable extradition agreements are inapplicable, a sovereign may still request the expulsion or lawful return of an individual pursuant to the requested state's domestic law.<sup>[1]</sup> This can be accomplished through the immigration laws of the requested state or other facets of the requested state's domestic law. Similarly, the codes of penal procedure in many countries contain provisions allowing for extradition to take place in the absence of an extradition agreement.<sup>[1]</sup> Sovereigns may, therefore, still request the expulsion or lawful return of a fugitive from the territory of a requested state in the absence of an extradition treaty.<sup>[1]</sup>

No country in the world has an extradition treaty with all other countries; for example, the United States lacks extradition treaties with several nations, including the People's Republic of China, Namibia, the United Arab Emirates, North Korea, and Bahrain.<sup>[2]</sup> However, the United States has extradition treaties with a number of countries, including one with Canada (with provisions to block extradition if the accused could face the death penalty)

## Bars to extradition []

By enacting laws or in concluding treaties or agreements, countries determine the conditions under which they may entertain or deny extradition requests. Common bars to extradition include:

- **Failure to fulfill dual criminality:** generally the act for which extradition is sought must constitute a crime punishable by some minimum penalty in both the requesting and the requested parties.
- **Political nature of the alleged crime:** most countries refuse to extradite suspects of political crimes.
- **Possibility of certain forms of punishment:** some countries refuse extradition on grounds that the person, if extradited, may receive capital punishment or face torture. A few go as far as to cover all punishments that they themselves would not administer.
  - **Death penalty:** Many countries, such as Australia, Canada, Macao,<sup>[3]</sup> New Zealand, South Africa, and most European nations except Belarus,<sup>[4]</sup> will not allow extradition if the death penalty may be imposed on the suspect unless they are assured that the death sentence will not be passed or carried out.
  - **Torture, inhuman or degrading treatment or punishment:** Many countries will not extradite if there is a risk that a requested person will be subjected to torture, inhuman or degrading treatment or punishment. In the case of Soering v United Kingdom, the European Court of Human Rights held that it would violate Article 3 of the

European Convention on Human Rights to extradite a person to the United States from the United Kingdom in a capital case. This was due to the harsh conditions on death row and the uncertain timescale within which the sentence would be executed.

- **Jurisdiction:** Jurisdiction over a crime can be invoked to refuse extradition. In particular, the fact that the person in question is a nation's own citizen causes that country to have jurisdiction.
  - **Own nationals:** Some countries, such as France,<sup>[5][6]</sup> Germany,<sup>[7]</sup> Russia, Austria, the People's Republic of China,<sup>[8]</sup> the Republic of China (Taiwan)<sup>[9]</sup> and Japan,<sup>[10]</sup> forbid extradition of their own nationals. These countries often have laws in place that give them jurisdiction over crimes committed abroad by or against citizens. By virtue of such jurisdiction, they prosecute and try citizens accused of crimes committed abroad as if the crime had occurred within the country's borders (see e.g. trial of Xiao Zhen).

## Aut Dedere Aut Judicare []

A concept related to extradition that has significant implications in transnational criminal law is that of *aut dedere aut judicare*.<sup>[1]</sup> This maxim represents the principle that states must either surrender a criminal within their jurisdiction to a state that wishes to prosecute the criminal or prosecute the offender in its own courts. Some contemporary scholars hold the opinion that aut dedere aut judicare is not an obligation under customary international law but rather “a specific conventional clause relating to specific crimes” and, accordingly, an obligation that only exists when a state has voluntarily assumed the obligation. Cherif Bassiouni, however, has posited that, at least with regard to international crimes, it is not only a rule of customary international law but a jus cogens principle. Professor Michael Kelly, moreover, citing Israeli and Austrian judicial decisions, has noted that “there is some supporting anecdotal evidence that judges within national systems are beginning to apply the doctrine on their own.”<sup>[1]</sup> Even so, a wide array of international instruments now contains provisions for aut dedere aut judicare. These include all four 1949 Geneva Conventions,<sup>113</sup> the U.N. Convention for the Suppression of Terrorist Bombings, the U.N. Convention Against Corruption, the Convention for the Suppression of the Unlawful Seizure of Aircraft, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention for the Protection of Cultural Property in the Event of an Armed Conflict, and the International Convention for the Suppression and Punishment of the Crime of Apartheid.<sup>[1]</sup>

## Controversies []

### International tensions []

The refusal of a country to extradite suspects or criminals to another may lead to international relations being strained. Often, the country to which extradition is refused will accuse the other country of refusing extradition for political reasons (regardless of whether or not this is justified). A case in point is that of Ira Einhorn, in which some US commentators pressured President Jacques Chirac of France, who does not intervene in legal cases, to permit extradition when the case was held up due to differences between French and American human rights law. Another long-standing example is Roman Polanski whose extradition California has pursued for over 20 years. For a brief period he was placed under arrest in Switzerland, however subsequent legal appeals there prevented extradition.

The questions involved are often complex when the country from which suspects are to be extradited is a democratic country with a rule of law. Typically, in such countries, the final decision to extradite lies with the national executive (prime minister, president or equivalent). However, such countries typically allow extradition defendants recourse to the law, with multiple appeals. These may significantly slow down procedures. On the one hand, this may lead to unwarranted international difficulties, as the public, politicians and journalists from the requesting country will ask their executive to put pressure on the executive of the country from which extradition is to take place, while that executive may not in fact have the authority to deport the suspect or criminal on their own. On the other hand, certain delays, or the unwillingness of the local prosecution authorities to present a good extradition case before the court on

behalf of the requesting state, may possibly result from the unwillingness of the country's executive to extradite.

For example, there is at present a disagreement between the United States and the United Kingdom about the Extradition Act 2003 ([text here](#)) that dispenses with the need for a *prima facie* case for extradition.

This came to a head over the extradition of the Natwest Three from the UK to the U.S., for their alleged role in the Enron fraud. Several British political leaders were heavily critical of the British government's handling of the issue.<sup>[11]</sup> The former leader of the UK's Liberal Democrat party, Sir Menzies Campbell, had argued that the U.S. had not ratified the treaty primarily due to the influence of what he calls the "Irish lobby" – which, he said, is opposed to the treaty because it could make it easier for Britain to have alleged IRA terrorist suspects extradited from the U.S.

The precedent of the Natwest Three may also be used to extradite/prosecute Philip Watts in connection with the Royal Dutch Shell reserves scandal. The press has carried vocal criticisms of the present extradition arrangements from the UK's business community, some of whom stated that they were avoiding doing business with or in the U.S. because of legal concerns such as the extradition treaty, among other concerns.<sup>[12]</sup>

A controversy in 2012 concerns the extradition of Richard O'Dwyer from the United Kingdom to the United States.

Extradition and abduction []

Issues of international law relating to extradition have proven controversial in cases where a state has abducted and removed an individual from the territory of another state without previously requesting permission, or following normal extradition procedures. Such abductions are usually in violation of the domestic law of the country in which they occur, as infringements of laws forbidding kidnapping. Many also regard abduction as violation of international law – in particular of a prohibition on arbitrary detention. A small number of countries have been reported to use kidnapping to circumvent the formal extradition process. Notable or controversial cases include the abduction or attempted abduction of

<b>Year</b>	<b>Name</b>	<b>From</b>	<b>To</b>
1950	<u>Morton Sobell</u>	<u>Mexico</u>	<u>United States</u>
1960	<u>Adolf Eichmann</u>	<u>Argentina</u>	<u>Israel</u>
1967 <sup>[13]</sup>	<u>Isang Yun</u>	<u>West Germany</u>	<u>South Korea</u>
1986	<u>Mordechai Vanunu</u>	<u>Italy</u>	<u>Israel</u>
1990	<u>Humberto Álvarez Machaín</u>	<u>Mexico</u>	<u>United States</u>
1999	<u>Abdullah Ocalan</u>	<u>Kenya</u>	<u>Turkey</u>
2005	<u>Hassan Mustafa Osama Nasr</u>	<u>Italy</u>	<u>Egypt</u> (with confirmed United States involvement)
2011	<u>Dirar Abu Seesi</u>	<u>Ukraine</u>	<u>Israel</u>

"Extraordinary rendition" is an extrajudicial procedure in which criminal suspects, generally suspected terrorists or supporters of terrorist organisations, extrajudicial transfer of a person from one country to another.<sup>[14]</sup> The procedure differs from extradition as the purpose of the rendition is to extract information from suspects, while extradition is used to return fugitives so that they can stand trial or fulfill their sentence. The United States' Central Intelligence Agency (CIA) allegedly operates a global extraordinary rendition programme, which from 2001 to 2005 captured an estimated 150 people and transported them around the world.<sup>[15][16][17][18]</sup>

The alleged US programme prompted several official investigations in Europe into alleged secret detentions and illegal international transfers involving Council of Europe member states. A June 2006 report from the Council of Europe estimated 100 people had been kidnapped by the CIA on EU territory (with the cooperation of Council of Europe members), and rendered to other countries, often after having transited through secret detention centres ("black sites") utilised by the CIA, some of which could be located in Europe. According to the separate European Parliament report of February 2007, the CIA has conducted 1,245 flights, many of them to destinations where suspects could face torture, in violation of article 3 of the United Nations Convention Against Torture.<sup>[19]</sup> A large majority of the European Union Parliament endorsed the report's conclusion that many member states tolerated illegal actions by the CIA and criticised such actions. Within days of his inauguration, President Obama signed an Executive Order opposing rendition torture and established a task force to provide recommendations about processes to prevent rendition torture.<sup>[20]</sup>

### Individuals:

- Brian O'Rourke (1540?–1591), first man to be extradited within Britain.
- Luis Posada Carriles, anti-Castrist detained in the U.S. and wanted by Cuba and Venezuela
- Ramil Safarov, Azerbaijani officer extradited from Hungary to Azerbaijan

### Footnotes []

1. <sup>^</sup> *abcdefghi* Dan E. Stigall, *Ungoverned Spaces, Transnational Crime, and the Prohibition on Extraterritorial Enforcement Jurisdiction in International Law*: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2211219&download=yes](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2211219&download=yes)
2. <sup>^</sup> Extradition Treaties Interpretation Act of 1998 from the United States Department of State, Extradition Treaties
3. <sup>^</sup> Article 7 of Law No. 6/2006 ((**Portuguese**) Lei n.º 6/2006, Chinese: 第6/2006號法律)
4. <sup>^</sup> Includes Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Israel, Kazakhstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom and Vatican City (Belarus is excluded)
5. <sup>^</sup> "Code of criminal procedure (legislative part). Articles 696-1 to 696-7". published by Légifrance, the official website of the French government for the publication of legislation, regulations, and legal information. 2005-12-13.
6. <sup>^</sup> "[Légifrance] publications of the French legislation". Légifrance. 2005-12-13. Wikilink embedded in URL title (help)
7. <sup>^</sup> Except to a member state of the European Union or to an international court: *Basic Law for the Federal Republic of Germany, Article 16 (2)*, 29 July 2009.
8. <sup>^</sup> Article 8 of the Extradition Law of the People's Republic of China (Chinese: 中华人民共和国引渡法)
9. <sup>^</sup> Article 4 of the Law of Extradition<sup>[*dead link*]</sup> (Chinese: 引渡法) prohibits a citizen of the Republic of China from being extradited from Taiwan, unless the person acquired the citizenship after the request for extradition is made.
10. <sup>^</sup> Article 2, Law of Extradition ((**Japanese**) 逃亡犯罪人引渡法)

11. ^ [Lib Dem leader joins bankers' extradition battle](#)
12. ^ Stevenson, Tom (2006-07-06). "[Senior executives attack 'invidious, one-sided treaty'](#)". *The Daily Telegraph* (London). Retrieved 2010-05-02.
13. ^ Gil, Yun-hyeong (2004-10-30). "[독일, 당시 국교단절 검토: 67년 윤이상씨등 서울로 납치 '동백림사건' 항의](#) (Germany considered breaking off relations at the time: Protests over the 1967 "East Berlin incident" kidnapping of Isang Yun and others)" (in Korean). The Hankyoreh. Retrieved 2007-05-30.
14. ^ Michael John Garcia, Legislative Attorney American Law Division. [Renditions: Constraints Imposed by Laws on Torture](#) 8 September 2009; link from the United States [Counter-Terrorism Training and Resources for Law Enforcement](#) web site
15. ^ Charlie Savage, "[Obama's War on Terror May Resemble Bush's in Some Areas](#)". *The New York Times*. 17 February 2009. Retrieved 2 January 2010.
16. ^ "[Background Paper on CIA's Combined Use of Interrogation Techniques](#)". 30 December 2004. Retrieved 2 January 2010.
17. ^ "[New CIA Docs Detail Brutal 'Extraordinary Rendition' Process](#)". *Huffington Post*. 28 August 2009. Retrieved 2 January 2010.
18. ^ [Fact sheet: Extraordinary rendition](#), [American Civil Liberties Union](#). Retrieved 29 March 2007 **(English)**
19. ^ [Resolution 1507 \(2006\)](#). Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states]
20. ^ "[Ensuring Lawful Interrogations | The White House](#)". Whitehouse.gov. Retrieved 17 July 2010.

## External links []

- [Extradition Lawyers' Association](#)
- [UN list of extradition information by country \(1996\)](#)
- [A Brief Primer on International Law](#) With cases and commentary. Nathaniel Burney, 2007.
- [Extraditions Cut Short](#) - Extraditions between Colombia and United States
- [Chiquita Board Members: Total Identification](#) - Extradition of Chiquita Board Members
- [\[1\] International Extradition: New Jersey & Other States](#)
- [Expulsions and extraditions](#), factsheet of the ECtHR case law

a **political prisoner** is 'someone who is in prison because they have opposed or criticized the government of their own country'.

The term is used by persons or groups challenging the legitimacy of the detention of a prisoner. Supporters of the term define a political prisoner as someone who is imprisoned for his or her participation in political activity. If a political offense was not the official reason for detention, the term would imply that the detention was motivated by the prisoner's politics.

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## Various definitions []

Some understand the term political prisoner narrowly, equating it with the term [prisoner of conscience](#) (POC). [Amnesty International](#) campaigns for the release of prisoners of conscience, which include both political prisoners as well as those imprisoned for their religious or philosophical beliefs. To reduce controversy, and as a matter of principle, the organization's policy applies only to prisoners who have not committed or advocated violence. Thus, there are political prisoners who do not fit the narrower criteria for POCs. The organisation defines the differences as follows:<sup>[1]</sup>

AI uses the term “political prisoner” broadly. It does not use it, as some others do, to imply that all such prisoners have a special status or should be released. It uses the term only to define a category of prisoners for whom AI demands a fair and prompt trial. In AI's usage, the term includes any prisoner whose case has a significant political element: whether the motivation of the prisoner's acts, the acts in themselves, or the motivation of the authorities. “Political” is used by AI to refer to aspects of human relations related to “politics”: the mechanisms of society and civil order, the principles, organization, or conduct of government or public affairs, and the relation of all these to questions of language, ethnic origin, sex or religion, status or influence (among other factors). The category of political prisoners embraces the category of [prisoners of conscience](#), the only prisoners who AI demands should be immediately and unconditionally released, as well as people who resort to criminal violence for a political motive. In AI's use of the term, here are some examples of political prisoners:

- a person accused or convicted of an ordinary crime carried out for political motives, such as murder or robbery carried out to support the objectives of an opposition group;
- a person accused or convicted of an ordinary crime committed in a political context, such as at a demonstration by a trade union or a peasants' organization;
- a member or suspected member of an armed opposition group who has been charged with treason or “subversion”.

Governments often say they have no political prisoners, only prisoners held under the normal criminal law. AI however describes cases like the examples given above as “political” and uses the terms “political trial” and “political imprisonment” when referring to them. But by doing so AI does not oppose the imprisonment, except where it further maintains that the prisoner is a prisoner of conscience, or condemn the trial, except where it concludes that it was unfair.

In the parlance of many political movements that utilize [armed resistance](#), [guerrilla warfare](#), and other forms of political violence, a political prisoner includes people who are imprisoned because they are awaiting trial for, or have been convicted of, actions which states they oppose describe as (accurately or otherwise) [terrorism](#). These movements may consider the actions of political prisoners morally justified against some system of governance, may claim innocence, or have varying understandings of what types of violence are morally and ethically justified. For instance, French [anarchist](#) groups typically call the former members of [Action Directe](#) held in [France](#) political prisoners. While the French government



deemed Action Directe illegal, the group fashioned itself as an urban guerilla movement, claiming a legitimate armed struggle. In this sense, "political prisoner" can be used to describe any politically active prisoner who is held in custody for a violent action which supporters deem ethically justified.

Some<sup>[who?]</sup> also include all convicted for treason and espionage in the category of political prisoners. Currently, there is still much controversy and debate around how to define this term and which cases to include or exclude.<sup>[2]</sup>

Political prisoners can also be imprisoned with no legal veneer by extrajudicial processes. Some political prisoners need not be imprisoned at all. Supporters of Gedhun Choekyi Nyima in the 11th Panchen Lama controversy have called him a "political prisoner", despite the fact that he is not accused of a political offense. He is held under secluded house arrest.<sup>[3]</sup>

Political prisoners are also arrested and tried with a veneer of legality where false criminal charges, manufactured evidence, and unfair trials (kangaroo courts, show trials) are used to disguise the fact that an individual is a political prisoner. This is common in situations which may otherwise be decried nationally and internationally as a human rights violation or suppression of a political dissident. A political prisoner can also be someone that has been denied bail unfairly, denied parole when it would reasonably have been given to a prisoner charged with a comparable crime, or special powers may be invoked by the judiciary. Particularly in this latter situation, whether an individual is regarded as a political prisoner may depend upon subjective political perspective or interpretation of the evidence.<sup>[4]</sup>

## **What is extradition?**

This is a simple introduction to a complex subject. It is not a definitive statement of the law and does not cover every aspect of extradition.

Extradition is the formal procedure for requesting the surrender of persons from one territory to another for the following purposes:

- to be prosecuted
- to be sentenced for an offence for which the person has already been convicted
- to carry out of a sentence that has already been imposed.

The relevant primary legislation is the Extradition Act 2003. For a full understanding of extradition proceedings with any given state, one must also consult any applicable extradition instrument (treaty, convention or scheme).

## **What are 'export' and 'import' extradition requests?**

An 'export' extradition request is made by another state to the United Kingdom, for the extradition of someone from the UK. It is sometimes known as an 'incoming' request as it is made to the United Kingdom.

An 'import' extradition request is made by the United Kingdom to another state, for the extradition of someone to the UK. It is sometimes known as an 'outgoing' request as it is made by the United Kingdom.

## **What offences can people be extradited for?**

This depends on the terms of the Extradition Act, and any applicable treaty or convention governing extradition proceedings with the state in question.

## **Export extradition to category 1 territories**

Part 1 of the Extradition Act regulates export extradition from the United Kingdom to category 1 territories. These territories are the other 26 Member States of the European Union, and also Gibraltar. This part of the Act implements the European Unions

Framework Decision of 13th June 2002 on the European Arrest Warrant and the surrender procedures between Member States. The framework decision has been implemented in all EU Member States.

The Serious Organised Crime Agency is the designated authority for the receipt of European arrest warrants (EAWs) and has an administrative function in certifying warrants that satisfy the requirements of the Extradition Act; for example the warrant must contain specified information relating to the alleged offence in accusation cases, or the sentence in conviction cases.

The CPS acts as the representative of the requesting judicial authority in the extradition proceedings. All export extradition cases where the person is arrested in England and Wales are dealt with at Westminster Magistrates' Court in London.

After the EAW has been certified the wanted person can be arrested by a constable who must bring the person to Westminster Magistrates' Court as soon as practicable. In certain circumstances a provisional arrest is possible before the EAW has been issued. Where this happens the person must be produced at court within 48 hours of the arrest, by which time the EAW must have been issued and certified.

At the Initial Hearing the district judge carries out several steps. The judge decides whether the person arrested is the person named on the warrant; fixes a date for the start of the extradition hearing within 21 days of the date of arrest; informs the person about the content of the EAW; explains to the person that he may consent to his surrender; and decides whether to grant bail or remand the person in custody pending the extradition hearing.

At the Extradition Hearing the district judge must decide a number of issues including: is the offence an extraditable offence? Are there any bars to the extradition? Is the extradition compatible with the person's rights under the European Convention on Human Rights? If there are no statutory grounds to refuse the request, an order is made for the person's surrender.

The meaning of extradition offence is given in sections 64 to 66 of the Act. In simple terms, in cases where a person is wanted for prosecution the offence must usually be one that could lead to a prison sentence of at least 12 months in the requesting state. For certain offences that are listed in the framework decision and which could lead to a prison sentence of at least 3 years in the requesting state, there is no requirement that a parallel offence exists in UK law. Otherwise the conduct complained of in the EAW must also be an offence in the United Kingdom. Where the person is wanted to serve a sentence, whether or not the offence is deemed an extradition offence depends on various factors including the length of sentence imposed in the other state.

The Extradition Act gives either the wanted person or the requesting state a right of appeal against the decision of the district judge. Appeals are to the High Court and timeframes are set out in the Act. Notice of the appeal must be given within 7 days of the decision of the judge at Westminster Magistrates' Court. It is possible to appeal from the High Court to the Supreme Court provided that the former certifies that the appeal involves a point of law of general public importance, and either court gives leave for the appeal to be made.

If extradition is ordered by the judge at Westminster Magistrates' Court and there is no appeal, the person must be surrendered within 10 days of the extradition order. Otherwise, if the appeal does not affect the extradition order, surrender must take place within 10 days of the conclusion of the appeal proceedings.

If before conclusion of the extradition hearing at Westminster Magistrates' Court the wanted person is charged with an offence in England or Wales, the court must adjourn the extradition proceedings until the domestic matter is concluded. If the person is already serving a sentence of imprisonment in the UK, extradition proceedings may either be postponed until he has completed his sentence or, if the purpose of the request is to prosecute the person in the other state, he can be temporarily surrendered on the undertaking that he will be remanded in custody in the other state and returned to complete his UK sentence at the conclusion of the foreign trial.

### **Export extradition to category 2 territories**

Part 2 of the Extradition Act, in conjunction with any applicable extradition instrument, regulates export extradition from the United Kingdom to category 2 territories. These are states outside the European Union. At present there are almost 100 states designated as category 2 territories.

Upon receipt of an extradition request from a category 2 territory the Secretary of State for the Home Department, acting on the advice of the Home Office's Judicial Co-operation Unit, must decide whether or not to certify the extradition request.

Requirements for certification are similar but not identical to those imposed for category 1 territories. Having certified the request, documents are sent from the Home Office to Westminster Magistrates' Court.

The CPS acts as the representative of the requesting state in category 2 cases (as for category 1 territories), and all proceedings are heard at Westminster Magistrates' Court.

On receipt of papers a district judge at this court decides whether or not to issue an arrest warrant for the wanted person. The judge must have reasonable grounds to believe that the offence is an extraditable offence, which is defined in sections 137 and 138 of the Act and is similar to the provisions for category 1 territories. A second requirement in accordance with section 71 of the Act is, in simple terms, that depending on the state concerned, the judge must also have reasonable grounds for believing that evidence or information contained in the request would in an analogous domestic case justify the issue of a warrant for the person's arrest.

If the judge issues a warrant, the person may be arrested by a constable who does not need to have the warrant with him at the time of arrest. After arrest the person is brought to Westminster Magistrates' Court as soon as practicable.

At the first court hearing the district judge informs the person about the content of the extradition request; explains to the person that he may consent to his extradition; fixes a date for the start of the extradition hearing, within 2 months from the date of the first appearance; and decides whether to bail the person or remand him in custody till the extradition hearing.

As with category 1 territories, provisional arrest is also possible with requests from category 2 territories, in accordance with sections 73 and 74 of the Act.

At the extradition hearing the judge must decide a number of issues: whether the documentation sent to the court by the Secretary of State complies with the Act; whether the individual arrested is the person named on the warrant; whether the offence detailed in the request is an extradition offence; be satisfied that the person has been given the necessary documentation including copies of the request and the Secretary of State's certificate; whether any of the bars to extradition apply; and, whether the extradition would be compatible with the person's rights under the European Convention on Human Rights.

Additionally, and for certain states only, section 84 of the Act requires the judge to decide if there is sufficient evidence which would make a case requiring an answer by the person if the proceedings were

the summary trial of an information against him. Section 84 does not apply for a number of states that have been designated by the Secretary of State, including the following: Albania, Andorra, Armenia, Australia, Azerbaijan, Bosnia and Herzegovina, 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.

If the district judge is satisfied on all the above issues at the extradition hearing, the judge must send the case to the Secretary of State.

The Secretary of State must then consider a number of issues including the following: the possible imposition of the death penalty, in which case extradition cannot be ordered; the rule of specialty, which prohibits a person being dealt with in the requesting state for matters other than those referenced in the extradition request; and whether or not the person was in the UK following extradition from another state, in which case that states permission must be obtained before extraditing to a third state. If these factors do not prevent extradition, the Secretary of State must order extradition within 2 months of the appropriate day, defined in section 102 and in most cases the day on which the district judge referred his decision to the Secretary of State.

The Extradition Act gives both the wanted person and the requesting state a right of appeal against the decision of the district judge, or the Secretary of State. Appeals are to the High Court with timeframes set out in the Act. It is also possible to appeal to the Supreme Court but as with category 1 territories this is only possible if the High Court certifies that the appeal involves a point of law of general public importance, and either the High Court or the Supreme Court gives leave for the appeal to be made.

Similar provisions apply as for category 1 territories if the wanted person is either charged with, or serving a sentence in respect of, a domestic offence.

### **Export extradition to non category 1 or 2 territories**

Many states are not designated as either category 1 or 2 territories. For these states export extradition from the United Kingdom may still be possible pursuant to section 193 of the Extradition Act, Parties to international conventions (and related secondary legislation), or section 194 on Special extradition arrangements. Such extraditions however are rare.

### **Reasons for refusing an extradition request**

Reasons for refusing an extradition request, bars to extradition, are set out in both Parts 1 and 2 of the Act, and also within multi and bilateral extradition instruments, and include the following (this list is not exhaustive):

- 'Double jeopardy'; a person must not be prosecuted or sentenced in respect of an offence that he has already been convicted or acquitted of.
- Extraneous considerations; the request will be refused if the purpose of the request is deemed to be to prosecute or punish the person on account of race, religion, nationality, gender, sexual orientation or political opinions, or if extradited the person might be prejudiced at his trial or punished unfairly for any of these reasons.
- Passage of time; the request will be refused if it would be oppressive to prosecute or punish the person for the extradition offence due to the age of the alleged offence.
- Age of wanted person; extradition is not possible if due to his age the person could not be convicted of the offence in the United Kingdom.
- Absence of speciality provisions; specialty is the principle that a person may only be dealt with in the requesting state for the conduct in respect of which extradition was ordered. Extradition instruments invariably include specialty provisions.

- Earlier extradition of the wanted person to the United Kingdom; in order to permit extradition to the requesting state in this situation the United Kingdom must first obtain permission from the state that extradited the person to the UK.
- Human rights; extradition will be refused if it would not be compatible with the person's rights under the European Convention on Human Rights within the meaning of the Human Rights Act.
- Death penalty; a person must not be extradited if there is a possibility that the person will be sentenced to death. Extradition may be possible if the requesting state gives an undertaking that the death penalty will not be imposed.
- Physical or mental condition; if it would be unjust or oppressive to extradite the wanted person on these grounds the extradition request will either be refused or adjourned until the condition improves.

## **Import extradition**

Import extradition essentially falls into two broad categories; extradition from category 1 or category 2 territories.

Category 1 territories are the other Member States of the European Union, and also Gibraltar. For these territories the EAW is the mechanism used to request surrender. Part 3 of the Extradition Act regulates operation of the EAW scheme with regard to import extradition. Crown Prosecutors throughout England and Wales are responsible both for drafting EAWs in their own cases and then applying to the court for their issue. EAWs are issued and processed by judicial authorities without state involvement. In England and Wales, an EAW may be issued by a District Judge (Magistrates' Courts), a justice of the peace, or a judge entitled to exercise the jurisdiction of the Crown Court.

Once issued, the prosecutor sends the EAW to the Fugitives Unit of the Serious Organised Crime Agency which is responsible for transmitting the warrant to the state where the wanted person is believed to be. An EAW is not country specific and is applicable in all category 1 territories.

The second category of import extradition cases concerns requests to category 2 territories which are designated states outside the European Union. In these cases Crown Prosecutors throughout England and Wales are responsible for collating the necessary information for the specialist Extradition Unit of CPSs Special Crime Division in London, which then drafts the extradition request. The papers are then passed to the Judicial Co-operation Unit of the Home Office before being sent to the other territory under authority of the Secretary of State, as extradition requests to territories outside the European Union are made on a state-to-state basis. Part 3 of the Extradition Act contains some provisions relating to import extradition from category 2 territories. Additionally for any given category 2 territory one must also consider any applicable extradition instrument.

For requests to both category 1 and 2 territories CPS lawyers only prepare an extradition request after considering the Code Tests (see the Code for Crown Prosecutors in the Legal Resources section). A request can be made for any of the following three purposes: to prosecute the wanted person for offences stated in the request; to sentence the person for offences noted in the request that the person has already been convicted of; and, to carry out a sentence on the person that has already been imposed in respect of offences noted in the request.

Upon arrest in the requested state, the foreign court will conduct the extradition hearing in accordance with their legislation. The foreign authority, usually the national prosecution service, will represent the United Kingdom during proceedings. If extradition is ordered United Kingdom police officers travel to the requested state to collect the person and return him to the UK. The person will be brought to the relevant court or, if the request was issued for the person to complete an existing custodial sentence, to the relevant prison.

As noted some states are not designated as either a category 1 or 2 territory. It may still be possible to make an extradition request in these circumstances, pursuant to section 193 of the Extradition Act, Parties to international conventions (and related secondary legislation). Such requests however are rare. Another alternative, also rarely used, is for the United Kingdom to seek an ad-hoc arrangement with the other state, to permit a request to be made.

Further details on extradition can be found here: <https://www.gov.uk/extradition-processes-and-review>

The Extradition Act can be seen at [www.legislation.gov.uk](http://www.legislation.gov.uk).

### **Extradition from the UK: European arrest warrant (EAW)**

Part 1 of the Extradition Act 2003 implements the framework decision on the European arrest warrant (EAW).

EAW extradition partners

Category 1 territories are:

- Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden

The extradition process to these territories follows these steps:

1. an extradition request is made
2. a certificate is issued
3. initial hearing
4. extradition hearing
5. dual criminality test

Extradition request

Extradition requests from category 1 territories should be made to the Serious Organised Crime Agency (SOCA) or to the Crown Office and Procurator Fiscal Service, if the person is in Scotland.

In urgent cases a 'requested person' (the person a country wants to extradite) can be arrested before the receipt of an extradition request. The EAW must be received in time for a court hearing to be held within 48 hours of the arrest.

Issuing a certificate

If the warrant has been issued by a judicial authority in the requesting territory, a certificate can be issued by the UK authority.

The documentation can only be certified if the requirements of section 2 of the 2003 Act are met. If the requested person has been convicted, the documentation must make it clear that the person is 'unlawfully at large' (liable to immediate arrest and detention).

The requested person can then be arrested and brought before a court.

Initial hearing

At the initial hearing the District Judge must confirm, on the balance of probabilities:

- the identity of the requested person
- inform the person about the procedures for consent
- fix a date for the extradition hearing if the requested person does not consent to his or her extradition

Extradition hearing

The extradition hearing should normally take place within 21 days of arrest.

If the judge is satisfied that the conduct amounts to an extradition offence, and that none of the bars to extradition apply, he must then decide if the person's extradition is compatible with the convention rights within the meaning of the Human Rights Act 1998.

If compatible, the judge must order the extradition.

Dual criminality test

'Dual criminality' means that for someone to be extradited, their alleged conduct has to be a criminal offence in both the surrendering and the requesting state.

There is a list of 32 categories of offence for which the dual criminality test is not needed. The offence must carry a maximum sentence of at least 3 years in the requesting state.

If the offence isn't covered in this list, it must be an offence in both the surrendering and requesting state. Also, if the conduct was carried out outside the requesting state, it must be an offence in both the issuing and executing states.

Appeals: High Court

An appeal must be lodged within 7 days of an extradition being ordered.

The requested person can appeal to the High Court against their extradition, and the requesting state can appeal against the discharge of someone they have requested extradition for.

Appeals: Supreme Court

A High Court decision can be appealed in the Supreme Court, as long as leave to appeal has been given.

An appeal to the Supreme Court can only be made on a point of law of general public importance and where the High Court decides the point should be considered by the Supreme Court.

Surrender of a requested person

The person should normally be extradited within 10 days of the final court order. This time limit can be extended in exceptional circumstances, and with the agreement of the requesting state.

**Extradition from UK: process under Part 2 of the act**

Part of 2 of the act covers category 2 territories, which are:

- Albania, Algeria, 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, Libya, 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, the United Arab Emirates, the United States of America, Uruguay, Vanuatu, Western Samoa, Zambia and Zimbabwe

Requests from these states need decisions by both the Secretary of State and the courts. The Secretary of State has no influence over the time it takes for a case to clear the judicial stages, and time a case takes to complete can vary depending on how complex the case is.

The extradition process to these territories follows these steps:

1. an extradition request is made to the Secretary of State
2. the Secretary of State issues a certificate and sends request to court (if request is valid)
3. preliminary hearing
4. extradition hearing
5. Secretary of State decides on extradition

After the extradition hearing and the Secretary of State's decision a requested person may be able to appeal to the High Court, and if that is unsuccessful, to the Supreme Court.

Extradition requests: what's required

When an extradition request is made to the Secretary of State if it's 'valid', the Secretary of State will issue a certificate and send the request to the court.

The request will be valid if it is for a person accused or convicted of an offence, and if it's made by an appropriate authority, such as a diplomatic or consular representative.

Documents needed to make a request

Generally the information accompanying a request needs to include:

- details of the person
- details of the offence of which they are accused or convicted
- if the person is accused of an offence - a warrant for their arrest or provisional arrest (or a duly authenticated copy)
- if someone is unlawfully at large after conviction of an offence – a certificate of the conviction and sentence (or a duly authenticated copy), or for provisional arrest, details of the conviction
- evidence or information that justifies 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

If the court is satisfied that enough information has been supplied, an arrest warrant can be issued.

Requesting states are advised to submit an initial draft request to the Crown Prosecution Service (CPS), so that any potential problems can be resolved.



Supporting evidence: exempted countries

The following countries don't need to provide prima facie evidence in support of their extradition request:

- Albania, Andorra, Armenia, Australia, Azerbaijan, Bosnia and Herzegovina, Canada, Croatia, Georgia, Iceland, Israel, Liechtenstein, Macedonia FYR, Moldova, Montenegro, New Zealand, Norway, Russian Federation, Serbia, South Africa, Switzerland, Turkey, Ukraine and the US

Preliminary hearing

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

Extradition hearing

During the extradition hearing the judge must satisfy himself that:

- the request meets the requirements of the 2003 Act, including dual criminality and prima facie evidence of guilt (where appropriate)
- none of the bars to extradition apply (passage of time, hostage-taking or extraneous considerations)
- the extradition is compatible with the convention rights within the meaning of the Human Rights Act 1998

Secretary of State: considerations with extradition requests

When a case is sent to the Secretary of State she must consider whether the surrender of a person is prohibited. It would be prohibited if:

- the person could face the death penalty (unless the Secretary of State gets adequate written assurance that the death penalty will not be imposed)
- there are no speciality arrangements with the requesting country – 'speciality' requires that the person must be dealt with in the requesting state only for the offences for which they're being extradited (except in certain limited circumstances)
- the person had already been extradited to the UK – this might mean the Secretary of State needs consent from the earlier extraditing country before extraditing on to the requesting state

If none of the 3 prohibitions apply, or if appropriate assurances have been given, the Secretary of State must order the extradition. Or, if surrender is prohibited, the person must be discharged.

Representations for the defence

The defence has to make any representations within 4 weeks of the case being sent to the Secretary of State (28 days including the day it was sent).

The Secretary of State has to make a decision within 8 weeks of the day the case is sent, otherwise the person may be discharged.

But the Secretary of State can apply to the High Court for an extension of the decision date if the representations are complex and enquiries need to be made of the requesting state.

To date, no extensions have been refused by the High Court. They are usually for no longer than 2 months, and more than one extension can be sought if necessary.

Appeals: the High Court

Appeals can be made to the High Court within 14 days by:

- a requested person - if the district judge has sent the case to the Secretary of State, who then orders the extradition
- a requesting state - if a requested person has been discharged by the judge at the extradition hearing and subsequently by the Secretary of State (after the case has been sent to them by the district judge)

Appeals: the Supreme Court

A requested person, or a requesting state, can appeal to the Supreme Court against the High Court's decision, if leave to appeal has been granted.

Appeals to the Supreme Court can only be made on a point of law of general public importance – where that's been agreed by the High Court. The details and time limits of these appeals are set out in section 114 of the 2003 Act.

Surrendering a requested person

Unless there is an appeal, a requested person should be extradited within 28 days of the Secretary of State's decision.

If there is an appeal, the 28 days begin once all legal remedies have been exhausted. This time limit can be extended in exceptional circumstances, but reasonable cause must be shown for any delay.

### **Extradition to the UK (outgoing requests)**

The Home Office certifies and forwards extradition requests that have been prepared by the prosecuting authorities, to the British Embassy, or High Commission in the requested state.

The Crown Prosecution Service and the Serious Fraud Office are the main authorities that the Home Office gets outgoing requests from.

The Crown Office and Procurator Fiscal Service deals with Scottish outgoing extradition requests.

Requests that are made by most of the Crown Dependencies and British Overseas Territories are submitted through the Foreign and Commonwealth Office (FCO).

Submitting outgoing requests to diplomatic posts

All outgoing extradition requests must be submitted via diplomatic channels (the British Embassy or High Commission).

An outgoing request can either be:

- a Full Order request - submitted in the requested state before the arrest of the person

- a provisional arrest - this is made when someone is known to be in a country, but is regarded as a flight risk

The police or prosecuting authority will liaise with Interpol London, to issue a request for their arrest.

The provisional arrest is carried out before extradition papers are formally submitted. When someone is provisionally arrested there is a deadline within which the papers must be submitted. This deadline is set out in the treaty that governs extradition arrangements with that state.

The Home Office will then need to liaise with the relevant prosecuting authority in England and Wales and Northern Ireland to make sure the papers are delivered in enough time for the Home Office to dispatch them.

Bringing a requested person back to the UK

Once a requested person is available for surrender, the Home Office will be notified by the British Embassy or High Commission, or the police will be notified by Interpol.

The police – usually from the force where the original arrest warrant was issued - then collect and escort the requested person back to the UK.

The escorting officers should contact the Home Office for a letter of introduction, which will allow them to bring the requested person back. The Home Office will also forward the officers' travel arrangements to the relevant British Embassy or High Commission.

Special arrangements where there is no extradition treaty

Even if there is no formal extradition treaty with a country, it may still be possible to make an extradition request.

The Home Office liaises with that country via the FCO, to find out if their domestic law allows for extradition, and if so, what documents are needed.

Sometimes a one-off arrangement has to be in place before a request can be processed. In effect this involves negotiating a mini-treaty, known as a 'special arrangement'.

Extradition of UK nationals

The UK will, as a matter of policy, extradite its own nationals, providing no bars to extradition apply.

Some countries are not permitted to extradite their own nationals. Though they often have provisions in place that mean that although they will not extradite their own nationals may be prepared to prosecute them on behalf of the UK.

### **Extradition review**

On 16 October 2012 the Home Secretary announced the government's response to Sir Scott Baker's independent review of the UK's extradition arrangements. The Home Secretary's oral ministerial statement to the House and the government's response to Sir Scott Baker's recommendations are available in [Command Paper 8458](#).

As promised by the Home Secretary, a copy of the evidence supplied to the review panel also been published as follows:

- copies of the consultations invited by the panel - it should be noted that not all the organisations invited by the panel to make representations and listed in annex A of the report chose to do so, we have published all those representations that were received except those that have been published elsewhere
- copies of the transcripts of the oral evidence sessions
- copies of responses to the public consultation exercise - those representations received from contributors who did not wish for their submissions to be published have been withheld
- copies of public views which were submitted

In due course, we will also be publishing details of all the information which is not published here, but which was considered by the Review Panel in reaching their conclusions.

### Extradition Act 2003

On 1 January 2004, the Extradition Act 2003 came into force. Requests made on or after 1 January 2004 are dealt with under the 2003 Act.

However, with the exception of Gibraltar, unless or until the Crown dependencies and British Overseas Territories amend their legislation, the Extradition Act 1989 (the legislation repealed by the Extradition Act 2003) will still apply to them. Currently, only Jersey has enacted its own extradition legislation.

On 15 January 2007, certain amendments to the 2003 Act were given effect in the UK by [Schedule 13 of the Police and Justice Act 2006.](<http://www.legislation.gov.uk/ukpga/2006/48/schedule/13>). Further amendments to the 2003 Act were given effect on 12 November 2009 by Part 6 of the Policing and Crime Act 2009.

This guide does not explain the extradition procedures for Scotland, which, because of its separate legal system, are slightly different from those for the rest of the UK. A separate guide to Scottish procedures is available on the Crown Office and Procurator Fiscal website. Northern Ireland's extradition proceedings are broadly similar to those for England and Wales, and are administered by the Home Office and SOCA.

### Statutory Instruments

A copy of the Statutory Instruments (SIs) designating category 1 territories can be found on the Office of Public Sector Information website. The relevant SIs are: 2003 No. 3333; 2004 No. 1898; 2005 Nos. 365 and 2036; 2006 No. 3451 and 2007 No. 2238.

Copies of the SIs designating category 2 territories can be found on the Office of Public Sector Information website. The relevant SIs are 2003 No. 3334; 2004 No. 1898; 2005 Nos. 365 and 2036; 2006 No. 3451, 2007 No. 2238; 2008 No. 1589 and 2010 No. 861.

For more information, contact [ExtraditionPolicySection@homeoffice.gsi.gov.uk](mailto:ExtraditionPolicySection@homeoffice.gsi.gov.uk)