

CRIMINAL PROCEDURE RULE COMMITTEE

CRIMINAL PROCEDURE RULES PART 17: EXTRADITION

Invitation to comment on proposed new rules

Introduction

1. The Criminal Procedure Rule Committee is considering a proposal to make new rules about extradition. The Rule Committee is the body appointed under section 70 of the Courts Act 2003 to make rules governing the practice and procedure to be followed in the criminal courts. The rules currently in force are The Criminal Procedure Rules 2012, which came into force on 1st October, 2012. Information about the Committee and about the Rules may be found on the website of the Ministry of Justice at:

<http://www.justice.gov.uk/courts/procedure-rules/criminal>

2. The Rule Committee would be especially grateful for the views of those to whom this invitation has been addressed, namely the Chief Magistrate and other extradition judges; the Crown Prosecution Service, as presenters of most extradition requests; the Law Society, the Criminal Bar Association and the Extradition Lawyers' Association, as representatives of legal practitioners; and the Home Office, as the department responsible for advising ministers on extradition matters. The Committee would welcome, too, the views of any others whom those consulted may know to have an interest in the subject matter of this proposal.

3. With this invitation is a copy of the proposed new rules.

4. The Committee invites comments on the proposal generally, or on any aspect of it. Two questions that those consulted are asked to consider in particular appear at paragraph 14. Please reply to the Criminal Procedure Rule Committee secretariat at the Ministry of Justice by **Friday 8th March, 2013**. Responses by email may be sent to: CriminalProcedureRuleEnquiries@justice.gsi.gov.uk.

5. Although the Committee does not intend to publish a list of those who comment, or the content of their comments, respondents are asked to bear in mind that responses will be treated as public documents in accordance with the Freedom of Information Act 2000 and may be made available to enquirers on request.

Background

6. Part 17 of the Criminal Procedure Rules supplies the procedure where either the Extradition Act 1989 or the Backing of Warrants (Republic of Ireland) Act 1965 applies. The rules in that part were adopted when the first Criminal Procedure Rules were made, and have remained unamended since then. They are not wholly redundant, because they continue to apply to an extradition request presented to the

Secretary of State under either Act before the end of 2003: and some requests, it is understood, remain outstanding from then, the fugitives in question having not yet been apprehended. However, the overwhelming majority of extradition requests that now come before the court are made under the provisions of the Extradition Act 2003, which comprehensively superseded the previous extradition regimes but to which the current rules do not apply.

7. The dearth of up to date procedure rules has mattered little in practice. The Extradition Act 2003 itself contains comprehensive provision, not only for the court's powers but also for the manner, and sequence, in which those powers are to be exercised. Moreover, extradition proceedings are assigned to a small number of specially appointed District Judges (Magistrates' Courts), and conducted, in practice, by a comparatively small number of litigators and advocates, each of whom has extensive relevant experience. Nevertheless, it would be unsatisfactory for the Criminal Procedure Rules to continue to contain no relevant, up to date, provision for extradition proceedings. By section 69 of the Courts Act 2003, the Rules are to govern the practice and procedure of the criminal courts. Therefore a reader reasonably might expect to find in the Rules a substantially complete set of provisions governing all the criminal courts' procedures, including extradition procedure; and might be surprised to find instead only rules that were now largely irrelevant to the exercise of the relevant court's powers. For the rules to be at best incomplete and at worst misleading, and for the relevant provisions to be fragmented, tends to promote confusion, misunderstanding and, potentially, injustice.

8. Despite the comprehensive provision made by the Extradition Act 2003, it is suggested, therefore, that there would be little harm, and some advantage, in rules laying out, in the manner of other Criminal Procedure Rules, the procedure compelled by that Act, with such additional procedural provision as may be required. Thus strangers to extradition could find Criminal Procedure Rules that supplemented the Act, just as they may find now, for example, rules that supplement the statutory provisions for allocation and sending for trial; even if extradition procedure rules are likely to be of limited practical use to experienced extradition judges and practitioners.

9. Since its enactment, the Extradition Act 2003 has been amended in various respects, chiefly by the provisions of the Police and Justice Act 2006 and those of the Policing and Crime Act 2009. Insofar as those amendments affect provisions directly relevant to the rules, they are cited in the legislative footnotes to the draft rules. The text of the Act, including the text of amendments to it, can be found on the legislation website maintained by the National Archives¹. As is perhaps notorious, the application of the 2003 Act has not been without occasional controversy, and the operation of the European Arrest Warrant scheme (to which Part 1 of the Act gives effect) and of extradition arrangements with the United States of America (to which Part 2 of the Act applies), in particular, have attracted comment. But whatever – if any – adjustments to the extradition regime may be made within the foreseeable future, for the purposes of these rules the Committee has assumed that the overall framework of the Act is unlikely to change. Supplementary rules such as those now proposed therefore are expected still to have some use.

¹ At <http://www.legislation.gov.uk/ukpga/2003/41/contents>.

Features of the proposed rules

Transitional provision

10. Although the current Part 17 would be revoked by the statutory instrument introducing these new rules, by a transitional provision the current rules would be preserved for the purposes of any extradition request proceeding under the 1989 or 1965 Acts.

Sequence of rules

11. The sequence in which the rules are set out follows the scheme of the Act. The Committee assumed that to depart from that scheme would be unnecessary and distracting.

Procedure deriving from the Act and from other Criminal Procedure Rules

12. As indicated above, much of the procedure exclusive to extradition which is contained in the draft rules is compelled by the Extradition Act 2003, either expressly or by necessary implication. The notes to each rule identify relevant sections of the Act. The Act contains some special provisions about evidence² (as might be expected: in essence, the extradition request is admissible evidence), and about the attendance of the defendant by live link if in custody³ (comparably with the corresponding provision for ordinary pre-trial proceedings), which procedure rules must accommodate. The Act provides that ‘at the extradition hearing the appropriate judge has the same powers (as nearly as may be) as a magistrates’ court would have if the proceedings were the summary trial of an information against the person in respect of whom the [Part 1 or Part 2] warrant was issued’⁴. Thus there can be no doubt that the general provisions of the Criminal Procedure Rules already apply, just as they would in proceedings for the trial of an offence in a magistrates’ court.

13. It follows that the overriding objective in Part 1 of the Rules applies, as do the Part 3 case management provisions; the Part 5 and Part 16 rules about court records and reporting restrictions, respectively; the Part 19 and Part 76 rules about bail, and costs; and the rules that govern the introduction of any evidence there may be in addition to that contained in the extradition request (Parts 27, 28, 29, 33, 34, 35 and 36): all as they would in proceedings for an offence in England and Wales. Although the time limits under those latter rules are ill-suited to extradition proceedings⁵, each Part of the Rules concerned contains a power for the court to adjust the time limit in question; and, in the event that still greater flexibility were required, the draft rules include a provision – rule 17.15 – allowing the adaptation of those rules in an extradition case. There are general definitions in Part 2 of the Rules which are relevant⁶, and some of the expressions used in the draft rules are adopted from what are now well-established instances of their use elsewhere in the Rules⁷.

² See section 202 of the Extradition Act 2003.

³ See sections 206A – 206C of the 2003 Act.

⁴ See sections 9 and 77 of the 2003 Act.

⁵ Some time limits begin to run on the occurrence of an event that in extradition proceedings will not occur: sending for trial, for example.

⁶ Notably, the definition of ‘court officer’.

⁷ Notably, the phrase ‘in terms the defendant can understand (with help, if necessary)’, which appears also in Part 9 (allocation and sending for trial) and in Part 37 (trial and sentence in a magistrates’ court) and which accommodates not only interpretation into a language other than English but also

Questions

14. There are two questions on which the views of those consulted would be especially appreciated:

- 1) Insofar as the rules follow the Act, do they do so accurately and clearly, or is there anything in them liable to mislead the reader ?
- 2) Bearing in mind that other, existing, Criminal Procedure Rules will apply, are there any other procedure rules than these needed, and if so about what ?

Criminal Procedure Rule Committee
January, 2013