



Home Office

# Extradition in criminal investigation cases

Version 6.0

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# About this guidance

This guidance tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office how to deal with the extradition of suspects and offenders you investigate.

It includes:

- the definition of extradition, and how you may be involved in these cases
- your role and the role of the Crown Prosecution Service (CPS)
- the law and how you must deal with European arrest warrants
- the work of the immigration enforcement extradition officers

This guidance is based on the Immigration Enforcement team's guidelines. For general information, see [Criminal and financial investigations](#).

The Home Office has a duty to safeguard vulnerable people and promote the welfare of children for more information see: [Vulnerable people and children](#).

Criminal Investigators in Immigration Enforcement must be aware of their obligations under the General Data Protection Regulation (GDPR) and the complementary Law Enforcement Directive (LED) domestic legislation via the Data Protection Act 2018 see: [Data protection changes \(GDPR and Data Protection Act 2018\)](#).

## Contacts

If you have read this guidance and need more help with this category, you must first ask the caseworker appointed to help with your case, the Crown Prosecution Service (CPS) lawyer for your case your line manager or email the CFI Fugitive, Extradition and Mutual Assistance team (FEMA).

If you have any questions about the guidance and your line manager cannot help you or you think that the guidance has factual errors then you can email: [CFI operational guidance team](#).

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email: [the Guidance Rules and Forms team](#).

## Publication

Below is information on when this version of the guidance was published:

- version **6.0**
- published for Home Office staff on **19 June 2020**

## Changes from last version of this guidance

- placed on new template
- housekeeping changes
- section added relating to the UK leaving the EU

### Related content

[Contents](#)

### Related external links

Criminal and financial investigation

Vulnerable people and children

Data protection changes (GDPR and Data Protection Act 2018)

# The definition of extradition

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the definition of extradition and the legislation used in extradition.

Extradition is sometimes confused with deportation, but the 2 are different. Deportation is the removal of a person from a country where the Home Secretary deems it conducive to the public good or on the recommendation of a court. Extradition involves returning a person to a country where they are accused of, or have been convicted of, a criminal offence.

Extradition is the formal procedure for requesting the surrender of someone from one country to another, when the person needs to:

- be prosecuted
- be sentenced for a previous conviction
- serve a sentence already imposed, for example, in cases where the person fled before the court could deal with them

## **Related content**

[Contents](#)

[Extradition and the law](#)

## **Related external links**

[Immigration Act 1971 Part 1 section 3\(5\), 3\(6\) & 5](#)

Deportation

# Extradition and the law

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the legal provisions which allow the extradition of someone to take place.

As a criminal investigator, you may occasionally be in the position where you:

- receive a request from a foreign law enforcement agency to arrange the extradition of a person to another country
- make a request to another foreign law enforcement agency to extradite a person to the UK to be prosecuted or sentenced as a result of one of your investigations

The [Extradition Act 2003](#) is the relevant UK legislation which governs all requests made on or after 1 January 2004. This act divides the UK's extradition partners into the following 2 categories.

## Category 1 territories

These are the 27 European Union (EU) member states, plus Gibraltar.

Extradition between these states operates by issuing a European arrest warrant (EAW), but the act makes no references to EAWs, instead:

- 'outgoing EAWs' are referred to as 'part 3 warrants'
- 'incoming EAWs' are 'part 1 warrants'

## Post EU-Exit

The UK left the EU on 31 January 2020 having concluded a Withdrawal Agreement, under which the transitional arrangements mean that the EAW processes remain in place until the end of the Transition Period.

If no further agreements are made by the end of the transition period (which is due to come to an end on 31 December 2020) then bi-lateral extradition arrangements arranged through the framework of the Council of Europe Convention on Extradition 1957 ("the 1957 Convention") would be the basis of future extradition requests. The Withdrawal Agreement provides that existing EAW cases are to be concluded under the EAW regime.

For details of bi-lateral treaties on mutual legal assistance in criminal matters see [Bilateral treaties in criminal matters](#) and for a list of bi-lateral treaties and international Mutual Legal Assistance (MLA) and extradition agreements the UK is party to see [MLA and Extradition Treaty list](#).

## Other territories (which include 'Category 2' territories)

These are non-EU members of the European Council Convention on Extradition 1957 and signatories to other similar agreements.

Extradition arrangements with these territories are regulated by the relevant bi-lateral or multi-lateral agreements but those agreements are implemented by Part 2 of the Extradition Act 2003 and proceedings with those territories follow Part 2. This part is unaffected by EU Exit.

To check if the country involved has any agreements with the UK you must speak to the Crown Prosecution Service (CPS) lawyer for the case.

For more information about the extradition legislation and the list of territories, search 'extradition' at [Foreign and Commonwealth Office Treaties online](#) and see [Extradition: processes and review](#).

For details of bi-lateral treaties on mutual legal assistance in criminal matters see [Bilateral treaties in criminal matters](#) and for a list of bi-lateral treaties and international Mutual Legal Assistance (MLA) and extradition agreements the UK is party to see [MLA and Extradition Treaty list](#).

### Related content

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# Extradition: European arrest warrants

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about what a European arrest warrant (EAW) is, and when you may need to apply for one. Please also refer to [Post EU Exit](#) section for related information.

## Who can issue an EAW

An EAW is a legal order for a European Union (EU) member state to arrest a person on behalf of another member state. An EAW is a document issued by a competent judicial authority (appropriate court official) for example a:

- Justice of the Peace (JP)
- District Judge in a magistrates' court
- Judge entitled to exercise jurisdiction in the Crown court

## When you would consider applying for an EAW

You must discuss the case in full with the Crown Prosecution Service (CPS) lawyer.

You must consider applying for an EAW if you are dealing with a Home Office immigration criminal prosecution if the person:

- has fled (escaped) the UK, after they have been charged, but before the court has held a trial to determine whether they are guilty of the offence
- has been prosecuted and sentenced by the courts but fled the UK before serving, or during their prison sentence, and the:
  - expected prison sentence is 12 months or more and the person flees the UK before a sentence is issued
  - actual prison sentence is 4 months or more and the person flees the UK before or during serving the sentence
- is someone who flees after they have been charged with an offence

You cannot apply for an EAW purely because you want to question a person who flees the UK. For a person who has not been charged and has fled, there must be sufficient evidence to convince the CPS there is sufficient evidence and following this a court issues a warrant for arrest in the first instance. For more information on the process see [The extradition process](#).

## Terms used when dealing with EAWs

The EAW was introduced by the [EU framework decision in 2002](#) and designed to increase the speed and ease of extradition across the EU.

The following are some terms you need to know if you deal with an EAW:

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# Extradition: European arrest warrant application process

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about what you must do when you apply for a European arrest warrant (EAW) to secure the arrest of a person who fled the UK before the courts could deal with them.

## The investigator's role

If you have made intelligence checks and decide to apply for an EAW you must follow the procedure below.

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## The role of the CPS lawyer

The CPS handles all extradition cases. For more information on the role of the CPS, see: [CPS: Extradition](#).

A CPS lawyer must:

- apply for the EAW
  - as a criminal investigator you may be asked to assist (see below, Assisting the CPS lawyer)
- arrange for the EAW to be issued
- get translated versions of the EAW in the appropriate language for the executing judicial authority - for a definition of this authority, see: [European arrest warrants](#)
- arrange for the EAW to be transmitted (sent)
  - the Home Office Immigration Enforcement Fugitive, Extradition and Mutual Assistance (FEMA) unit will deal with this

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**Related content**

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**Related external links**

[Extradition Act 2003](#)

# The extradition process

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the process for extraditing a suspect after a European arrest warrant (EAW) has been issued.

## Extradition offences

You can only apply for extradition for an extradition offence. The definition of the offence varies depending on the extradition scheme concerned. Generally, extradition is not possible unless:

- the offence is ‘an indictable offence’ (punishable with at least 12 months imprisonment) for cases where the person has been either:
  - charged but not yet appeared in court
  - sentenced by the courts and received a minimum prison sentence of 4 months
  - where a ‘warrant for arrest in the first instance’ (see below) has been issued
- the offence committed is also an offence in the country from where you apply for the suspect’s extradition

A ‘warrant for arrest in the first instance’ is a way of getting approval to arrest someone suspected of committing an indictable offence, in cases where the person has not previously been arrested for this offence. These warrants are issued by a court when:

- you have ‘laid information’ to the court, this means provided written information about the offence and the suspect’s alleged involvement
- the Crown Prosecution Service (CPS) lawyer has agreed this course of action
- the court believes it is necessary to arrest the person

Extradition is a serious interference with a person’s liberty. You must only request extradition when it is necessary and proportionate because a person may be held in custody for months in the country receiving the EAW while it is decided whether to extradite them.

The Human Rights Act (HRA) 1998 has protections to safeguard the rights of people who a country is applying to extradite.

The relevant HRA articles in extradition cases are:

- Article 3: the prohibition of torture, or inhuman or degrading treatment
- Article 5: the right to liberty and security
- Article 6: the right to a fair trial
- Article 8: the right to respect for private and family life
- Article 14: the prohibition of discrimination

For more information see: [HRA 1998](#).

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# Returning an extradited person to serve their prison sentence abroad

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about situations where the Home Office may be asked to return a convicted defendant, previously extradited to the UK, back to their home country for imprisonment.

## Commitment to return a suspect to serve a prison sentence

Some European Union (EU) countries, including the Netherlands and Belgium, will only extradite their own nationals if an undertaking is given to return the suspect to serve any prison sentence in their home country. The Crown Prosecution Service (CPS) lawyer will advise if this affects your case.

The sentence given by the UK court may be increased or decreased to bring it in line with national laws in their home country. This can vary from one country to another and is based on each country's own sentencing criteria.

In these cases, the CPS lawyer will get the required commitment from the Home Office. The lawyer may need you to give details of:

- UK court dates
- plea entered
- trial outcomes
- any confiscation orders, including:
  - amount of money to be repaid
  - property or assets forfeited
  - dates court decisions were made
  - details of any default sentences, additional sentences can be imposed if the suspect fails to repay confiscated amounts by a certain date

### Related content

[Contents](#)

# The effect of extradition on custody time limits

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the custody time limits for a defendant awaiting extradition to the UK.

## Definition of the custody time limit

The custody time limit relates to the length of time a person can be held at a police station or other designated custody office.

The custody time limit for the amount of time a person can be held at a police station prior to charge is governed by [Section 41 of the Police and Criminal Evidence Act \(PACE\) 1984](#).

The custody time limit relating to the amount of time a person may be remanded in custody prior to going to court is governed by:

- [section 22 of the Prosecution of Offences Act 1985](#) (as amended)
- [Prosecution of Offences \(CTL\) Regulations 1987](#) (as amended)
- [Criminal Procedure Rules \(October 2015\)](#)

## Custody time limit after extradition

The custody time limit is calculated differently when a person is held after extradition.

If a defendant flees (escapes) the UK and you apply for extradition, any periods of time the defendant spends in custody abroad, waiting to be extradited and collected, does not count towards the custody time limits.

The custody time limits start again once the defendant is returned to the UK and remanded in custody until their trial.

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# Preparing for the trial of an extradited suspect

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about how to prepare for the trial of an extradited suspect and the reasons why you must fully prepare your prosecution case.

Before you make an extradition request, you must make sure all case prosecution papers are in order and the case is ready for trial. For more information about getting your case ready for court you must speak to your criminal and financial investigations (CFI) manager.

You must be fully prepared for the suspect's trial because:

- [Section 153 of the Extradition Act 2003](#) states if court trial proceedings are not started within 6 months of the suspect's arrival in the UK (after extradition) the:
  - person must be acquitted (found not guilty)
  - UK Secretary of State must arrange for their prompt return, free of charge, to the extraditing territory; the person must apply for this within a certain period of time (The Crown Prosecution Service (CPS) lawyer will tell you the time limit)
- [Article 6 of the Human Rights Act 1998](#) states every person has a right to a fair trial, including a commitment to a fair and public hearing within a reasonable time

## Related content

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## Related external links

Personal safety training (PST)

# Extradition officers

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the work of Home Office extradition officers. Some of them also work in Immigration Enforcement teams.

If a suspect needs to be extradited back to the UK, the Immigration Enforcement Fugitive, Extradition and Mutual Assistance (FEMA) unit has a pool of trained extradition officers to help in this process.

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