

# **EXPLANATORY MEMORANDUM ON THE THIRD ADDITIONAL PROTOCOL TO THE EUROPEAN CONVENTION ON EXTRADITION**

## **Title of Treaty**

Third Additional Protocol to the European Convention on Extradition

Command paper number **8805**.....

## **Subject matter**

The **European Convention on Extradition** ("the Convention") is a multilateral extradition treaty which opened for signature by members of the Council of Europe on 13 December 1957. The Convention is also available for signature by other States. The UK began operating the Convention in 1991.

Although the Convention has been replaced, as regards relations between EU Member States, by Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States [Official Journal L 190 of 18.7.2002], it still applies as regards relations between EU Member States, on one hand, and other signatories, on the other (and as regards relations between signatories, neither of which are EU Member States). Non-EU Member States which are signatories to the Convention include Albania, Russia, South Africa and the Republic of Korea.

There are four Additional Protocols to the Convention. The First Additional Protocol was done in 1975; the Second in 1978. The UK has ratified the Second Additional Protocol.

Under the authority of the European Committee on Crime Problems (CDPC), the Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC) is entrusted with, in particular, examining the functioning and implementation of Council of Europe conventions and agreements in the field of international co-operation in criminal matters, with a view to adapting them and improving their practical application where necessary.

At its 52<sup>nd</sup> meeting (October 2006), the PC-OC put forward a number of proposals relating to the modernisation of the Convention (as amended by the First and Second Additional Protocols). The Convention is one of the oldest European conventions in the criminal law field and has a direct impact on individuals' rights and freedoms, to which the CDPC asked the PC-OC to pay particular attention.

In this context, the PC-OC suggested (i) providing for simplified extradition procedures in cases where the person consents to extradition, and (ii) amending a number of provisions of the Convention in order to adapt it to modern needs.

The CDPC, at its 56<sup>th</sup> plenary session (June 2007), decided to mandate the PC-OC to draft the legal instruments necessary to put into effect these

suggestions. Having studied various options, the PC-OC agreed to draw up two Additional Protocols to the Convention; a Third Additional Protocol providing for simplified extradition procedures in cases where the person consents to extradition and a Fourth Additional Protocol amending and supplementing certain provisions of the Convention. The Third Additional Protocol was finalised by the PC-OC at its 58<sup>th</sup> meeting (12-16 October 2009) and submitted to the CDPC for approval.

### Third Additional Protocol

The Third Additional Protocol was opened for signature on 10 November 2010 and, as of 21 January 2014, 27 Member States of the Council of Europe have signed it, but only seven have ratified it.

The Protocol simplifies the procedure when the person whose extradition is sought consents to extradition.

- Article 1 sets out that contracting parties undertake to extradite to each other under the simplified procedure persons sought under the Convention, subject to the consent of the person and the agreement of the requested party.
- Article 2 sets out that where a person is the subject of a request for provisional arrest (under Article 16 of the Convention)<sup>1</sup>, and the simplified procedure applies, the submission of a full request for extradition complete with the documents listed in Article 12 of the Convention shall not be necessary. Instead, the information listed in Article 2 shall be regarded as adequate.
- Article 3 sets out that the requested party must inform the person who has been arrested pursuant to a request for provisional arrest of the possibility of applying the simplified procedure.
- Article 4 deals with the giving, recording and revocation of consent.
- Article 5 sets out that a contracting party may make a declaration that where a person consents to extradition, the rules set out in Article 14 of the Convention do not apply (specialty protection<sup>2</sup>).
- Article 6 details that, in cases of provisional arrest, the requested State must inform the requesting State whether or not the person consents to extradition, no later than 10 days after the provisional arrest. It also sets out that where a person consents to extradition but the requested State exceptionally chooses not to apply the simplified procedure, it must inform the requesting State of this sufficiently in advance so that the latter can submit a full extradition request within 40 days of arrest.
- Article 7 states that, where a person consents to extradition, the requested State shall inform the requesting State of the final decision

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<sup>1</sup> In case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought.

<sup>2</sup> A person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his surrender other than that for which he was extradited

on extradition within 20 days of the date on which the person consented.

- Article 8 supplements Article 12 of the Convention in that it provides for the use of modern means of communication as well as communication through the Interpol, in order to ensure efficient communication in the context of the simplified extradition procedure.
- Article 9 highlights the importance of a speedy surrender when there is consent to extradition.
- Article 10 applies to cases where the person consents after the expiry of the initial ten-day period but before the expiry of the forty-day period stipulated in Article 16 of the Convention and before the requesting Party has submitted a formal request for extradition.
- Article 11 simplifies the conditions applicable to transit as laid down by Article 21 of the Convention.
- Articles 12 to 19 deal with such matters as signature and entry into force, accession, territorial application and declarations and reservations.

No changes to the UK's domestic law are needed to implement the Third Additional Protocol.

### **Ministerial responsibility**

The Home Secretary has overall responsibility for extradition in the UK. The Secretary of State for Foreign and Commonwealth Affairs has overall responsibility for UK policy relating to international relations. The Minister for Europe also has an interest where UK nationals are extradited or detained abroad.

### **Policy considerations**

#### **(i) General**

The Third Additional Protocol will allow the UK to operate a simpler and efficient extradition procedure with other contracting parties to the Convention (which are not also EU Member States), where the requested person consents to his or her extradition.

The Protocol removes the need for the State seeking extradition to submit a full request for extradition in respect of the person in cases where a person has been arrested pursuant to a provisional arrest request, and has consented to his or her extradition. This will have the effect of returning the person to the Requesting State to face justice in quicker time than might otherwise happen.

Many of the articles in the Protocol make technical improvements to the operation of the Convention but do not create any technical or procedural difficulties.

#### **(ii) Financial**

No additional financial burdens are anticipated by the signature and subsequent ratification of this Protocol.

(iii) Reservations and Declarations

None.

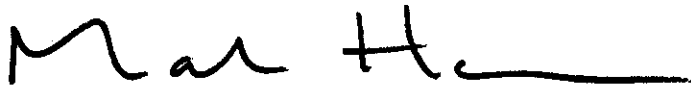
Implementation

This Protocol will be ratified alongside the Fourth Additional Protocol, both of which were signed by the UK's Permanent Representative in Strasbourg on 6 January 2014. No change to UK law is needed to implement this Protocol.

Consultations

The Scottish Government has been consulted in the drafting of this EM, as in Scotland, most of the functions which the Secretary of State performs in England, Wales and Northern Ireland are performed by the Scottish Ministers

Although the Home Office has assumed responsibility for all extradition requests concerning Northern Ireland since 1 April 2008, the Northern Ireland authorities have also been consulted.



Mark Harper  
Minister for Immigration

[Date] 3rd February