STATUTORY INSTRUMENTS

2001 No. 1453

EXTRADITION

The European Convention on Extradition (Fiscal Offences) Order 2001

Made - - - -	*11th April 2001*
Laid before Parliament	*25th April 2001*
Coming into force	*16th May 2001*

At the Court at Windsor Castle, the 11th day of April 2001

Present,

The Queen's Most Excellent Majesty in Council

Whereas the European Convention on Extradition ("the Convention")**(a)**, opened for signature by Members of the Council of Europe on 13th December 1957, entered into force for the United Kingdom on 14th May 1991:

And whereas the Second Additional Protocol to the Convention ("the Protocol")**(b)**, the terms of which are set out in Schedule 1 to this Order, was opened for signature, by Members of the Council of Europe which have signed the Convention ("Convention States"), on 17th March 1978:

And whereas, on 6th June 1994, the United Kingdom became a party to the Protocol, accepted Chapter II of the Protocol and made the reservation set out in Schedule 2 to this Order:

And whereas the Convention States listed in Schedule 3 to this Order are parties to the Protocol which have accepted Chapter II thereof, and those States have made certain reservations and declarations, the terms of which are set out in Schedule 4 to this Order:

And whereas the Protocol provides for denunciation by means of a notification by a party to it, such denunciation to take effect six months after the date when the Secretary General of the Council of Europe receives such notification:

And whereas the reservations, notifications and declarations made by the United Kingdom and by the Convention States listed in Schedule 3 to this Order, which are set out in Schedules 2 and 4 respectively to the European Convention on Extradition Order 2001**(c)**, are also applicable to the Protocol:

And whereas the Protocol, as it relates to the United Kingdom, is in conformity with the provisions of the Extradition Act 1989 ("the 1989 Act")**(d)**, in particular with the restrictions on return contained in Part II of that Act:

And whereas section 4(1) of the 1989 Act provides that where general extradition arrangements have been made, Her Majesty may, by Order in Council reciting or embodying

(a) Cm. 1762.
(b) Cm. 2113.
(c) S.I. 2001/962.
(d) 1989 c.33.

their terms, direct that the 1989 Act, so far as it relates to extradition procedures under Part III of that Act, shall apply as between the United Kingdom and the foreign State, or any foreign State, with which they have been made, subject to the limitations, restrictions, exceptions and qualifications in the Order:

Now, therefore, Her Majesty, in exercise of the powers conferred on Her by section 4(1) of the Extradition Act 1989 or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1.—(1) This Order may be cited as the European Convention on Extradition (Fiscal Offences) Order 2001, and shall come into force on 16th May 2001.

(2) This Order shall extend to the United Kingdom only.

(3) In this Order "the United Kingdom" means Great Britain and Northern Ireland.

2. In the application of the 1989 Act, by virtue of the European Convention on Extradition Order 2001, as between the United Kingdom and any Convention State which is listed in Schedule 3 to this Order, Article 5 of the Convention is replaced by the provision set out in Article 2 of the Protocol.

3. The European Convention on Extradition (Fiscal Offences) Order 1993**(a)** is hereby revoked.

A.K. Galloway
Clerk of the Privy Council

(a) S.I. 1993/2663 (there are no amending Orders).

SCHEDULE 1

THE PROTOCOL

THE SECOND ADDITIONAL PROTOCOL TO THE EUROPEAN CONVENTION ON EXTRADITION

The member States of the Council of Europe, signatory to this Protocol,

Desirous of facilitating the application of the European Convention on Extradition opened for signature in Paris on 13 December 1957 (hereinafter referred to as "the Convention") in the field of fiscal offences;

Considering it also desirable to supplement the Convention in certain other respects,

Have agreed as follows:

CHAPTER I

Article 1

Paragraph 2 of Article 2 of the Convention shall be supplemented by the following provision:

"This right shall also apply to offences which are subject only to pecuniary sanctions."

CHAPTER II

Article 2

Article 5 of the Convention shall be replaced by the following provisions:

"Fiscal Offences

1. For offences in connection with taxes, duties, customs and exchange, extradition shall take place between the Contracting Parties in accordance with the provisions of the Convention if the offence, under the law of the requested Party, corresponds to an offence of the same nature.

2. Extradition may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, customs or exchange regulation of the same kind as the law of the requesting Party."

CHAPTER III

Article 3

The Convention shall be supplemented by the following provisions:

"Judgments in absentia

1. When a Contracting Party requests from another Contracting Party the extradition of a person for the purpose of carrying out a sentence or detention order imposed by a decision rendered against him *in absentia*, the requested Party may refuse to extradite for this purpose if, in its opinion, the proceedings leading to the judgment did not satisfy the minimum rights of defence recognised as due to everyone charged with criminal offence. However, extradition shall be granted if the requesting Party gives an assurance considered sufficient to guarantee to the person claimed the right to a retrial which safeguards the rights of defence. This decision will authorise the requesting Party either to enforce the judgment in question if the convicted person does not make an opposition or, if he does, to take proceedings against the person extradited.

2. When the requested Party informs the person whose extradition has been requested of the judgment rendered against him *in absentia*, the requesting Party shall not regard this communication as a formal notification for the purposes of the criminal procedure in that State."

CHAPTER IV

Article 4

The Convention shall be supplemented by the following provisions:

"Amnesty

Extradition shall not be granted for an offence in respect of which an amnesty has been declared in the requested State and which that State had competence to prosecute under its own criminal law."

CHAPTER V

Article 5

Paragraph 1 of Article 12 of the Convention shall be replaced by the following provisions:

"The request shall be in writing and shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party; however, use of the diplomatic channel is not excluded. Other means of communication may be arranged by direct agreement between two or more Parties."

CHAPTER VI

Article 6

1. This Protocol shall be open to signature by the member States of the Council of Europe which have signed the Convention. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the Council of Europe.

2. The Protocol shall enter into force 90 days after the date of the deposit of the third instrument of ratification, acceptance or approval.

3. In respect of a signatory State ratifying, accepting or approving subsequently, the Protocol shall enter into force 90 days after the date of the deposit of its instrument of ratification, acceptance or approval.

4. A member State of the Council of Europe may not ratify, accept or approve this Protocol without having, simultaneously or previously, ratified the Convention.

Article 7

1. Any State which has acceded to the Convention may accede to this Protocol after the Protocol has entered into force.

2. Such accession shall be effected by depositing with the Secretary-General of the Council of Europe an instrument of accession which shall take effect 90 days after the date of its deposit.

Article 8

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.

2. Any State may, when depositing its instrument of ratification, acceptance, approval or accession or at any later date, by declaration addressed to the Secretary-General of the Council of Europe, extend this Protocol to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.

3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn by means of a notification addressed to the

Secretary-General of the Council of Europe. Such withdrawal shall take effect six months after the date of receipt by the Secretary-General of the Council of Europe of the notification.

Article 9

1. Reservations made by a State to a provision of the Convention shall be applicable also to this Protocol, unless that State otherwise declares at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession.

2. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it reserves the right:

(a) not to accept Chapter I;

(b) not to accept Chapter II, or to accept it only in respect of certain offences or certain categories of the offences referred to in Article 2;

(c) not to accept Chapter III, or to accept only paragraph 1 of Article 3;

(d) not to accept Chapter IV;

(e) not to accept Chapter V.

3. Any Contracting Party may withdraw a reservation it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary-General of the Council of Europe which shall become effective as from the date of its receipt.

4. A Contracting Party which has applied to this Protocol a reservation made in respect of a provision of the Convention or which has made a reservation in respect of a provision of this Protocol may not claim the application of that provision by another Contracting Party; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

5. No other reservation may be made to the provisions of this Protocol.

Article 10

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Protocol and shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

Article 11

1. Any Contracting Party may, insofar as it is concerned, denounce this Protocol by means of a notification addressed to the Secretary-General of the Council of Europe.

2. Such denunciation shall take effect six months after the date of receipt by the Secretary-General of such notification.

3. Denunciation of the Convention entails automatically denunciation of this Protocol.

Article 12

The Secretary-General of the Council of Europe shall notify the member States of the Council and any State which has acceded to the Convention of:

(a) any signature of this Protocol;

(b) any deposit of an instrument of ratification, acceptance, approval or accession;

(c) any date of entry into force of this Protocol in accordance with Articles 6 and 7;

(d) any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 8;

(e) any declaration received in pursuance of the provisions of paragraph 1 of Article 9;

(f) any reservation made in pursuance of the provisions of paragraph 2 of Article 9;

(g) the withdrawal of any reservation carried out in pursuance of the provisions of paragraph 3 of Article 9;

(h) any notification received in pursuance of the provisions of Article 11 and the date on which denunciation takes effect.

SCHEDULE 2

RESERVATION BY THE UNITED KINGDOM

In accordance with paragraph 2 of Article 9, the United Kingdom declares that it does not accept Chapter I, Chapter III, Chapter IV or Chapter V of the Protocol.

SCHEDULE 3

Article 2

STATES PARTIES TO THE PROTOCOL WHICH HAVE ACCEPTED CHAPTER II

Albania
Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
Germany
Hungary
Iceland
Italy
Latvia
Lithuania
Macedonia, Former Yugoslav Republic of
Malta
Netherlands
Norway
Poland
Portugal
Romania
Russian Federation
Slovakia
Slovenia
Spain
Sweden
Turkey
Ukraine

SCHEDULE 4

RESERVATIONS AND DECLARATIONS MADE BY STATES PARTIES TO THE PROTOCOL WHICH HAVE ACCEPTED CHAPTER II

AUSTRIA

With respect to the member States of this Additional Protocol, Austria declares that, under the conditions provided by Chapter II, it will grant extradition also for offences which are exclusively contraventions against regulations concerning monopolies on the export, import, transit and rationing of goods.

BELGIUM

Belgium declares that it does not accept Chapter V of the Second Additional Protocol to the European Convention on Extradition.

BULGARIA

In accordance with Article 9 paragraph 2, the Republic of Bulgaria declares that it reserves the right not to accept Chapter I and the right to accept Chapter II in respect of offences concerning taxes, customs charges and currency exchange charges which are punishable under the Bulgarian Criminal Code.

LATVIA

In pursuance of paragraph 2 of Article 9 of the Second Additional Protocol to the Convention on Extradition of 1978, the Republic of Latvia reserves the right not to accept Chapter V of the Protocol.

MALTA

In accordance with Article 9 of the Protocol, Malta reserves the right not to apply Chapter I and Chapter III of the Protocol.

NORWAY

Pursuant to Article 9, Norway declares that it does not accept Chapters I and V of the Protocol.

RUSSIAN FEDERATION

The designated authority of the Russian Federation to consider questions of extradition is the Procurator-General's Office of the Russian Federation.

The Russian Federation shall reserve the right not to apply Chapter V of the Second Additional Protocol of March 17, 1978 to the European Convention on Extradition of December 13, 1957.

TURKEY

The Government of the Republic of Turkey reserves the right to use diplomatic channels in transmitting extradition requests in order to follow-up and carry out the necessary proceedings by diplomatic missions in the requested State, taking into consideration the type of request.

UKRAINE

The Ministry of Justice of Ukraine (in case of requests by courts) and the Prosecutor-General's Office of Ukraine (in case of requests by bodies of pre-trial investigation) shall be the authorities to which reference is made in Article 12, paragraph 1 of the Convention, as amended by the Second Additional Protocol.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order revokes and replaces the European Convention on Extradition (Fiscal Offences) Order 1993 (S.I. 1993/2663) ("the 1993 Order") so as to take account of the revocation and replacement of the European Convention on Extradition Order 1990 (S.I. 1990/1507) ("the 1990 Order") by the European Convention on Extradition Order 2001 (S.I. 2001/962) ("the 2001 Order"). The 1993 Order resulted from the United Kingdom's becoming a party to the Second Additional Protocol to the European Convention on Extradition (the UK being already a party to the Convention) and accepting Chapter II of the Protocol (which provides for extradition between the UK and those States Parties which have accepted Chapter II in respect of certain fiscal offences). This Order updates the references to the Convention, and the States parties to it, (now contained in the 2001 Order) and takes account of the additional States which have become parties to the Protocol and accepted Chapter II, namely Albania, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Latvia, Lithuania, Former Yugoslav Republic of Macedonia, Malta, Romania, the Russian Federation, Slovakia, Slovenia and the Ukraine, together with any reservations and declarations made by those States.

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