

Julian Assange and detention before trial in Sweden: frequently asked questions

Julian Assange was first arrested in the UK in December 2010 under a European Arrest Warrant issued by Sweden. He was granted bail. In November 2011 he lost his appeal against extradition. He appealed to the Supreme Court on the question whether the Swedish Prosecutor had authority to issue a European Arrest Warrant or whether this should have been done by a judge. This note explains what will happen next if the Supreme Court rules that the Arrest Warrant is valid and that Julian Assange should be extradited to Sweden.

Could Julian Assange still avoid extradition?

He could try and take his case to the European Court of Human Rights in Strasbourg, but the chances of his extradition being stopped on human rights grounds are slim.

So, what happens next?

The extradition should be carried out within 10 days of the Supreme Court ruling. The exact date will be agreed between the extradition unit at Scotland Yard and their Swedish counterparts. On the agreed day, Mr Assange will be taken to a named airport where he will be handed over to Swedish authorities who will accompany him on a flight to Sweden.

What will happen to Mr Assange when he gets to Sweden?

Mr Assange will be arrested on his arrival in Sweden and taken to a Swedish police station. Within 96 hours of being detained he will be brought to court, for a decision as to whether he should be remanded in custody until trial (see further below). This hearing is normally in private, unlike in many other countries, including the UK, where such hearings are normally in open court.

As soon as the investigation is over, a decision will be taken about whether to formally charge him. Swedish law requires a person to be physically present before charges can be laid, so this can only happen once Mr Assange is on Swedish territory. Alternatively, prosecutors may decide not to charge Mr Assange and to release him.

He was on bail here – is the system the same in Sweden?

Mr Assange has been on bail in the UK and has had to stay at an agreed address (a house in Suffolk owned by a friend), report daily to local police and wear an electronic tag, but has had free access to the internet, telephone and visitors. In the UK, there is a presumption in favour of bail unless the prosecution can show that there is a need for the person to be held on remand.

The system in Sweden is very different. Effectively, the presumption is in favour of detention and restrictions usually apply to the person's activities and contact with the outside world (see further below).

Do people ever get bail in Sweden?

Hardly ever, especially if they are not Swedish nationals or residents. Sweden does have alternatives to custody, including travel bans and an obligation to report to a police station, but these are only used for vulnerable people (including minors) or in cases where the alleged offence is not punishable

by a prison sentence. This might explain why, in 2010/2011, 24% of the total prison population in Sweden was awaiting trial, compared to 10% in England and Wales.

Does this mean Julian Assange won't get bail?

His chances of doing so are slim. The alleged offences are rape (as defined under Swedish law), unlawful coercion and two cases of sexual molestation. All of these offences carry a maximum sentence of more than one year in prison under Swedish law. Coupled with the fact that he is not a Swedish national or resident, Julian Assange is unlikely to get bail in Sweden. This is despite the fact that he has observed all his bail conditions in the UK for over a year.

What sort of conditions could he be held in pre-trial?

Mr Assange could be held in isolation and barred from communicating with anyone other than his lawyers. He may be subjected to a range of restrictions such as:

- isolation: meaning that he is held in his cell for up to 23 hours a day;
- no visits from anyone other than his lawyer or a priest;
- restrictions on phone calls and written correspondence;
- limited contact with other detainees; and
- lack of access to newspapers, radio and television.

There has been international criticism of these conditions. The Council of Europe has reported ongoing concerns about remand conditions in Sweden and that many people feel that they are prevented from contacting family members to 'break' them.¹ The US State Department has also noted that people are often subject to extended isolation and severe restriction on their activities whilst awaiting trial.²

How likely is he to have these restrictions imposed on him?

The above restrictions are only meant to be used if the Swedish court believes the suspect will contact associates who might tamper with evidence or impede the investigation. Given that the evidence in Mr Assange's case has been secured, there should be no such risk.

In practice, however, these restrictions are routinely imposed without any clear or transparent reasons given for them. In the Stockholm prison of Kronoberg, for example, they apply to around 70% of remand prisoners.

Could he appeal against these restrictions?

It is possible to appeal to the court against restrictions imposed. However, this right of appeal was only introduced in April 2011 and it is rarely used.

How long could Mr Assange be held for before trial?

There is no maximum period of pre-trial detention in Sweden, though in practice average periods are short compared to many EU countries. Guidelines suggest that an individual cannot be held for

¹ Report to the Swedish Government on the visit to Sweden carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 18 June 2009, 11 December 2009, p.25.

² US State Department, 2010 Human Rights Report: Sweden, p.2.

longer than the length of sentence they are likely to receive. Until it is known exactly what charges, if any, Mr Assange will face, it is difficult to know what this period would be in his case.

After charge, detention periods are in practice fairly short due to a legal requirement that a trial must be held within two weeks of charge (though this can be extended if the prosecution require more time). However, there is no time limit in which the charges themselves must be brought.

Is there a regular review of detention by the court?

Before the suspect is charged, the court must hold a hearing to review the decision to detain every 14 days. However, the process has been criticised by defence lawyers as a rubber-stamping exercise because the court does not require the prosecution to give evidence of why detention is necessary and decisions to continue holding the person in custody are not taken in open court.

How easy would it be for Mr Assange to prepare his defence from behind bars?

Mr Assange should have unrestricted access to his lawyer: something that is not guaranteed in many other EU countries. However, he will not be able to see any evidence in the case against him until the investigation has formally closed. Swedish law usually requires a trial to be held within two weeks of the closing of an investigation, so this gives him very little time to go through the evidence and prepare his defence, unless the court agrees to an extension of time for the trial date.