
STATUTORY INSTRUMENTS

1997 No. 1178

HONG KONG

The Hong Kong (Extradition) Order 1997

<i>Made</i>	- - - -	<i>8th April 1997</i>
<i>Laid before Parliament</i>		<i>14th May 1997</i>
<i>Coming into force</i>	- -	<i>1st July 1997</i>

At the Court at Windsor Castle, the 8th day of April 1997

Present,

The Queen's Most Excellent Majesty in Council

Whereas section 1(1) of the Hong Kong Act 1985(1) provides that as from 1st July 1997 ("the relevant date") Her Majesty shall no longer have sovereignty or jurisdiction over any part of Hong Kong:

And whereas from the relevant date Hong Kong will no longer be a colony for the purpose of section 1(2) of the Extradition Act 1989(2):

And whereas paragraph 3(2) of the Schedule to the Hong Kong Act 1985 provides that Her Majesty may before, on or after the relevant date, by Order in Council make such provision as appears to Her Majesty to be necessary or expedient in consequence of or in connection with the provisions of section 1(1) of that Act for repealing or amending, so far as it relates to Hong Kong, any enactment forming part of the law of, or of any part of, the United Kingdom or of a British possession other than Hong Kong:

Now, therefore, Her Majesty, in exercise of the powers conferred on Her by paragraph 3(2) of the Schedule to the Hong Kong Act 1985, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Hong Kong (Extradition) Order 1997 and shall come into force on 1st July 1997.
2. The Extradition Act 1989 ("the 1989 Act") shall be amended as set out in the Schedule to this Order.
3. This article applies in any case where, before the coming into force of this Order—

(1) 1985 c. 15.
(2) 1989 c. 33.

- (a) a request has been made by or on behalf of the Governor of Hong Kong for the surrender of a person under the 1989 Act, or
 - (b) a provisional warrant for the arrest of any person has been issued under section 8(1)(b) of the 1989 Act and it appeared to the person who issued the warrant that the conduct alleged (as is mentioned in section 8(3) of that Act) would constitute an extradition crime against the law of Hong Kong.
4. Where article 3 of this Order applies—
- (a) the case shall proceed as if the procedure which took place under Part III of the 1989 Act had taken place under that Part as amended by this Order,
 - (b) references in any instrument or other document relating to the proceedings, to the law of Hong Kong and offences under that law, shall be treated as if they were references to the law of the Hong Kong Special Administrative Region and offences under that law, and
 - (c) no proceedings which took place in the case before the date of coming into force of this Order, or any decision taken in the case before that date, shall be questioned in any court on the ground that the proceedings were not, or, as the case may be, the decision was not taken, in accordance with Part III of the 1989 Act as amended by this Order.
5. The following further transitional provisions shall apply—
- (a) section 1(2A)(b) of the 1989 Act shall apply to a person alleged to be unlawfully at large following conviction for an extradition crime in Hong Kong before the coming into force of this Order;
 - (b) where an extradition request is made by the Hong Kong Special Administrative Region, section 7(2)(c) of the 1989 Act shall be satisfied if there is furnished with any such request a warrant for the arrest of the person issued in Hong Kong before the coming into force of this Order;
 - (c) a warrant issued by the Secretary of State under section 12 of the 1989 Act for the return of any person to Hong Kong shall be effective for the return of that person to the Hong Kong Special Administrative Region notwithstanding the provisions of section 13 of the 1989 Act as amended by this Order;
 - (d) section 19 of the 1989 Act shall continue to apply in the case of any person returned by Hong Kong before the date of coming into force of this Order.
6. The operation of this Order is limited to the United Kingdom, the Channel Islands and the Isle of Man.

N. H. Nicholls
Clerk of the Privy Council

SCHEDULE

Article 2

AMENDMENTS TO THE EXTRADITION ACT 1989

1. In section 1 (liability to extradition), after subsection (2), there shall be inserted—
 - “(2A) Subject to the provisions of this Act, a person in the United Kingdom who—
 - (a) is accused in the Hong Kong Special Administrative Region of an extradition crime, or
 - (b) is alleged to be unlawfully at large after conviction for such an offence in that Region,may be arrested and returned to that Region in accordance with extradition procedures under Part III of this Act.”.
- 2.—(1) Section 2 (meaning of “extradition crime”) shall be amended as follows.
 - (2) In subsection (1)—
 - (a) in paragraph (a)—
 - (i) for the words “or a colony” there shall be substituted the words “, a colony or the Hong Kong Special Administrative Region”, and
 - (ii) after the words “or colony” there shall be inserted the words “or of the Hong Kong Special Administrative Region”, and
 - (b) in paragraph (b) after the word “colony” there shall be inserted the words “, or of the Hong Kong Special Administrative Region.”.
 - (3) In subsection (3)(a), after the word “colony” there shall be inserted the words “or the Hong Kong Special Administrative Region”.
 - (4) In subsection (4)—
 - (a) at the end of paragraph (b) the word “and” shall be omitted, and
 - (b) after paragraph (c) there shall be added
“; and
 - (d) conduct in a vessel, aircraft or hovercraft of the Hong Kong Special Administrative Region shall be treated as if it were conduct in that Region.”.
3. In section 3 (arrangements for availability of Part III procedure), in subsection (2)—
 - (a) the word “or” shall be omitted, and
 - (b) after paragraph (iv) there shall be inserted
“; or
 - (v) the Hong Kong Special Administrative Region.”.
4. In section 6 (general restrictions on return)—
 - (a) in subsection (2)—
 - (i) after the words “foreign state”, in the first place where they occur, there shall be inserted the words “or to the Hong Kong Special Administrative Region”; and
 - (ii) after the words “foreign state”, in the second place where they occur, there shall be inserted the words “or to that Region”;
 - (b) in subsection (4), after the word “colony” there shall be inserted the words “or with the Hong Kong Special Administrative Region”.
5. In section 7 (extradition request and authority to proceed)—

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- (a) after subsection (1)(b), there shall be inserted
“; or
(c) by or on behalf of the Government of the Hong Kong Special Administrative Region.”;
- (b) in subsection (2)(c), after the word “colony”, there shall be inserted the words “or in the Hong Kong Special Administrative Region”.
- 6. In section 9 (proceedings for committal), after subsection (7) there shall be inserted—
“(7A) In exercising the power conferred by subsection (5) above in a case where the extradition request is made by or on behalf of the Government of the Hong Kong Special Administrative Region the court shall not fix a period ending more than 60 days after the day of the person’s arrest, unless the exceptional circumstances of the case justify a longer period.”.
- 7. In section 10 (statement of case by court), after subsection (13), there shall be inserted—
“(14) This section shall apply to the Hong Kong Special Administrative Region in the same way as it applies to any foreign state, Commonwealth country or colony.”.
- 8. In section 12(2) (order for return), after the word “colony” there shall be inserted the words “or to the Hong Kong Special Administrative Region”.
- 9. In section 13 (return to foreign states—supplementary)—
 - (a) in subsection (1), after the words “foreign state” there shall be inserted the words “or to the Hong Kong Special Administrative Region”;
 - (b) in subsection (5), after the words “foreign state” there shall be inserted the words “or to the Hong Kong Special Administrative Region”;
 - (c) in subsection (9)(b), after the words “foreign state” there shall be inserted the words “or to the Hong Kong Special Administrative Region”.
- 10. After section 19 there shall be inserted—

“Restrictions upon proceedings for other offences in case of persons returned by the Hong Kong Special Administrative Region

19A.—(1) This section applies to any person accused or convicted of an offence under the law of or any part of the United Kingdom who is returned to the United Kingdom from the Hong Kong Special Administrative Region under any law of that Region corresponding to this Act.

(2) A person to whom this section applies shall not, during the period described in subsection (3) below, be dealt with in the United Kingdom for or in respect of any offence committed before he was returned to the United Kingdom other than—

- (i) the offence in respect of which he was returned;
- (ii) any lesser offence disclosed by the particulars furnished to the Hong Kong Special Administrative Region on which his return is grounded; or
- (iii) any other offence in respect of which the Government of the Hong Kong Special Administrative Region may consent to his being dealt with.

(3) The period referred to in subsection (2) above, in relation to a person to whom this section applies, is the period beginning with the day of his arrival in the United Kingdom on his return as mentioned in subsection (1) above and ending 40 days after the first subsequent day on which he has the opportunity to leave the United Kingdom.

(4) Where a person to whom this section applies has been convicted before his return to the United Kingdom of an offence for which his return was not granted, any punishment for that conviction shall by operation of this section be remitted; but his conviction for it shall be treated as a conviction for all other purposes.

(5) In this section “dealt with” has the same meaning as in section 19.”.

11. In section 20 (restoration of persons not tried or acquitted)—

(a) in subsection (1), after the words “section 19(1)” there shall be added the words “or section 19A(1)”;

(b) in subsection (2), after the word “colony” there shall be inserted the words “, or of the Hong Kong Special Administrative Region,”.

12. In section 21 (persons serving sentences outside country of conviction), in subsection (1)(a), after sub-paragraph (ii) there shall be inserted

“; or

(iii) by or on behalf of the Government of the Hong Kong Special Administrative Region”.

13. In section 26 (authentication of foreign documents)—

(a) after subsection (1), there shall be inserted—

“(1A) In extradition proceedings in relation to a person whose return has been requested by or on behalf of the Government of the Hong Kong Special Administrative Region documents from that Region may be authenticated by the oath of a witness, but shall in any case be deemed duly authenticated—

(a) if they purport to be signed by a judge, magistrate or officer of the Hong Kong Special Administrative Region; and

(b) if they purport to be certified by being sealed—

(i) with an official or public seal of the Hong Kong Special Administrative Region, or

(ii) by an officer of that Region.”.

(b) in subsection (2) after the words “subsection (1)(b)” there shall be inserted the words “or (1A)(b)”.

14. In section 28(2) (form of warrants and orders), for the words “and colonies” there shall be substituted the words “, colonies and the Hong Kong Special Administrative Region”.

15. In section 35 (interpretation), in subsection (1), after the definition of “extradition request” there shall be inserted—

““Hong Kong Special Administrative Region” means the Hong Kong Special Administrative Region of the People’s Republic of China;”.

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Extradition Act 1989 (“the 1989 Act”) so that the 1989 Act applies in relation to the Hong Kong Special Administrative Region from 1st July 1997, the date from which Hong Kong ceases to be a colony.

Article 1 of the Order provides that it shall come into force on 1st July 1997. Article 2 provides that the 1989 Act shall be amended as set out in the Schedule to this Order. Articles 3, 4 and 5 contain transitional provisions. Article 6 provides that the Order shall extend to the United Kingdom, the Channel Islands and the Isle of Man.

The purpose of the amendments to the 1989 Act as set out in the Schedule to the Order is to enable the 1989 Act to have effect in relation to the return of persons to, or in relation to persons returned from, the Hong Kong Special Administrative Region.