

SCHEDULES

SCHEDULE 1

Section 1.

AMENDMENTS OF EXTRADITION ACT 1870, BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965 AND FUGITIVE OFFENDERS ACT 1967

PART I

EXTRADITION ACT 1870

- 1 In section 3(3) (restrictions on surrender) after the word “otherwise” there shall be inserted the words “, or unless an order is made for the charge in respect of the offence to lie on the file”.
- 2 The following section shall be inserted after section 11—

“11A Simplified procedure

- (1) A person may give notice that he waives the rights conferred on him by section 11 above.
 - (2) A notice under this section shall be given in England and Wales in the manner prescribed by rules under section 144 of the Magistrates' Courts Act 1980 and, without prejudice to the generality of subsection (1) of that section, the power to make such rules shall include power to make provision for a magistrate to order the committal for return of a person with his consent at any time after his arrest.
 - (3) A notice under this section shall be given in Scotland in the manner prescribed by the High Court of Justiciary by Act of Adjournal and the sheriff may order the committal for return of a person with his consent at any time after his arrest.
 - (4) Where an order is made under this section, this Act shall cease to apply to the person in respect of whom it is made, except that if, within one month after the order is made, he is not surrendered to the foreign state to which he is to be returned, the High Court, upon application by or on behalf of that person, may, unless reasonable cause is shown for the delay, order him to be discharged.”.
- 3 In section 26, in the definition of “police magistrate”, for the words from “a” to the end there shall be substituted the words “the chief metropolitan stipendiary magistrate or a metropolitan stipendiary magistrate designated by the Lord Chancellor for the purposes of this Act and the Acts that may be cited together with it as the Extradition Acts 1870 to 1935”.
 - 4 There shall be included in the list of extradition crimes contained in Schedule 1—
 - (a) any offence under the Company Securities (Insider Dealing) Act 1985; and

- (b) offences under section 24 of the Drug Trafficking Offences Act 1986 (assisting another to retain the benefit of drug trafficking).

PART II

BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965

5 The following section shall be inserted after section 2—

“2A Statement of case by court

- (1) If the court refuses to make an order in relation to a person under section 2 above, the chief officer of police for the area of the force to which the constable making the application under section 1 above belongs or, if the application is made in Northern Ireland, the chief constable of the Royal Ulster Constabulary may question the proceeding on the ground that it is wrong in law by applying to the court to state a case for the opinion of the High Court on the question of law involved.
- (2) If the chief officer or chief constable immediately informs the court that he intends to make such an application, the court shall make an order providing for the detention of the person in question, or directing that he shall not be released except on bail.
- (3) Rules of Court may specify—
 - (a) a period within which the chief officer or chief constable must make such an application unless the Court grants a longer period; and
 - (b) a period within which the court must comply with such an application.
- (4) Where the court fails to comply with an application under subsection (1) above within the period specified in Rules of Court the High Court may, on the application of the chief officer or chief constable, make an order requiring the court to state a case.
- (5) The High Court shall have power—
 - (a) to remit the case to the magistrates' court to decide it according to the opinion of the High Court on the question of law; or
 - (b) to dismiss the appeal.
- (6) An order made by a court in England and Wales or Northern Ireland under subsection (2) above shall cease to have effect if—
 - (a) the High Court dismisses the appeal; and
 - (b) the chief officer or chief constable does not immediately—
 - (i) apply for leave to appeal to the House of Lords; or
 - (ii) inform the court that he intends to apply for leave.
- (7) An order made by a court in Scotland under subsection (2) above shall cease to have effect if the court dismisses the appeal.
- (8) In relation to a decision of a court on an appeal under this section, section 1 of the Administration of Justice Act 1960 or section 41 of the Judicature (Northern Ireland) Act 1978 (right of appeal to House of Lords) shall have

effect as if so much of subsection (2) as restricts the grant of leave to appeal were omitted.

- (9) The House of Lords may exercise any powers of the High Court under subsection (5) above and subsection (6) above shall apply to them as it applies to that Court.
- (10) Subject to subsections (6) and (7) above, an order under subsection (2) above shall have effect so long as the case is pending.
- (11) For the purposes of this section a case is pending (unless proceedings are discontinued) until (disregarding any power of a court to grant leave to take any step out of time) there is no step that the chief officer or chief constable can take.
- (12) In the application to Scotland of this section—
- (a) for the references to the chief officer of police or the chief constable of the Royal Ulster Constabulary there shall be substituted references to the procurator fiscal;
 - (b) for the references to the High Court, other than the reference in subsection (9) above, there shall be substituted references to the High Court of Justiciary; and
 - (c) subsections (8) and (9) shall be omitted; and, in relation to an appeal under this section in Scotland, the court may make an order providing for the detention of the person to whom it relates, or may grant bail; and section 446(2) of the Criminal Procedure (Scotland) Act 1975 shall apply for the purpose of such an appeal as it applies for the purpose of an appeal such as is mentioned in section 444 of that Act.”.

PART III

FUGITIVE OFFENDERS ACT 1967

6 The following section shall be substituted for section 3—

“3 Relevant offences

- (1) In this Act “relevant offence” means—
- (a) conduct in a designated Commonwealth country or United Kingdom dependency which, if it occurred in the United Kingdom, would constitute an offence punishable with imprisonment for a term of 12 months or any greater punishment, and which, however described in the law of the designated Commonwealth country or United Kingdom dependency, is so punishable under that law; or
 - (b) any conduct which by virtue of subsection (4)(b) or (c) below is treated as conduct in a designated Commonwealth country or United Kingdom dependency and which satisfies the conditions in paragraph (a) above; or
 - (c) an extra-territorial offence against the law of the designated Commonwealth country or United Kingdom dependency which is punishable under that law with imprisonment for a term of 12 months or any greater punishment, and which satisfies—

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- (i) the conditions specified in subsection (2) below; or
 - (ii) all the conditions specified in subsection (3) below.
- (2) The condition mentioned in subsection (1)(c)(i) above is that in corresponding circumstances equivalent conduct would constitute an extra-territorial offence against the law of the United Kingdom punishable with imprisonment for a term of 12 months, or any greater punishment.
- (3) The conditions mentioned in subsection (1)(c)(ii) above are—
- (a) that the designated Commonwealth country or United Kingdom dependency bases its jurisdiction on the nationality of the offender;
 - (b) that the conduct constituting the offence occurred outside the United Kingdom; and
 - (c) that if it occurred in the United Kingdom it would constitute an offence under the law of the United Kingdom.
- (4) For the purposes of this Act—
- (a) the law of a designated Commonwealth country or United Kingdom dependency includes the law of any part of that country or dependency and the law of the United Kingdom includes the law of any part of the United Kingdom; and
 - (b) conduct in a dependency of a designated Commonwealth country, or a vessel, aircraft or hovercraft of such a country, shall be treated as if it were conduct in that country; and
 - (c) conduct in a vessel, aircraft or hovercraft of a United Kingdom dependency shall be treated as if it were conduct in that dependency.”.
- 7 (1) Section 4 (general restrictions on return) shall be amended as follows.
- (2) The following paragraph shall be inserted after paragraph (a) of subsection (1)—
- “(aa) that it is an offence under military law which is not also an offence under the general criminal law;”.
- (3) In subsection (3)—
- (a) for the words “been restored or had an opportunity of returning to the United Kingdom” there shall be substituted the words “had an opportunity to leave that country”;
 - (b) in paragraph (a), for the word “requested” there shall be substituted the word “ordered”;
 - (c) the following paragraph shall be substituted for paragraph (b)—
 - “(b) a lesser offence, other than an offence excluded by subsection (3A) below, which is disclosed by the facts in respect of which his return was ordered; or”; and
 - (d) at the beginning of paragraph (c) there shall be inserted the words “subject to subsection (3B) below,”.
- (4) The following subsections shall be inserted after that subsection—
- “(3A) The offences excluded from paragraph (b) of subsection (3) above are offences in relation to which an order for the return of the person concerned could not lawfully be made.

- (3B) The Secretary of State may not give consent under paragraph (c) of that subsection in respect of an offence in relation to which it appears to him that an order for the return of the person concerned could not lawfully be made, or would not in fact be made.”.
- 8 (1) The following subsections shall be substituted for subsection (2) of section 5 (authority to proceed)—
- “(2) There shall be furnished with any such request—
- (a) particulars of the person whose return is requested;
 - (b) particulars of the offence of which he is accused or was convicted (including information sufficient to justify the issue of a warrant for his arrest under this Act);
 - (c) in the case of a person accused of an offence, a warrant for his arrest issued in the Commonwealth country or United Kingdom dependency; and
 - (d) in the case of a person unlawfully at large after conviction of an offence, a certificate of the conviction and sentence,
- and copies of them shall be served on the person whose return is requested before he is brought before a court under section 7 of this Act.
- (2A) Rules under section 144 of the Magistrates' Courts Act 1980 may make provision as to the procedure for service under subsection (2) above in England and Wales.
- (2B) The High Court of Justiciary may, by Act of Adjournal, make rules as to the procedure for service under subsection (2) above in Scotland.”.
- (2) The following subsection shall be added at the end of that section—
- “(4) An authority to proceed shall specify the offence or offences under the law of the United Kingdom which it appears to the Secretary of State would be constituted by equivalent conduct in the United Kingdom.”.
- 9 In subsection (1)(a) of section 6 (arrest for purposes of committal) for the words “a metropolitan stipendiary magistrate or by” there shall be substituted the words—
- “(i) the chief metropolitan stipendiary magistrate or a metropolitan stipendiary magistrate designated for the purposes of this Act by the Lord Chancellor; or
 - (ii)”.
- 10 (1) In subsection (1) of section 7 (proceedings for committal) for the words “a metropolitan stipendiary magistrate” there shall be substituted the words “the chief metropolitan stipendiary magistrate or a metropolitan stipendiary magistrate designated as mentioned in section 6(1)(a) above”.
- (2) For the words in subsection (5) of that section from “the court shall” to the end there shall be substituted the words
- “the court, unless his committal is prohibited by any other provision of this Act, shall commit him in custody or on bail—
- (i) to await the Secretary of State’s decision as to his return to the country on behalf of which the request for his return was made; and

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- (ii) if the Secretary of State decides that he shall be returned to that country, to await his return.
- (6) If the court commits a person under subsection (5) above, it shall issue a certificate of the offence against the law of the United Kingdom which would be constituted by his conduct.
- (7) A person may be committed in the exercise of the power conferred by subsection (5) above either to custody or on bail.
- (8) If the court commits a person to custody in the exercise of that power, it may subsequently grant him bail if it considers it appropriate to do so.
- (9) If—
 - (a) the court is not satisfied as mentioned in subsection (5) above in relation to the person arrested; or
 - (b) his committal is prohibited by a provision of this Act, it shall discharge him”.

11 The following section shall be inserted after section 7—

“7A Statement of case by court

- (1) If the court of committal refuses to make an order of committal in relation to a person under section 7 above, in respect of the offence or, as the case may be, any of the offences, to which the authority to proceed relates, the country seeking the return of that person to it may question the proceeding on the ground that it is wrong in law by applying to the court to state a case for the opinion of the High Court or, in Scotland, the High Court of Justiciary on the question of law involved.
- (2) If the country seeking his return immediately informs the court of committal that it intends to make such an application, the court shall make an order providing for his detention, or directing that he shall not be released except on bail.
- (3) Rules of Court may specify—
 - (a) a period within which a country must make such an application unless the Court grants a longer period; and
 - (b) a period within which the court of committal must comply with such an application.
- (4) Where the court of committal fails to comply with an application under subsection (1) above within the period specified in Rules of Court, the High Court or, in Scotland, the High Court of Justiciary may, on the application of the country seeking the return of the person in question, make an order requiring the court to state a case.
- (5) The High Court or High Court of Justiciary shall have power—
 - (a) to remit the case to the court of committal to decide it according to the opinion of the High Court or High Court of Justiciary on the question of law; or
 - (b) to dismiss the appeal.

- (6) Where the court dismisses an appeal relating to an offence, it shall by order declare that that offence is not an offence in respect of which the Secretary of State has power to make an order under section 9 of this Act in respect of the person whose return was requested.
- (7) An order made by a metropolitan magistrate under subsection (2) above shall cease to have effect if—
- (a) the court dismisses the appeal in respect of the offence or all the offences to which it relates; and
 - (b) the country seeking return does not immediately—
 - (i) apply for leave to appeal to the House of Lords; or
 - (ii) inform the court that it intends to apply for leave.
- (8) An order made by the sheriff of Lothian and Borders under subsection (2) above shall cease to have effect if the court dismisses the appeal in respect of the offence or all of the offences to which it relates.
- (9) In relation to a decision of a court on an appeal under this section, section 1 of the Administration of Justice Act 1960 (right of appeal to House of Lords) shall have effect as if so much of subsection (2) as restricts the grant of leave to appeal were omitted.
- (10) The House of Lords may exercise any powers of the High Court under subsection (5) above and subsection (6) above shall apply to them as it applies to that Court.
- (11) Subject to subsections (7) and (8) above, an order under subsection (2) above shall have effect so long as the case is pending.
- (12) For the purposes of this section a case is pending (unless proceedings are discontinued) until (disregarding any power of a court to grant leave to take any step out of time) there is no step that the Commonwealth country can take.
- (13) In the application to Scotland of this section, subsections (9) and (10) shall be omitted, and, in relation to an appeal under this section in Scotland section 446(2) of the Criminal Procedure (Scotland) Act 1975 shall apply for the purpose of such an appeal as it applies for the purpose of an appeal such as is mentioned in section 444 of that Act.”.
- 12 (1) Section 8 (application for habeas corpus etc.) shall be amended as follows.
- (2) The words “to custody” shall be omitted from subsections (1) and (2).
- (3) The following words shall be substituted for the words in subsection (3) from the beginning to “the court”, in the second place where those words occur—
- “(3) Without prejudice to any jurisdiction of the High Court or High Court of Justiciary apart from this section, the court shall order the applicant’s discharge if it appears to the court, in relation to the offence, or each of the offences, in respect of which the applicant’s return is sought.”.
- (4) In subsection (5), for the words from “until” to the end there shall be substituted the words “(unless they are discontinued) until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal”.

- (5) The following subsections shall be inserted after that subsection—
- “(6) A person may give notice that he waives the rights conferred on him by subsection (2) above.
- (7) A notice under this section shall be given in England and Wales in the manner prescribed by rules under section 144 of the Magistrates' Courts Act 1980 and, without prejudice to the generality of subsection (1) of that section, the power to make such rules shall include power to make provision for a magistrate to order the committal for return of a person with his consent at any time after his arrest.
- (8) In Scotland, a person may give notice in the manner prescribed by the High Court of Justiciary by Act of Adjournal that he waives the rights conferred on him by subsection (2) above and the sheriff may order the committal for return of a person with his consent at any time after his arrest.
- (9) In any case where an order is made under this section, this Act shall cease to apply to the person in respect of whom it is made, except that if within one month after the order is made he is not surrendered to the country to which he is to be returned, the High Court or, in Scotland, the High Court of Justiciary, upon application by or on behalf of that person, may, unless reasonable cause is shown for the delay, order him to be discharged.”.
- 13 (1) Section 9 (order for return to requesting country) shall be amended as follows.
- (2) In subsection (1) for the words “to await his return” there shall be substituted the words “under section 7 of this Act”.
- (3) In paragraph (b) of subsection (2), after the word “withdrawn” there shall be inserted the words “or unless an order is made for it to lie on the file”.
- (4) The following subsection shall be inserted after that subsection—
- “(2A) In the application of this section to Scotland, the reference to an order being made for the charge to lie on the file shall be construed as a reference to the diet being deserted pro loco et tempore.”.
- 14 In subsection (1) of section 10 (discharge in case of delay in returning) for the words from “to” to “Act”, in the first place where it occurs, there shall be substituted the words “under section 7 of this Act is still in the United Kingdom”.
- 15 The following paragraph shall be substituted for subsection (2)(b) of section 14 (restriction upon proceedings)—
- “(b) any lesser offence disclosed by the particulars furnished to the designated Commonwealth country or United Kingdom dependency on which his return is grounded; or”.
- 16 In subsection (1) of section 16 (application to Channel Islands and Isle of Man) the words “(except for purposes of the references to the United Kingdom in section 3)” shall cease to have effect.
- 17 At the end of subsection (1) of section 19 (interpretation) there shall be added—
- ““warrant”, in the case of any country, includes any judicial document authorising the arrest of a person accused or convicted of an offence.”.