

2002 No. 1823

EXTRADITION

The Extradition (Overseas Territories) Order 2002

<i>Made</i>	- - - -	<i>16th July 2002</i>
<i>Laid before Parliament</i>		<i>26th July 2002</i>
<i>Coming into force</i>		<i>16th August 2002</i>

At the Court at Buckingham Palace, the 16th day of July 2002

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 32 and section 34(3) of the Extradition Act 1989(a) 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 Extradition (Overseas Territories) Order 2002.

(2) This Order shall come into force on 16th August 2002.

2.—(1) For the purposes of extradition as between the territories listed in Schedule 1 to this Order and the United Kingdom, Ireland, Commonwealth countries and British overseas territories, the following sections of the Extradition Act 1989 (“the 1989 Act”), modified and adapted as in Schedule 2 to this Order, shall extend to the territories listed in Schedule 1 to this Order: section 1, section 2, sections 5 to 12, section 14, sections 16 and 17, sections 19, 20 and 21, section 23, section 24, section 25, sections 27 and 28, section 35 and section 36.

(2) In its extension to the British Antarctic Territory and the British Indian Ocean Territory, the 1989 Act, as so modified and adapted, shall be subject to the further modifications and adaptations set out in, respectively, Schedules 3 and 4 to this Order.

3.—(1) Subject to paragraph (2) below the Orders listed in Schedule 5 to this Order are hereby revoked.

(2) The foregoing paragraph shall not have effect in relation to any case in which a warrant of arrest, whether issued on receipt of an authority to proceed or a provisional warrant, has been issued before 16th August 2002.

(3) Without prejudice to paragraph (2) above, this Order applies to offences committed before as well as after the coming into force of this Order.

A.K. Galloway
Clerk of the Privy Council

(a) 1989 c.33.

SCHEDULE 1

Article 2(1)

LISTED TERRITORIES

Anguilla
Bermuda
British Antarctic Territory
British Indian Ocean Territory
Cayman Islands
Falkland Islands
Montserrat
Pitcairn, Henderson, Ducie and Oeno Islands
St Helena and St Helena Dependencies
South Georgia and the South Sandwich Islands
Turks and Caicos Islands
The Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus
Virgin Islands

SCHEDULE 2

Article 2(1)

PROVISIONS OF EXTRADITION ACT 1989 AS EXTENDED TO THE LISTED TERRITORIES

PART I

INTRODUCTORY

General

1.—(2) Subject to the provisions of this Act, a person in a listed territory who is accused of an extradition crime—

- (a) in the United Kingdom;
- (b) in a designated Commonwealth country;
- (c) in a British overseas territory; or
- (d) in Ireland,

or who is alleged to be unlawfully at large after conviction of such an offence in any such country or in a British overseas territory, may be arrested and returned to that country or British overseas territory in accordance with extradition procedures under Part III of this Act.

Extradition Crimes

2.—(1) In this Act “extradition crime” means—

- (a) conduct in the territory of the United Kingdom, Ireland, a designated Commonwealth country or a British overseas territory which, if it occurred in the relevant listed territory, 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 United Kingdom, Ireland, Commonwealth country or British overseas territory, is so punishable under that law;
- (b) an extra-territorial offence against the law of the United Kingdom, Ireland, a designated Commonwealth country or a British overseas territory which is punishable under that law with imprisonment for a term of 12 months, or any greater punishment, and which satisfies—

- (i) the condition specified in subsection (2) below; or
- (ii) all the conditions specified in subsection (3) below.

(2) The condition mentioned in subsection (1)(b)(i) above is that in corresponding circumstances equivalent conduct would constitute an extra-territorial offence against the law of the relevant listed territory punishable with imprisonment for a term of 12 months, or any greater punishment.

(3) The conditions mentioned in subsection (1)(b)(ii) above are—

- (a) that the United Kingdom, Ireland, the designated Commonwealth country or British overseas territory bases its jurisdiction on the nationality of the offender;
- (b) that the conduct constituting the offence occurred outside the relevant listed territory; and
- (c) that, if it occurred in that listed territory it would constitute an offence under the law of that territory punishable with imprisonment for a term of 12 months, or any greater punishment.

(4) For the purposes of subsections (1) to (3) above—

- (a) the law of the United Kingdom, Ireland, a designated Commonwealth country or a British overseas territory includes the law of any part of it;
- (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 the territory of that country; and
- (c) conduct in a vessel, aircraft or hovercraft of the United Kingdom, or of a British overseas territory, or of Ireland shall be treated as if it were conduct in the United Kingdom or in that British overseas territory or in Ireland; but
- (d) reference shall be made to the law of a dependency of a designated Commonwealth country, and not (where different) to the law of the Commonwealth country, to determine the level of punishment applicable to conduct in that dependency.

Designation etc.

5.—(1) In this Act as it has effect under the law of a listed territory, “designated Commonwealth country” means any country that is for the time being a designated Commonwealth country under this Act as it has effect under the law of the United Kingdom.

(2) This Act has effect in relation to all British overseas territories.

(3) Subject to any provision made by the Governor of a territory under subsection (4) below, any Order of Her Majesty in Council made under section 5(3) of this Act as it has effect under the law of the United Kingdom, and any provision made by an Order of Her Majesty in Council in reliance on section 5(4) of this Act as it so has effect, shall have effect also under the law of a listed territory.

(4) The Governor of a listed territory may, by order made with the approval of the Secretary of State, direct that any Order of Her Majesty in Council made under section 5(3) of this Act as it has effect under the law of the United Kingdom, or any provision made by an Order of Her Majesty in Council in reliance on section 5(4) of this Act as it so has effect, shall not have effect under the law of that listed territory or shall have effect subject to such exceptions, adaptations or modifications as may be specified in the Governor’s order.

(5) The Governor of a listed territory may by order direct that this Act shall have effect in relation to the return of persons to, or in relation to persons returned from, any designated Commonwealth country or any British overseas territory subject to such exceptions, adaptations or modifications as may be specified in the order.

(6) Any order under this section may contain such transitional or other incidental and supplementary provisions as may appear to the Governor to be necessary or expedient.

(7) For the purposes of any order under section 5(1) of this Act as it has effect under the law of the United Kingdom, any territory for the external relations of which a Commonwealth country is responsible may be treated as part of that country or, if the Government of that country so requests, as a separate country.

(8) Any order made by the Governor of a territory under this section shall be published in the Official Gazette of the territory.

PART II

RESTRICTIONS ON RETURN

6.—(1) A person shall not be returned under Part III of this Act, or committed or kept in custody for the purposes of return, if it appears to an appropriate authority—

- (a) that the offence of which that person is accused or was convicted is an offence of a political character;
- (b) that it is an offence under military law which is not also an offence under the general criminal law;
- (c) that the request for his return (though purporting to be made on account of an extradition crime) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or
- (d) that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

(3) A person accused of an offence shall not be returned, or committed or kept in custody for the purposes of return, if it appears to an appropriate authority that if charged with that offence in the relevant listed territory he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction.

(4) A person shall not be returned, or committed or kept in custody for the purposes of such return, unless provision is made by the relevant law, or by an arrangement made with the relevant country or British overseas territory, for securing that he will not, unless he has first had an opportunity to leave it, be dealt with there for or in respect of any offence committed before his return to it other than—

- (a) the offence in respect of which his return is ordered;
- (b) an offence, other than an offence excluded by subsection (5) below, which is disclosed by the facts in respect of which his return was ordered; or
- (c) subject to subsection (6) below, any other offence being an extradition crime in respect of which the Governor may consent to his being dealt with.

(5) The offences excluded from paragraph (b) of subsection (4) above are offences in relation to which an order for the return of the person concerned could not lawfully be made.

(6) The Governor may not give consent under paragraph (c) of subsection (4) above 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.

(7) Any such arrangement as is mentioned in subsection (4) above may be an arrangement made for the particular case or an arrangement of a more general nature, and for the purposes of that subsection a certificate issued by or under the authority of the Governor confirming the existence of an arrangement with a country or a British overseas territory and stating its terms shall be conclusive evidence of the matters contained in the certificate.

(8) The reference in subsection (1) above to an offence of a political character does not include an offence against the life or person of the Head of the Commonwealth or attempting or conspiring to commit, or assisting, counselling or procuring the commission of or being accessory before or after the fact to such an offence, or of impeding the apprehension or prosecution of persons guilty of such an offence.

(9) In this Act “appropriate authority” means—

- (a) the Governor;
- (b) the court of committal;
- (c) a superior court of the relevant listed territory, on an application for habeas corpus or for review of the order of committal.

(10) In this section, in relation to Commonwealth countries and colonies, “race” includes tribe.

PART III
PROCEDURE

General

7.—(1) Subject to the provisions of this Act relating to provisional warrants, a person shall not be dealt with under this Part of this Act except in pursuance of an order of the Governor (in this Act referred to as an “authority to proceed”) issued in pursuance of a request (in this Act referred to as an “extradition request”) for the surrender of a person under this Act made to the Governor by or on behalf of the Government of the United Kingdom, or the Government of a designated Commonwealth country or the Governor of a British overseas territory or the Government of Ireland.

(2) There shall be furnished with any extradition request—

- (a) particulars of the person whose return is requested;
- (b) particulars of the offence of which he is accused or was convicted (including evidence 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 that country or British overseas territory; 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 the court of committal.

(4) On receipt of any such request the Governor may issue an authority to proceed unless 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, in accordance with the provisions of this Act.

(5) An authority to proceed shall specify the offence or offences under the law of the relevant listed territory which it appears to the Governor would be constituted by equivalent conduct in that territory.

8.—(1) For the purposes of this Part of this Act a warrant for the arrest of a person may be issued by a magistrate—

- (a) on receipt of an authority to proceed;
- (b) without such an authority upon information that the said person is or is believed to be in or on his way to the relevant listed territory;

and any warrant issued by virtue of paragraph (b) above is in this Act referred to as a “provisional warrant”.

(3) A person empowered to issue warrants of arrest under this section may issue such a warrant if he is supplied with such evidence as would in his opinion justify the issue of a warrant for the arrest of a person accused or, as the case may be, convicted within his jurisdiction and it appears to him that the conduct alleged would constitute an extradition crime.

(4) Where a provisional warrant is issued under this section, the magistrate by whom it is issued shall forthwith give notice to the Governor and transmit to him the information and evidence, or certified copies of the information and evidence, upon which it was issued; and the Governor may in any case, and shall if he decides not to issue an authority to proceed in respect of the person to whom the warrant relates, cancel the warrant and, if that person has been arrested under it, discharge him from custody.

(5) A warrant of arrest issued under this section may be executed by any person to whom it is directed or by any constable.

(6) Where a warrant is issued under this section for the arrest of a person accused of an offence of stealing or receiving stolen property or any other offence in respect of property, a magistrate shall have the like power to issue a warrant to search for the property as if the offence had been committed within the jurisdiction.

9.—(1) A person arrested in pursuance of a warrant under section 8 above shall (unless previously discharged under subsection (4) of that section) be brought as soon as practicable before a court (in this Act referred to as “the court of committal”) consisting of a magistrate.

(2) For the purposes of proceedings under this section a court of committal shall have the like jurisdiction and powers, as nearly as may be, including power to remand in custody or on bail as a magistrates' court in proceedings for committal in relation to an offence triable on indictment in the relevant listed territory.

(5) Where the person arrested is in custody by virtue of a provisional warrant and no authority to proceed has been received in respect of him, the court of committal may fix a period (of which the court shall give notice to the Governor) after which he will be discharged from custody unless such an authority has been received.

(8) Where an authority to proceed has been issued in respect of the person arrested and the court of committal is satisfied, after hearing any representations made in support of the extradition request or on behalf of that person, that the offence to which the authority relates is an extradition crime, and is further satisfied—

- (a) where that person is accused of the offence, that the evidence would be sufficient to warrant his trial if the extradition crime had taken place within the jurisdiction of the court;
- (b) where that person is alleged to be unlawfully at large after conviction of the offence, that he has been so convicted and appears to be so at large,

the court, unless his committal is prohibited by any other provision of this Act, shall commit him to custody or on bail—

- (i) to await the Governor's decision as to his return; and
- (ii) if the Governor decides that he shall be returned, to await his return.

(9) If the court commits a person under subsection (8) above, it shall issue a certificate of the offence against the law of the relevant listed territory which would be constituted by his conduct.

(10) If the court commits a person to custody in the exercise of that power, it may subsequently grant bail if it considers it appropriate to do so.

(11) If—

- (a) the court is not satisfied as mentioned in subsection (8) above in relation to the person arrested; or
- (b) his committal is prohibited by a provision of this Act,

it shall discharge him.

10.—(1) If the court of committal refuses to make an order in relation to a person under section 9 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 or British overseas territory seeking his return 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 a superior court of the relevant listed territory on the question of law involved.

(2) If the country or British overseas territory seeking return immediately informs the court of committal that it intends to make such an application, the court shall make an order providing for the detention of the person to whom the authority to proceed relates, or directing that he shall not be released except on bail.

(3) Rules of court may specify—

- (a) a period within which such an application must be made 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 by rules of court, the superior court may, on the application of the country or British overseas territory that applied for the case to be stated, make an order requiring the court to state a case.

- (5) The superior court shall have power—
- (a) to remit the case to the court of committal to decide it according to the opinion of the superior court on the question of law; or
 - (b) to dismiss the appeal.
- (6) Where the superior court dismisses an appeal relating to an offence, it shall by order declare that the offence is not an offence in respect of which the Governor has power to make an order for return in respect of the person whose return was requested.
- (7) An order made under subsection (2) above shall cease to have effect if—
- (a) the superior court dismisses the appeal in respect of the offence or all the offences to which it relates; and
 - (b) the country or British overseas territory seeking return does not immediately—
 - (i) apply for leave to appeal against that dismissal; or
 - (ii) inform the superior court that it intends to apply for leave.
- (9) An appeal against the decision of a superior court given under this section may be made to the court of the territory to which an appeal from the superior court in criminal matters lies by the person whose return is sought or by the country or British overseas territory seeking his return but may be so made only—
- (a) by leave of the superior court; or
 - (b) where that court has refused leave under paragraph (a) above, by special leave of the court to which an appeal in that case would lie.
- (10) Without prejudice to any other powers exercisable apart from this provision, a court may, on an appeal from a decision of a superior court under subsection (9) above, exercise any powers of the superior court under subsection (5) above, and subsection (6) above shall apply to it as it applies to the superior court in question.
- (11) Subject to subsection (7) above, an order under subsection (2) above shall have effect so long as the case is pending.
- (12) For the purpose 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 and the power of Her Majesty to grant special leave to appeal to Her Majesty in Council) there is no step that the country or British overseas territory seeking the return can take.
- 11.—**(1) Where a person is committed under section 9 above, the court shall inform him in ordinary language of his right to make an application for habeas corpus, and shall forthwith give notice of the committal to the Governor.
- (2) A person committed shall not be returned—
- (a) in any case, until the expiration of the period of 15 days beginning with the day on which the order for his committal is made;
 - (b) if an application for habeas corpus is made in his case, so long as proceedings on that application are pending.
- (3) Without prejudice to any jurisdiction, apart from this section, of the court of the relevant listed territory to which the application for habeas corpus is made, 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, that—
- (a) by reason of the trivial nature of the offence; or
 - (b) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or
 - (c) because the accusation against him is not made in good faith in the interests of justice, it would, having regard to all the circumstances, be unjust or oppressive to return him.
- (4) On any such application the court may receive additional evidence relevant to the exercise of its jurisdiction under section 6 above or subsection (3) above.
- (5) Proceedings on an application for habeas corpus shall be treated for the purposes of this section as pending (unless they are discontinued) until (disregarding any power of a court to grant

leave to appeal out of time and the power of Her Majesty to grant special leave to appeal to Her Majesty in Council) there is no further possibility of an appeal.

12.—(1) Where a person is committed under section 9 above and is not discharged by order of a superior court of the relevant listed territory, the Governor may by warrant order him to be returned unless his return is prohibited, or prohibited for the time being, by this Act, or the Governor decides under this section to make no such order in his case.

(2) Without prejudice to his general discretion as to the making of an order for the return of a person to a country or British overseas territory—

(a) the Governor shall not make an order in the case of any person if it appears to the Governor in relation to the offence, or each of the offences, in respect of which his return is sought, that—

(i) by reason of its trivial nature; or

(ii) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or

(iii) because the accusation against him is not made in good faith in the interests of justice,

it would, having regard to all the circumstances, be unjust or oppressive to return him; and

(b) the Governor may decide to make no order for the return of a person accused or convicted of an offence not punishable with death in the relevant listed territory if that person could be or has been sentenced to death for that offence in the country by which the request for his return is made.

(3) An order for return shall not be made in the case of a person who is serving a sentence of imprisonment or detention, or is charged with an offence, in the relevant listed territory—

(a) in the case of a person serving such a sentence, until the sentence has been served;

(b) in the case of a person charged with an offence, until the charge is disposed of or withdrawn or unless an order is made for it to lie on the file and, if it results in his serving a term of imprisonment or detention, until the sentence has been served.

(5) The Governor may decide to make no order under this section for the return of a person committed in consequence of an extradition request if another extradition request (as defined in section 35 of this Act) has been made in respect of him and it appears to the Governor, having regard to all the circumstances of the case and in particular—

(a) the relative seriousness of the offences in question;

(b) the date on which each such request was made; and

(c) the nationality or citizenship of the person concerned and his ordinary residence,

that preference should be given to that other request or requisition.

(6) Notice of the issue of a warrant under this section for the return of a person shall forthwith be given to the person to be returned.

14.—(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 the manner prescribed by rules for proceedings before a magistrate in the relevant listed territory and 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.

(4) Where an order is made by virtue of this section, this Act shall cease to apply to the person in respect of whom it is made, except that, if he is not surrendered within one month after the order is made, a superior court of the relevant listed territory, upon application by or on behalf of that person, may, unless reasonable cause is shown for the delay, order him to be discharged.

Effect of delay

16.—(1) If a person committed under section 9 above is still in the relevant listed territory after the expiration of the relevant period, he may apply to a superior court of the territory for his discharge.

(2) Unless he has instituted proceedings for judicial review of the Governor's decision to order his return, the relevant period is—

(a) the period of two months beginning with the first day on which, having regard to section 11(2) above, he could have been returned;

(b) where a warrant for his return has been issued under section 12 above, the period of one month beginning with the day on which that warrant was issued.

(3) If he has instituted such proceedings, the relevant period is the period expiring one month after they end.

(4) Proceedings for judicial review end for the purposes of this section—

(a) if they are discontinued, on the day of discontinuance; and

(b) if they are determined, on the day on which (disregarding any power of a court to grant leave to appeal out of time and the power of Her Majesty to grant special leave to appeal to Her Majesty in Council) there is no further possibility of an appeal.

(5) If upon an application under this section the court is satisfied that reasonable notice of the proposed application has been given to the Governor, the court may, unless sufficient cause is shown to the contrary, by order direct the applicant to be discharged and, if a warrant for his return has been issued under section 12 above, quash that warrant.

17.—(1) Any person remanded or committed to custody under this Part of this Act shall be committed to the like institution as a person charged with an offence before the court of committal.

(2) If any person who is in custody by virtue of a warrant under this Act escapes out of custody, he may be retaken in like manner as a person escaping from custody under a warrant for his arrest issued in respect of an offence committed in the relevant listed territory.

(3) Where a person, being in custody in any part of a listed territory whether under this Part of this Act or otherwise, is required to be removed in custody under this Act to another part of that territory and is so removed by sea or by air, he shall be deemed to continue in legal custody until he reaches the place to which he is required to be removed.

(4) A warrant for the return of any person shall be sufficient authority for all persons to whom it is directed and all constables to receive that person, keep him in custody and convey him into the jurisdiction to which he is to be returned.

PART IV

TREATMENT OF PERSONS RETURNED

19.—(1) This section applies to any person accused or convicted of an offence under the law of a listed territory who is returned to that territory—

(a) from the United Kingdom, under this Act as it has effect in the United Kingdom;

(b) from any designated Commonwealth country or Ireland, under any law of that country corresponding with this Act;

(c) from any British overseas territory, under this Act, or the Fugitive Offenders Act 1967^(a), as extended to that British overseas territory or under any corresponding law of that British overseas territory.

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

(i) the offence in respect of which he was returned;

(ii) any lesser offence disclosed by the particulars furnished to the country or British overseas territory on which his return is grounded; or

(iii) any other offence in respect of which the Government of the country or Governor of the British overseas territory from which he was returned 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 relevant listed territory on his return as mentioned in subsection (1) above and ending 45 days after the first subsequent day on which he has the opportunity to leave that territory.

^(a) 1967 c.68.

(4) Where a person to whom this section applies has been convicted before his return of an offence for which his return was not granted, any punishment for that offence 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” means tried or returned or surrendered to any country or British overseas territory or detained with a view to trial or with a view to such return or surrender.

20.—(1) This section applies to any person accused of an offence under the law of a listed territory who is returned to that territory as mentioned in section 19(1) above.

(2) If in the case of a person to whom this section applies either—

(a) proceedings against him for the offence for which he was returned are not begun within the period of six months beginning with the day of his arrival in that territory on being returned; or

(b) on his trial for that offence, he is acquitted or discharged (whether conditionally or unconditionally),

the Governor may, if he thinks fit, on the request of that person, arrange for him to be sent back free of charge and with as little delay as possible to the jurisdiction of the country or British overseas territory from which he was returned.

PART V

SPECIAL CASES

Repatriation Cases

21.—(1) This section applies where—

(a) a request is made by or on behalf of the Government of the United Kingdom or the Government of Ireland or the Government of a designated Commonwealth country or the Governor of a British overseas territory, for the arrest and return of a person in a listed territory who is alleged to be unlawfully at large from a prison in which he was serving a sentence in pursuance of international arrangements for the repatriation of prisoners sentenced in one country (“the country of conviction”) to serve their sentences in another (“the country of imprisonment”); and

(b) there are furnished with the request—

(i) particulars of the person whose return is requested;

(ii) particulars of the offence of which he was convicted (including evidence sufficient to justify the issue of a warrant for his arrest under the relevant legislation);

(iii) a certificate of the conviction and sentence; and

(iv) a certificate of the international arrangements for repatriation under which he was held.

(2) Where this section applies, the relevant legislation shall have effect—

(a) if the request is from the country of conviction, as if the person to whom the request relates were alleged to be unlawfully at large from a prison in that country; and

(b) if it is from the country of imprisonment, as if he were alleged to have been convicted of a corresponding offence under the law of that country committed there,

and the question whether the person to whom the request relates is to be returned shall be determined, subject to subsection (3) below, in accordance with that legislation.

(3) A person shall not be returned under subsection (2)(b) above unless—

(a) the offence was committed in the country of conviction; or

(b) the offence was not committed there but was committed in circumstances in which he might be returned on a request made by the country of conviction.

(4) In this section “the relevant legislation” means the provisions of this Act that are relevant—

(a) if the case falls within paragraph (a) of subsection (2) above, to extradition to the country of conviction; and

(b) if it falls within paragraph (b), to extradition to the country of imprisonment.

International Convention Cases

23.—(1) For the purposes of this Act, no offence which, if committed in the relevant listed territory, would be punishable as an offence of genocide or as an attempt, conspiracy or incitement to commit such an offence shall be regarded as an offence of a political character, and no proceedings in respect of such an offence shall be regarded as a criminal matter of a political character.

(2) It shall not be an objection to any proceedings against a person under this Act in respect of an offence which, if committed in the relevant listed territory, would be punishable as an offence of genocide or as an attempt, conspiracy or incitement to commit such an offence that under the law in force at the time when and in the place where he is alleged to have committed the act of which he is accused or of which he was convicted he could not have been punished for it.

24.—(1) For the purposes mentioned in subsection (2) below—

- (a) no offence to which section 1 of the Suppression of Terrorism Act 1978(a) applies shall be regarded as an offence of a political character; and
- (b) no proceedings in respect of an offence to which that section applies shall be regarded as a criminal matter of a political character or as criminal proceedings of a political character.

(2) Those purposes are the purposes of a request for the return of a person from a listed territory to which the Suppression of Terrorism Act 1978 has been extended in accordance with extradition procedures under Part III of this Act, made by a country to which this subsection applies.

(3) Subsection (2) above applies—

- (a) to the United Kingdom;
- (b) to a Commonwealth country in relation to which the Secretary of State has made an order under section 5 of the Suppression of Terrorism Act 1978 applying that subsection;
- (c) to any British overseas territory to which that Act has been extended; and
- (d) to Ireland.

25.—(1) A person shall not be returned under this Act from a listed territory to which the Convention referred to in subsection (3) below has been extended, to Ireland or to a designated Commonwealth country which is party to that Convention, or to a British overseas territory to which that Convention has been extended, or committed or kept in custody for the purposes of such return, if it appears to the appropriate authority—

- (a) that he might, if returned, be prejudiced at his trial by reason of the impossibility of effecting communications between him and the appropriate authorities of the state entitled to exercise rights of protection in relation to him; and
- (b) that the act or omission constituting the offence of which he has been accused or convicted also constituted an offence under section 1 of the Taking of Hostages Act 1982(b) as extended to that territory, or a corresponding law of that territory, or an attempt to commit such an offence.

(2) Where the Governor of the relevant listed territory certifies that a country is a party to the Convention or that a British overseas territory is a British overseas territory to which the Convention has been extended, the certificate shall, in any proceedings under this Act, be conclusive evidence of that fact.

(3) The Convention mentioned in subsections (1) and (2) above is the International Convention against the Taking of Hostages opened for signature at New York on 18 December 1979.

PART VI

MISCELLANEOUS AND SUPPLEMENTARY

Evidence

27.—(1) In any proceedings under this Act in relation to a person whose return has been requested from a listed territory by the United Kingdom, a designated Commonwealth country,

(a) 1978 c.26.

(b) 1982 c.28.

Ireland or a British overseas territory, including proceedings on an application for habeas corpus in respect of a person in custody under this Act—

- (a) a document, duly authenticated, which purports to set out evidence given on oath in the United Kingdom, a designated Commonwealth country, Ireland or a British overseas territory (other than the relevant listed territory) shall be admissible as evidence of the matters stated in it;
 - (b) a document, duly authenticated, which purports to have been received in evidence, or to be a copy of a document so received, in any proceeding in any such country or British overseas territory shall be admissible in evidence;
 - (c) a document, duly authenticated, which certifies that a person was convicted on a date specified in the document of an offence against the law of, or of a part of, any such country or any British overseas territory shall be admissible as evidence of the fact and date of the conviction.
- (2) A document shall be deemed to be duly authenticated for the purposes of this section—
- (a) in the case of a document purporting to set out evidence given as mentioned in subsection (1)(a) above, if the document purports to be certified by a judge or magistrate or officer in or of the country or British overseas territory in question to be the original document containing or recording that evidence or a true copy of such a document;
 - (b) in the case of a document which purports to have been received in evidence as mentioned in subsection (1)(b) above or to be a copy of a document so received, if the document purports to be certified as mentioned in paragraph (a) above to have been, or to be a true copy of a document which has been, so received;
 - (c) in the case of a document which certifies that a person was convicted as mentioned in subsection (1)(c) above, if the document purports to be certified as mentioned in paragraph (a) above,

and in any such case the document is authenticated either by the oath of a witness or by the official seal of a Minister of the country or of the Governor or a Minister, secretary or other officer administering a department of the government of the British overseas territory, as the case may be.

(3) Nothing in this section shall prejudice the admission in evidence of any document which is admissible in evidence apart from this section.

Warrants and orders

28.—(1) Any warrant or order to be issued or made by the Governor of a listed territory under this Act shall be given under the hand of the Governor or any person for the time being lawfully performing the functions of the Governor.

(2) The Governor of a listed territory may by regulations prescribe the form of any warrant or order to be issued or made under this Act in its application to return to the United Kingdom, Ireland, Commonwealth countries and British overseas territories.

General

35.—(1) In this Act—

- “appropriate authority” has the meaning assigned to it by section 6(9) above;
- “authority to proceed” has the meaning assigned to it by section 7(1) above;
- “constable” includes an officer of the police force of the territory;
- “court of committal” has the meaning assigned to it by section 9(1) above;
- “designated Commonwealth country” has the meaning assigned to it by section 5(1) above;
- “extradition crime” is to be construed in accordance with section 2 above;
- “extradition request” has the meaning assigned to it by section 7(1) above, but in section 12(5) above includes a request or requisition made by some person recognised by the Governor of the relevant listed territory as the consular representative of a foreign State (or as the governor of a colony or dependency of a foreign State) for the surrender of a person to that State, colony or dependency under the law in that behalf for the time being in force in that listed territory;

“Governor” means the person for the time being lawfully administering the government of the territory;

“listed territory” means a territory listed in Schedule 1 to this Order and references to a relevant listed territory are references to a listed territory from which the return of a person is sought or (as the case may be) to which a person has been returned;

“provisional warrant” has the meaning assigned to it by section 8(1) above;

“the United Kingdom” includes the Channel Islands and the Isle of Man.

(2) For the purposes of this Act a person convicted in his absence in a designated Commonwealth country, Ireland or a British overseas territory shall be treated as a person accused of the offence of which he is convicted.

SCHEDULE 3

Article 2(2)

FURTHER MODIFICATIONS AND ADAPTATIONS TO EXTRADITION ACT 1989 AS EXTENDED TO THE BRITISH ANTARCTIC TERRITORY

1. The references in this Schedule to provisions of the 1989 Act are references to them as set out in Schedule 2 to this Order and as they are extended to the British Antarctic Territory.

2. In section 8(1), for the words “a magistrate” there shall be substituted the words “the Senior Magistrate or a designated magistrate (that is to say, a magistrate designated for the purposes of this Act by the Commissioner)”; and in section 8(4) the words “or by any public officer” shall be added after the word “constable”.

3. At the end of section 9(1), there shall be added the words “holding a Summary Court”.

4. In section 9(2), for all the words after the words “in custody or on bail”, there shall be substituted the words “as a Summary Court sitting in committal proceedings (as defined in section 2(2) of the Summary Courts (Criminal Proceedings) Ordinance 1990(a) of the British Antarctic Territory”.

5. For section 14(2) there shall be substituted the following:

“(2) A notice under this section shall be given in the manner prescribed by rules under section 42 of the Summary Courts (Criminal Proceedings) Ordinance 1990 of the British Antarctic Territory or, subject to any such rules, as directed under section 41 of that Ordinance, and a magistrate may order the committal for return of a person with his consent at any time after his arrest.”.

6. In section 17(1), for all the words after the words “this Part of this Act” there shall be substituted the words “may for that purpose be dealt with in like manner as a person charged with an offence before a Summary Court”.

7. For section 17(3) there shall be substituted the following:

“(3) Where a person, being in custody in any part of the British Antarctic Territory whether under this Part of this Act or otherwise, is required to be moved in custody under this Act to another part of the Territory and is so removed by sea or air or, without prejudice to any provision in that behalf in the Falkland Islands Courts (Overseas Jurisdiction) Order 1989(b), where such a person is required to be removed to the Falkland Islands, he shall be deemed to continue to be in legal custody until he reaches the place to which he is required to be removed.”.

8. In section 17(4) the words “and public officers” shall be inserted after the word “constables”.

9. The following shall be added to section 19 as subsection (6) thereof:

“(6) References in this section to a person’s being returned to, or being dealt with in, a listed territory include, in their application to the British Antarctic Territory, references to his being returned to, or being dealt with in, a place where a court of that Territory sits; the reference in subsection (3) above to his arrival in, or opportunity to leave, such a territory includes, in its application as aforesaid, a reference to his arrival in, or opportunity to leave,

(a) Ordinance No. 6 of 1990.

(b) S.I. 1989/2399.

such a place; and references in this section to a court of the British Antarctic Territory include, without prejudice to their generality, references (to the extent provided for in section 35(3) below) to the Supreme Court of the Falkland Islands (as defined in the said section 35(3)).”.

10. The following shall be added to section 20 as subsection (3) thereof:

“(3) Section 19(6) above applies also for the interpretation of this section.”.

11. The words “or of the Administrator” shall be added at the end of section 28(1).

12. In section 35(1), for the definition “ “Governor” means the person for the time being lawfully administering the government of the territory” there shall be substituted the definition “ “the Governor”, in relation to the British Antarctic Territory and without prejudice to the definition in Schedule 1 to the Interpretation Act 1978(a), means the Commissioner”.

13. The following additional definitions shall be inserted, in their appropriate places (by alphabetical order), in section 35(1):

“the Administrator” means the person holding the office of Administrator of the British Antarctic Territory and includes any person for the time being lawfully discharging the functions of that office;

“the Commissioner” means the person holding the office of Commissioner for the British Antarctic Territory and includes any person for the time being lawfully discharging the functions of that office;

“magistrate” means any person appointed to be a magistrate under Part IV of the Administration of Justice Ordinance 1990(b) of the British Antarctic Territory;

“public officer” has the meaning assigned to it by section 7(1) of the Interpretation and General Provisions Ordinance 1990(c) of the British Antarctic Territory and, in any case where a member of a police force established under the law of another country (including a British overseas territory other than the British Antarctic Territory) has, by arrangement with the Commissioner, been empowered under that law to act as a constable under the law of the Territory for the purposes of, or in connection with, extradition from the Territory, includes that member of that police force; and a certificate by the Commissioner that that member was at the relevant time so empowered shall, in any proceedings concerning anything done or omitted by him, be conclusive of that fact;

“the Senior Magistrate” means the person holding the office of Senior Magistrate under Part III of the Administration of Justice Ordinance 1990 of the British Antarctic Territory and includes any person for the time being lawfully discharging the functions of that office;

“Summary Court” means a court established under Part IV of the Administration of Justice Ordinance 1990 of the British Antarctic Territory.

14. The following shall be added to section 35 as subsections (3) and (4) thereof:

“(3) (a) In their application to the British Antarctic Territory and subject to paragraph (b) below, references in this Act to a superior court of a listed territory are references to the Supreme Court of that Territory.

(b) Without prejudice to the generality of sections 3 and 4 of the Falkland Islands Courts (Overseas Jurisdiction) Order 1989, the jurisdiction and powers conferred on the Supreme Court of the Falkland Islands by those sections include the jurisdiction to hear and determine any matter that may under this Act be heard and determined by the Supreme Court of the British Antarctic Territory and all powers that under this Act are vested in the latter court; and all references in this Act to the latter court (including references to the stating of a case to it or to appeals from its decisions) shall be construed accordingly.

(a) 1978 c.30.

(b) Ordinance No. 5 of 1990.

(c) Ordinance No. 4 of 1990.

- (c) Where it appears to the Judge of the Supreme Court of the British Antarctic Territory that any proceedings that have been instituted under this Act before that court could more appropriately be pursued, by virtue of paragraph (b) above, before the Supreme Court of the Falkland Islands, he may, after consultation with the Chief Justice of the Falkland Islands, so order and may give any necessary directions for that purpose.
- (d) In this subsection, but subject to paragraph (b) above, references to the Supreme Court of the British Antarctic Territory are references to the court established by Part II of the Administration of Justice Ordinance 1990 of the British Antarctic Territory; and references in this subsection and in section 19(6) above to the Supreme Court of the Falkland Islands are references to the court established by section 77 of the Constitution of the Falkland Islands set out in Schedule 1 to the Falkland Islands Constitution Order 1985(a).

(4) For the avoidance of doubt, any of the functions conferred by this Act on the Commissioner (whether expressly so referred to or referred to as the Governor) or the Administrator or the Senior Magistrate may be performed either within or outside the British Antarctic Territory.”.

SCHEDULE 4

Article 2(2)

FURTHER MODIFICATIONS AND ADAPTATIONS TO EXTRADITION ACT 1989 AS EXTENDED TO THE BRITISH INDIAN OCEAN TERRITORY

1. The references in this Schedule to provisions of the 1989 Act are references to them as set out in Schedule 2 to this Order and as they are extended to the British Indian Ocean Territory.

2. In section 8(4), for the word “constable” there shall be substituted the words “Peace Officer”.

3. In section 9(2), for all the words after the words “in custody or on bail,” there shall be substituted the words “as the Magistrates’ Court trying a criminal charge”.

4. For section 14(2) there shall be substituted the following:

“(2) A notice under this section shall be given in such manner as may be directed by the court of committal, and a Magistrate may order the committal for return of a person with his consent at any time after his arrest.”.

5. In section 17(4), for the word “constables” there shall be substituted the words “Peace Officers”.

6. The words “or of the Administrator” shall be added at the end of section 28(1).

7. In section 35(1), for the definition “ “Governor” means the person for the time being lawfully administering the government of the territory” there shall be substituted the definition “ “the Governor”, in relation to the British Indian Ocean Territory and without prejudice to the definition in Schedule 1 to the Interpretation Act 1978(b), means the Commissioner (that is to say, the person holding the office of Commissioner for that Territory or any person for the time being lawfully discharging the functions of that office)”.

8. The following additional definitions shall be inserted, in their appropriate places (by alphabetical order), in section 35(1):

““the Administrator” means the person holding the office of Administrator of the British Indian Ocean Territory and includes any person for the time being lawfully discharging the functions of that office;

“Magistrate” means any person appointed as such by under the Courts Ordinance 1983(c) of the British Indian Ocean Territory and includes a Senior Magistrate so appointed;

“the Magistrates’ Court” means the Magistrates’ Court established by the Courts Ordinance 1983 of the British Indian Ocean Territory;

(a) S.I. 1985/444.

(b) 1978 c.30.

(c) Ordinance No. 3 of 1983.

“Peace Officer” means any person appointed as such under the Courts Ordinance 1983 of the British Indian Ocean Territory;”.

9. The following shall be added to section 35 as subsection (3) thereof:

“(3) For the avoidance of doubt, any of the functions conferred by this Act on the Commissioner (as “the Governor”) or on the Administrator may be performed either within or outside the British Indian Ocean Territory.”.

SCHEDULE 5

Article 3

ORDERS REVOKED

The Fugitive Offenders (Bermuda) Order 1967, S.I. 1967/1905.
The Fugitive Offenders (Gibraltar) Order 1967, S.I. 1967/1909.
The Fugitive Offenders (Montserrat) Order 1967, S.I. 1967/1913.
The Fugitive Offenders (Virgin Islands) Order 1967, S.I. 1967/1915.
The Fugitive Offenders (Sovereign Base Areas of Akrotiri and Dhekelia) Order 1967, S.I. 1967/1916.
The Fugitive Offenders (Cayman Islands) Order 1968, S.I. 1968/112.
The Fugitive Offenders (Falkland Islands and Dependencies) Order 1968, S.I. 1968/113.
The Fugitive Offenders (British Indian Ocean Territory) Order 1968, S.I. 1968/183.
The Fugitive Offenders (St Helena) Order 1968, S.I. 1968/184.
The Fugitive Offenders (Turks and Caicos Islands) Order 1968, S.I. 1968/185.
The Fugitive Offenders (Overseas Territories) Order 1968, S.I. 1968/292.
The Fugitive Offenders (Pitcairn) Order 1968, S.I. 1968/884 (amended by S.I. 1973 No. 761).
The Fugitive Offenders (Overseas Territories) (No. 2) Order 1968, S.I. 1968/1375.
The Fugitive Offenders (Anguilla) Order 1987, S.I. 1987/452.
The Extradition (British Antarctic Territory) (Commonwealth countries, Colonies and Republic of Ireland) Order 1992, S.I. 1992/1300.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends to all the British overseas territories except Gibraltar, with certain exceptions, adaptations and modifications, the provisions of the Extradition Act 1989 relating to extradition between the United Kingdom and Commonwealth countries or the British overseas territories. It also applies those provisions as appropriate so as to regulate extradition between the territories and Ireland and the territories and the United Kingdom itself.

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