

SCHEDULE 3

Article 2(6)

Provisions applying in the Territories

For the purpose of article 2(6), the provisions of the Extradition Act 2003, including the modifications and additional provisions, which extend to each Territory are—

“PART 2

Extradition to Extradition Territories

INTRODUCTION

Extradition to extradition territories

69. This Part deals with extradition from a Territory to the extradition territories.

Extradition request and certificate

70.—(1) The Governor must (subject to subsection (2)) issue a certificate under this section if he receives a valid request for the extradition of a person to an extradition territory.

(2) The Governor may refuse to issue a certificate under this section if—

- (a) he has power under section 126 to order that proceedings on the request be deferred,
- (b) the person whose extradition is requested is a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside his country of nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, unwilling to return to it, or
- (c) the person whose extradition is requested has been granted leave to enter or remain in the Territory on the ground that to remove him to the territory to which extradition is requested would be in breach of his right to life or his right not to be subjected to torture or to inhuman or degrading treatment or punishment.

(3) A request for a person’s extradition is valid if—

- (a) it contains the statement referred to in subsection (4) or the statement referred to in subsection (4A), and
- (b) it is made in the approved way.

(4) The statement is one that—

- (a) the person is accused in the extradition territory of the commission of an offence specified in the request, and
- (b) the request is made with a view to his arrest and extradition to the extradition territory for the purpose of being prosecuted for the offence.

(4A) The statement is one that—

- (a) the person has been convicted of an offence specified in the request by a court in the extradition territory, and
- (b) the request is made with a view to his arrest and extradition to the extradition territory for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence.

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(5) A request for extradition to an extradition territory which is a British overseas territory is made in the approved way if it is made by or on behalf of the Governor of that British overseas territory.

(5A) A request for extradition to an extradition territory which is the United Kingdom, Guernsey, Jersey or the Isle of Man is made in the approved way if it is made by or on behalf of the government of that territory.

(6) A request for extradition to an extradition territory which is the Hong Kong Special Administrative Region of the People's Republic of China is made in the approved way if it is made by or on behalf of the government of the Region.

(7) A request for extradition to any other extradition territory is made in the approved way if it is made—

(a) by an authority of the territory which the Governor believes has the function of making requests for extradition in that territory, or

(b) by a person recognised by the Governor as a diplomatic or consular representative of the territory.

(8) A certificate under this section must certify that the request is made in the approved way.

(9) If a certificate is issued under this section the Governor must send the request and the certificate to the appropriate judge.

(10) Subsection (11) applies at all times after the Governor issues a certificate under this section.

(11) The Governor is not to consider whether the extradition would be compatible with the Human Rights Convention.

(12) References in the Act to a valid request for a person's extradition must be read in accordance with this section.

ARREST

Arrest warrant following extradition request

71.—(1) This section applies if the Governor sends documents to the appropriate judge under section 70.

(2) The judge may issue a warrant for the arrest of the person whose extradition is requested if the judge has reasonable grounds for believing that—

(a) the offence in respect of which extradition is requested is an extradition offence, and

(b) there is evidence falling within subsection (3).

(3) The evidence is—

(a) evidence that would justify the issue of a warrant for the arrest of a person accused of the offence within the Territory, if the person whose extradition is requested is accused of the commission of the offence;

(b) evidence that would justify the issue of a warrant for the arrest of a person unlawfully at large after conviction of the offence within the Territory, if the person whose extradition is requested is alleged to be unlawfully at large after conviction of the offence.

(4) An order made by the Secretary of State for the purposes of section 71(4) of the UK Act, has effect also under the law of a Territory, and in respect of a category 2 territory designated under such an order, subsections (2) and (3) have effect as if "evidence" read "information".

(5) A warrant under this section may—

- (a) be executed by any person to whom it is directed or by any constable;
- (b) be executed even if neither the warrant nor a copy of it is in the possession of the person executing it at the time of the arrest.

Person arrested under section 71

- 72.**—(1) This section applies if a person is arrested under a warrant issued under section 71.
- (2) A copy of the warrant must be given to the person as soon as practicable after his arrest.
 - (3) The person must be brought as soon as practicable before the appropriate judge.
 - (4) But subsection (3) does not apply if—
 - (a) the person is granted bail by a constable following his arrest, or
 - (b) the Governor decides under section 126 that the request for the person's extradition is not to be proceeded with.
 - (5) If subsection (2) is not complied with and the person applies to the judge to be discharged, the judge may order his discharge.
 - (6) If subsection (3) is not complied with and the person applies to the judge to be discharged, the judge must order his discharge.
 - (7) When the person first appears or is brought before the appropriate judge, the judge must—
 - (a) inform him of the contents of the request for his extradition;
 - (b) give him the required information about consent;
 - (c) remand him in custody or on bail.
 - (8) The required information about consent is—
 - (a) that the person may consent to his extradition to the extradition territory to which his extradition is requested;
 - (b) an explanation of the effect of consent and the procedure that will apply if he gives consent;
 - (c) that consent must be given in writing and is irrevocable.
 - (9) If the person is remanded in custody, the appropriate judge may later grant bail.

Provisional warrant

- 73.**—(1) This section applies if a magistrate is satisfied on information in writing and on oath that a person within subsection (2)—
- (a) is or is believed to be in the Territory, or
 - (b) is or is believed to be on his way to the Territory.
- (2) A person is within this subsection if—
- (a) he is accused in an extradition territory of the commission of an offence, or
 - (b) he is alleged to be unlawfully at large after conviction of an offence by a court in an extradition territory.
- (3) The magistrate may issue a warrant for the arrest of the person (a provisional warrant) if he has reasonable grounds for believing that—
- (a) the offence of which the person is accused or has been convicted is an extradition offence, and
 - (b) there is written evidence falling within subsection (4).

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- (4) The evidence is—
 - (a) evidence that would justify the issue of a warrant for the arrest of a person accused of the offence within the Territory, if the person in respect of whom the warrant is sought is accused of the commission of the offence;
 - (b) evidence that would justify the issue of a warrant for the arrest of a person unlawfully at large after conviction of the offence within the Territory, if the person in respect of whom the warrant is sought is alleged to be unlawfully at large after conviction of the offence.
- (5) An order made by the Secretary of State for the purposes of section 73(5) of the UK Act, has effect also under the law of a Territory, and in respect of a category 2 territory designated under such an order, subsections (3) and (4) have effect as if “evidence” read “information”.
- (6) A provisional warrant may—
 - (a) be executed by any person to whom it is directed or by any constable;
 - (b) be executed even if neither the warrant nor a copy of it is in the possession of the person executing it at the time of the arrest.

Person arrested under provisional warrant

- 74.**—(1) This section applies if a person is arrested under a provisional warrant.
- (2) A copy of the warrant must be given to the person as soon as practicable after his arrest.
 - (3) The person must be brought as soon as practicable before the appropriate judge.
 - (4) But subsection (3) does not apply if—
 - (a) the person is granted bail by a constable following his arrest, or
 - (b) in a case where the Governor has received a valid request for the person’s extradition, the Governor decides under section 126 that the request is not to be proceeded with.
 - (5) If subsection (2) is not complied with and the person applies to the judge to be discharged, the judge may order his discharge.
 - (6) If subsection (3) is not complied with and the person applies to the judge to be discharged, the judge must order his discharge.
 - (7) When the person first appears or is brought before the appropriate judge, the judge must—
 - (a) inform him that he is accused of the commission of an offence in an extradition territory or that he is alleged to be unlawfully at large after conviction of an offence by a court in an extradition territory;
 - (b) give him the required information about consent;
 - (c) remand him in custody or on bail.
 - (8) The required information about consent is—
 - (a) that the person may consent to his extradition to the extradition territory in which he is accused of the commission of an offence or is alleged to have been convicted of an offence;
 - (b) an explanation of the effect of consent and the procedure that will apply if he gives consent;
 - (c) that consent must be given in writing and is irrevocable.
 - (9) If the person is remanded in custody, the appropriate judge may later grant bail.

(10) The judge must order the person's discharge if the documents referred to in section 70(9) are not received by the judge within the required period.

(11) The required period is—

- (a) 45 days starting with the day on which the person was arrested, or
- (b) if an order has been made by the Secretary of State for the purposes of section 74(11) (b) of the UK Act, that order shall have effect also under the law of a Territory, and in respect of a category 2 territory designated under such an order, the required period is any longer period permitted by the order.

THE EXTRADITION HEARING

Date of extradition hearing: arrest under section 71

75.—(1) When a person arrested under a warrant issued under section 71 first appears or is brought before the appropriate judge, the judge must fix a date on which the extradition hearing is to begin.

(2) The date fixed under subsection (1) must be such as to ensure no unnecessary delay.

(3) If before the date fixed under subsection (1) (or this subsection) a party to the proceedings applies to the judge for a later date to be fixed and the judge believes it to be in the interests of justice to do so, he may fix a later date; and this subsection may apply more than once.

(4) If the extradition hearing does not begin on or before the date fixed under this section and the person applies to the judge to be discharged, the judge must order his discharge.

Date of extradition hearing: arrest under provisional warrant

76.—(1) Subsection (2) applies if—

- (a) a person is arrested under a provisional warrant, and
- (b) the documents referred to in section 70(9) are received by the appropriate judge within the period required under section 74(10).

(2) The judge must fix a date on which the extradition hearing is to begin.

(3) The date fixed under subsection (2) must be such as to ensure no unnecessary delay.

(4) If before the date fixed under subsection (2) (or this subsection) a party to the proceedings applies to the judge for a later date to be fixed and the judge believes it to be in the interests of justice to do so, he may fix a later date; and this subsection may apply more than once.

(5) If the extradition hearing does not begin on or before the date fixed under this section and the person applies to the judge to be discharged, the judge must order his discharge.

Person charged with offence in Territory before extradition hearing

76A.—(1) This section applies if—

- (a) a person has been brought before the appropriate judge under section 72(3) or 74(3) but the extradition hearing has not begun; and
- (b) the judge is informed that the person is charged with an offence in the Territory.

(2) The judge must order further proceedings in respect of the extradition to be adjourned until one of these occurs—

- (a) the charge is disposed of;

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- (b) the charge is withdrawn;
- (c) proceedings in respect of the charge are discontinued;
- (d) an order is made for the charge to lie on the file.

(3) If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the judge may order further proceedings in respect of the extradition to be adjourned until the person is released from detention pursuant to the sentence (whether under early release provisions or otherwise).

Person serving sentence in Territory before extradition hearing

76B.—(1) This section applies if—

- (a) a person has been brought before the appropriate judge under section 72(3) or 74(3) but the extradition hearing has not begun; and
- (b) the judge is informed that the person is detained pursuant to a sentence of imprisonment or another form of detention in the Territory.

(2) The judge may order further proceedings in respect of the extradition to be adjourned until the person is released from detention pursuant to the sentence (whether under early release provisions or otherwise).

Judge's powers at extradition hearing

77.—(1) At the extradition hearing the appropriate judge has the same powers (as nearly as may be) as a magistrate's court would have if the proceedings were the summary trial of an information against the person whose extradition is requested.

(2) *Subsection (2) of the Act does not apply.*

(3) *Subsection (3) of the Act does not apply.*

(4) If the judge adjourns the extradition hearing he must remand the person in custody or on bail.

(5) If the person is remanded in custody, the appropriate judge may later grant bail.

Initial stages of extradition hearing

78.—(1) This section applies if a person alleged to be the person whose extradition is requested appears or is brought before the appropriate judge for the extradition hearing.

(2) The judge must decide whether the documents sent to him by the Governor consist of (or include)—

- (a) the documents referred to in section 70(9);
- (b) particulars of the person whose extradition is requested;
- (c) particulars of the offence specified in the request;
- (d) in the case of a person accused of an offence, a warrant for his arrest issued in the extradition territory;
- (e) in the case of a person alleged to be unlawfully at large after conviction of an offence, a certificate issued in the extradition territory of the conviction and (if he has been sentenced) of the sentence.

(3) If the judge decides the question in subsection (2) in the negative he must order the person's discharge.

(4) If the judge decides that question in the affirmative he must decide whether—

- (a) the person appearing or brought before him is the person whose extradition is requested;
 - (b) the offence specified in the request is an extradition offence;
 - (c) copies of the documents sent to the judge by the Governor have been served on the person.
- (5) The judge must decide the question in subsection (4)(a) on a balance of probabilities.
- (6) If the judge decides any of the questions in subsection (4) in the negative he must order the person's discharge.
- (7) If the judge decides those questions in the affirmative he must proceed under section 79.
- (8) The reference in subsection (2)(d) to a warrant for a person's arrest includes a reference to a judicial document authorising his arrest.

Bars to extradition

79.—(1) If the judge is required to proceed under this section he must decide whether the person's extradition to the extradition territory is barred by reason of—

- (a) the rule against double jeopardy;
- (b) extraneous considerations;
- (c) the passage of time;
- (d) hostage-taking considerations;
- (e) forum.

(1A) But the judge is to decide whether the person's extradition is barred by reason of forum only in a case where the request for extradition contains the statement referred to in section 70(4) (warrant issued for purposes of prosecution for offence in extradition territory).

(2) Sections 80 to 83E apply for the interpretation of subsection (1).

(3) If the judge decides any of the questions in subsection (1) in the affirmative he must order the person's discharge.

(4) If the judge decides those questions in the negative and the person is accused of the commission of the extradition offence but is not alleged to be unlawfully at large after conviction of it, the judge must proceed under section 84.

(5) If the judge decides those questions in the negative and the person is alleged to be unlawfully at large after conviction of the extradition offence, the judge must proceed under section 85.

Rule against double jeopardy

80. A person's extradition to an extradition territory is barred by reason of the rule against double jeopardy if (and only if) it appears that he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction if he were charged with the extradition offence in the Territory.

Extraneous considerations

81. A person's extradition to an extradition territory is barred by reason of extraneous considerations if (and only if) it appears that—

- (a) the request for his extradition (though purporting to be made on account of the extradition offence) is in fact made for the purpose of prosecuting or punishing him

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on account of his race, religion, nationality, gender, sexual orientation or political opinions, or

- (b) if extradited he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, gender, sexual orientation or political opinions.

Passage of time

82. A person's extradition to an extradition territory is barred by reason of the passage of time if (and only if) it appears that it would be unjust or oppressive to extradite him by reason of the passage of time since he is alleged to have—

- (a) committed the extradition offence (where he is accused of its commission), or
- (b) become unlawfully at large (where he is alleged to have been convicted of it).

Hostage-taking considerations

83.—(1) A person's extradition to an extradition territory is barred by reason of hostage-taking considerations if (and only if) the territory is a party to the Hostage-taking Convention and it appears that—

- (a) if extradited he might be prejudiced at his trial because communication between him and the appropriate authorities would not be possible, and
- (b) the act or omission constituting the extradition offence also constitutes an offence under section 1 of Schedule 1 to the Taking of Hostages Act 1982 (Overseas Territories) Order 1982(1) or an attempt to commit such an offence.

(2) The appropriate authorities are the authorities of the territory which are entitled to exercise rights of protection in relation to him.

(3) A certificate issued by the Governor that a territory is a party to the Hostage-taking Convention is conclusive evidence of that fact for the purposes of subsection (1).

(4) The Hostage-taking Convention is the International Convention against the Taking of Hostages opened for signature at New York on 18 December 1979(2).

Forum

83A.—(1) The extradition of a person ("D") to an extradition territory is barred by reason of forum if the extradition would not be in the interests of justice.

(2) For the purposes of this section, the extradition would not be in the interests of justice if the judge—

- (a) decides that a substantial measure of D's relevant activity was performed in the Territory, and
 - (b) decides, having regard to the specified matters relating to the interests of justice (and only those matters), that the extradition should not take place.
- (3) These are the specified matters relating to the interests of justice—
- (a) the place where most of the loss or harm resulting from the extradition offence occurred or was intended to occur;
 - (b) the interests of any victims of the extradition offence;

(1) [S.I. 1982/1540](#), as amended by the Taking of Hostages (Anguilla) Order 1987 [S.I. 1987/455](#) and the Overseas Territories (Change of Name) (No. 11) Order 2011 [S.I. 2011/2984](#).

(2) UK Treaty Series No. 15 (1983); Cmnd. 9100.

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- (c) any belief of a prosecutor that the Territory is not the most appropriate jurisdiction in which to prosecute D in respect of the conduct constituting the extradition offence;
- (d) were D to be prosecuted in the Territory for an offence that corresponds to the extradition offence, whether evidence necessary to prove the offence is or could be made available in the Territory;
- (e) any delay that might result from proceeding in one jurisdiction rather than another;
- (f) the desirability and practicability of all prosecutions relating to the extradition offence taking place in one jurisdiction, having regard (in particular) to —
 - (i) the jurisdictions in which witnesses, co-defendants and other suspects are located, and
 - (ii) the practicability of the evidence of such persons being given in the Territory or in jurisdictions outside the Territory;
- (g) D's connections with the Territory.

(4) In deciding whether the extradition would not be in the interests of justice, the judge must have regard to the desirability of not requiring the disclosure of material which is subject to restrictions on disclosure in the extradition territory concerned.

(5) If, on an application by a prosecutor, it appears to the judge that the prosecutor has considered the offences for which D could be prosecuted in the Territory, in respect of the conduct constituting the extradition offence, the judge must make that prosecutor a party to the proceedings on the question of whether D's extradition is barred by reason of forum.

(6) In this section "D's relevant activity" means activity which is material to the commission of the extradition offence and is alleged to have been performed by D.

Effect of prosecutor's certificates on forum proceedings

83B.—(1) The judge hearing proceedings under section 83A (the "forum proceedings") must decide that the extradition is not barred by reason of forum if (at a time when the judge has not yet decided the proceedings) the judge receives a prosecutor's certificate relating to the extradition.

(2) The duty to decide the forum proceedings in that way is subject to the determination of any question relating to the prosecutor's certificate raised in accordance with section 83D.

(3) A designated prosecutor may apply for the forum proceedings to be adjourned for the purpose of assisting that or any other designated prosecutor—

- (a) in considering whether to give a prosecutor's certificate relating to the extradition,
- (b) in giving such a certificate, or
- (c) in sending such a certificate to the judge.

(4) If such an application is made, the judge must—

- (a) adjourn the forum proceedings until the application is decided, and
- (b) continue the adjournment, for such period as appears to the judge to be reasonable, if the application is granted.

(5) But the judge must end the adjournment if the application is not granted.

Prosecutor's certificates

83C.—(1) A "prosecutor's certificate" is a certificate given by a designated prosecutor which—

- (a) certifies both matter A and matter B, and

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- (b) certifies either matter C or matter D.
- (2) Matter A is that a responsible prosecutor has considered the offences for which D could be prosecuted in the Territory, in respect of the conduct constituting the extradition offence.
- (3) Matter B is that the responsible prosecutor has decided that there are one or more such offences that correspond to the extradition offence (the “corresponding offences”).
- (4) Matter C is that—
 - (a) the responsible prosecutor has made a formal decision as to the prosecution of D for the corresponding offences,
 - (b) that decision is that D should not be prosecuted for the corresponding offences, and
 - (c) the reason for that decision is a belief that—
 - (i) there would be insufficient admissible evidence for the prosecution, or
 - (ii) the prosecution would not be in the public interest.
- (5) Matter D is that the responsible prosecutor believes that D should not be prosecuted for the corresponding offences because there are concerns about the disclosure of sensitive material in—
 - (a) the prosecution of D for the corresponding offences, or
 - (b) any other proceedings.
- (6) In relation to the extradition of any person to an extradition territory, neither this section nor any other rule of law (whether or not contained in an enactment) may require a designated prosecutor—
 - (a) to consider any matter relevant to giving a prosecutor’s certificate, or
 - (b) to consider whether to give a prosecutor’s certificate.
- (7) In this section “sensitive material” means material which appears to the responsible prosecutor to be sensitive, including material appearing to be sensitive on grounds relating to—
 - (a) national security,
 - (b) international relations, or
 - (c) the prevention or detection of crime (including grounds relating to the identification or activities of witnesses, informants or any other persons supplying information to the police or any other law enforcement agency who may be in danger if their identities are revealed).

Questioning of prosecutor’s certificate

83D.—(1) No decision of a designated prosecutor relating to a prosecutor’s certificate in respect of D’s extradition (a “relevant certification decision”) may be questioned except on an appeal under section 103 or 108 against an order for that extradition.

- (2) For the purpose of—
 - (a) determining whether to give permission for a relevant certification decision to be questioned, and
 - (b) determining any such question (if that permission is given),

the Supreme Court must apply the procedures and principles which would be applied by it on an application for judicial review.

(3) *Subsection (3) of the Act does not apply.*

(4) In a case where the Supreme Court quashes a prosecutor’s certificate, the Supreme Court is to decide the question of whether or not the extradition is barred by reason of forum.

(5) Where the Supreme Court is required to decide that question by virtue of subsection (4)

- (a) sections 83A to 83C and this section apply in relation to that decision (with the appropriate modifications) as they apply to a decision by the judge; and
- (b) in particular—
 - (i) a reference in this section to an appeal under section 103 or 108 has effect as a reference to an appeal under section 114 to the Judicial Committee;
 - (ii) a reference in this section to the Supreme Court has effect as a reference to the Judicial Committee.

Interpretation of sections 83A to 83D

83E.—(1) This section applies for the purposes of sections 83A to 83D (and this section).

(2) These expressions have the meanings given—

“D” has the meaning given in section 83A(1);

“designated prosecutor” means —

- (a) in Bermuda, the Cayman Islands, Montserrat, the Turks and Caicos Islands, and the Virgin Islands, the Director of Public Prosecutions of the respective Territory;
- (b) in Anguilla, the British Antarctic Territory, the Falkland Islands, Pitcairn, St Helena, Ascension and Tristan da Cunha, South Georgia and the South Sandwich Islands, and the Sovereign Base Areas, the Attorney General of the respective Territory;
- (c) in the British Indian Ocean Territory, the Principal Legal Adviser;

“extradition offence” means the offence specified in the request for extradition (including the conduct that constitutes the extradition offence);

“forum proceedings” has the meaning given in section 83B(1);

“prosecutor” means a person who has responsibility for prosecuting offences in the Territory whether or not the person has other responsibilities;

“prosecutor’s certificate” has the meaning given in section 83C(1);

“responsible prosecutor”, in relation to a prosecutor’s certificate, means the designated prosecutor.

(3) In determining for any purpose whether an offence corresponds to the extradition offence, regard must be had, in particular, to the nature and seriousness of the 2 offences.

(4) A reference to a formal decision as to the prosecution of D for an offence is a reference to a decision (made after complying with, in particular, any applicable requirement concerning a code of practice) that D should, or should not, be prosecuted for the offence.

Case where person has not been convicted

84.—(1) If the judge is required to proceed under this section he must decide whether there is evidence which would be sufficient to make a case requiring an answer by the person if the proceedings were the summary trial of an information against him.

(2) In deciding the question in subsection (1) the judge may treat a statement made by a person in a document as admissible evidence of a fact if—

- (a) the statement is made by the person to a police officer or another person charged with the duty of investigating offences or charging offenders, and

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- (b) direct oral evidence by the person of the fact would be admissible.
- (3) In deciding whether to treat a statement made by a person in a document as admissible evidence of a fact, the judge must in particular have regard—
 - (a) to the nature and source of the document;
 - (b) to whether or not, having regard to the nature and source of the document and to any other circumstances that appear to the judge to be relevant, it is likely that the document is authentic;
 - (c) to the extent to which the statement appears to supply evidence which would not be readily available if the statement were not treated as being admissible evidence of the fact;
 - (d) to the relevance of the evidence that the statement appears to supply to any issue likely to have to be determined by the judge in deciding the question in subsection (1);
 - (e) to any risk that the admission or exclusion of the statement will result in unfairness to the person whose extradition is sought, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings.
- (4) A summary in a document of a statement made by a person must be treated as a statement made by the person in the document for the purposes of subsection (2).
- (5) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.
- (6) If the judge decides that question in the affirmative he must proceed under section 87.
- (7) If an order has been made by the Secretary of State for the purposes of section 84(7) of the UK Act, it shall have effect also under the law of a Territory, and in respect of a category 2 territory designated under such an order, if the judge is required to proceed under this section—
 - (a) the judge must not decide under subsection (1), and
 - (b) he must proceed under section 87.

Case where person has been convicted

- 85.**—(1) If the judge is required to proceed under this section he must decide whether the person was convicted in his presence.
- (2) If the judge decides the question in subsection (1) in the affirmative he must proceed under section 87.
 - (3) If the judge decides that question in the negative he must decide whether the person deliberately absented himself from his trial.
 - (4) If the judge decides the question in subsection (3) in the affirmative he must proceed under section 87.
 - (5) If the judge decides that question in the negative he must decide whether the person would be entitled to a retrial or (on appeal) to a review amounting to a retrial.
 - (6) If the judge decides the question in subsection (5) in the affirmative he must proceed under section 86.
 - (7) If the judge decides that question in the negative he must order the person's discharge.
 - (8) The judge must not decide the question in subsection (5) in the affirmative unless, in any proceedings that it is alleged would constitute a retrial or a review amounting to a retrial, the person would have these rights—

- (a) the right to defend himself in person or through legal assistance of his own choosing or, if he had not sufficient means to pay for legal assistance, to be given it free when the interests of justice so required;
- (b) the right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

Conviction in person's absence

86.—(1) If the judge is required to proceed under this section he must decide whether there is evidence which would be sufficient to make a case requiring an answer by the person if the proceedings were the summary trial of an information against him.

(2) In deciding the question in subsection (1) the judge may treat a statement made by a person in a document as admissible evidence of a fact if—

- (a) the statement is made by the person to a police officer or another person charged with the duty of investigating offences or charging offenders, and
- (b) direct oral evidence by the person of the fact would be admissible.

(3) In deciding whether to treat a statement made by a person in a document as admissible evidence of a fact, the judge must in particular have regard—

- (a) to the nature and source of the document;
- (b) to whether or not, having regard to the nature and source of the document and to any other circumstances that appear to the judge to be relevant, it is likely that the document is authentic;
- (c) to the extent to which the statement appears to supply evidence which would not be readily available if the statement were not treated as being admissible evidence of the fact;
- (d) to the relevance of the evidence that the statement appears to supply to any issue likely to have to be determined by the judge in deciding the question in subsection (1);
- (e) to any risk that the admission or exclusion of the statement will result in unfairness to the person whose extradition is sought, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings.

(4) A summary in a document of a statement made by a person must be treated as a statement made by the person in the document for the purposes of subsection (2).

(5) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.

(6) If the judge decides that question in the affirmative he must proceed under section 87.

(7) If an order has been made by the Secretary of State for the purposes of section 86(7) of the UK Act, it shall have effect also under the law of a Territory, and in respect of a category 2 territory designated under such an order, if the judge is required to proceed under this section—

- (a) the judge must not decide under subsection (1), and
- (b) he must proceed under section 87.

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Human rights

87.—(1) If the judge is required to proceed under this section (by virtue of section 84, 85 or 86) he must decide whether the person's extradition would be compatible with the Human Rights Convention.

(2) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.

(3) If the judge decides that question in the affirmative he must send the case to the Governor for his decision whether the person is to be extradited.

Person charged with offence in Territory

88.—(1) This section applies if at any time in the extradition hearing the judge is informed that the person is charged with an offence in the Territory.

(2) The judge must adjourn the extradition hearing until one of these occurs—

- (a) the charge is disposed of;
- (b) the charge is withdrawn;
- (c) proceedings in respect of the charge are discontinued;
- (d) an order is made for the charge to lie on the file.

(3) If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the judge may adjourn the extradition hearing until the person is released from detention pursuant to the sentence (whether under early release provisions or otherwise).

(4) If before he adjourns the extradition hearing under subsection (2) the judge has decided under section 79 whether the person's extradition is barred by reason of the rule against double jeopardy, the judge must decide that question again after the resumption of the hearing.

Person serving sentence in Territory

89.—(1) This section applies if at any time in the extradition hearing the judge is informed that the person is detained pursuant to a sentence of imprisonment or another form of detention in the Territory.

(2) The judge may adjourn the extradition hearing until the person is released from detention pursuant to the sentence (whether under early release provisions or otherwise).

Competing extradition claim

90.—(1) This section applies if at any time in the extradition hearing the judge is informed that the conditions in subsection (2) are met.

(2) The conditions are that—

- (a) the Governor has received another valid request for the person's extradition to an extradition territory;
- (b) the other request has not been disposed of;
- (c) the Governor has made an order under section 126(2) for further proceedings on the request under consideration to be deferred until the other request has been disposed of.

(3) *Subsection (3) of the Act does not apply.*

(4) The judge must remand the person in custody or on bail.

(5) If the person is remanded in custody, the appropriate judge may later grant bail.

Physical or mental condition

91.—(1) This section applies if at any time in the extradition hearing it appears to the judge that the condition in subsection (2) is satisfied.

(2) The condition is that the physical or mental condition of the person is such that it would be unjust or oppressive to extradite him.

(3) The judge must—

- (a) order the person's discharge, or
- (b) adjourn the extradition hearing until it appears to him that the condition in subsection (2) is no longer satisfied.

Case sent to Governor

92.—(1) This section applies if the appropriate judge sends a case to the Governor under this Part for his decision whether a person is to be extradited.

(2) The judge must inform the person in ordinary language that—

- (a) he has a right to appeal to the Supreme Court;
- (b) if he exercises the right the appeal will not be heard until the Governor has made his decision.

(3) But subsection (2) does not apply if the person has consented to his extradition under section 127.

(4) The judge must remand the person in custody or on bail—

- (a) to wait for the Governor's decision, and
- (b) to wait for his extradition to the territory to which extradition is requested (if the Governor orders him to be extradited).

(5) If the person is remanded in custody, the appropriate judge may later grant bail.

GOVERNOR'S FUNCTIONS

Governor's consideration of case

93.—(1) This section applies if the appropriate judge sends a case to the Governor under this Part for his decision whether a person is to be extradited.

(2) The Governor must decide whether he is prohibited from ordering the person's extradition under any of these sections—

- (a) section 94 (death penalty);
- (b) section 95 (speciality);
- (c) section 96 (earlier extradition to Territory from other territory);
- (d) section 96A (earlier transfer to Territory by International Criminal Court).

(3) If the Governor decides any of the questions in subsection (2) in the affirmative he must order the person's discharge.

(4) If the Governor decides those questions in the negative he must order the person to be extradited to the territory to which his extradition is requested unless—

- (a) he is informed that the request has been withdrawn,
- (b) he makes an order under section 126(2) for further proceedings on the request to be deferred and the person is discharged under section 180, or
- (c) he orders the person's discharge under subsection (6A) or section 208.

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- (5) In deciding the questions in subsection (2), the Governor is not required to consider any representations received by him after the end of the permitted period.
- (6) The permitted period is the period of 4 weeks starting with the appropriate day.
- (6A) The Governor may order the person's discharge if the person—
- (a) is a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside his country of nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence is unable or, owing to such fear, is unwilling to return to it, or
 - (b) has been granted leave to enter or remain in the Territory on the ground that to remove him to the territory to which extradition is requested would be in breach of his right to life or his right not to be subjected to torture or to inhuman or degrading treatment or punishment.
- (7) In the case of a person who has consented under section 127 to his extradition, the Governor is not required—
- (a) to wait until the end of the permitted period before ordering the person's extradition, or
 - (b) to consider any representations received after the order is made.

Death penalty

- 94.**—(1) The Governor must not order a person's extradition to an extradition territory if he could be, will be or has been sentenced to death for the offence concerned in the extradition territory.
- (2) Subsection (1) does not apply if the Governor receives a written assurance which he considers adequate that a sentence of death—
- (a) will not be imposed, or
 - (b) will not be carried out (if imposed).

Speciality

- 95.**—(1) The Governor must not order a person's extradition to an extradition territory if there are no speciality arrangements with the extradition territory.
- (2) But subsection (1) does not apply if the person consented to his extradition under section 127 before his case was sent to the Governor.
- (3) There are speciality arrangements with an extradition territory if (and only if) under the law of that territory or arrangements made between it and the Territory a person who is extradited to the extradition territory from the Territory may be dealt with in the extradition territory for an offence committed before his extradition only if—
- (a) the offence is one falling within subsection (4), or
 - (b) he is first given an opportunity to leave the extradition territory.
- (4) The offences are—
- (a) the offence in respect of which the person is extradited;
 - (b) an extradition offence disclosed by the same facts as that offence, other than one in respect of which a sentence of death could be imposed;

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(c) an extradition offence in respect of which the Governor consents to the person being dealt with;

(d) an offence in respect of which the person waives the right that he would have (but for this paragraph) not to be dealt with for the offence.

(5) Arrangements made with an extradition territory which is a Commonwealth country, a British overseas territory, Guernsey, Jersey or the Isle of Man may be made for a particular case or more generally.

(6) A certificate issued by or under the authority of the Governor confirming the existence of arrangements with an extradition territory which is a Commonwealth country, a British overseas territory, Guernsey, Jersey or the Isle of Man and stating the terms of the arrangements is conclusive evidence of those matters.

Earlier extradition to Territory from other territory

96.—(1) The Governor must not order a person's extradition to an extradition territory if—

(a) the person was extradited to the Territory from another territory (the extraditing territory);

(b) under arrangements between the Territory and the extraditing territory, that territory's consent is required to the person's extradition from the Territory to the extradition territory in respect of the extradition offence under consideration;

(c) that consent has not been given on behalf of the extraditing territory.

(2) The arrangements referred to in subsection (1)(b) are deemed to exist between the Territory and each of the United Kingdom, the other British overseas territories, Guernsey, Jersey and the Isle of Man.

Earlier transfer to Territory by International Criminal Court

96A.—(1) The Governor must not order a person's extradition to an extradition territory if—

(a) the person was transferred to the Territory to serve a sentence imposed by the International Criminal Court;

(b) under arrangements between the Territory (or by the United Kingdom on behalf of the Territory) and the Court, the consent of the Presidency of the Court is required to the person's extradition from the Territory to the extradition territory in respect of the extradition offence under consideration;

(c) that consent has not been given.

(2) Subsection (1) does not apply if the person has served the sentence imposed by the Court and has subsequently—

(a) remained voluntarily in the Territory for more than 30 days, or

(b) left the Territory and returned to it.

Deferral: person charged with offence in Territory

97.—(1) This section applies if—

(a) the appropriate judge sends a case to the Governor under this Part for his decision whether a person is to be extradited;

(b) the person is charged with an offence in the Territory.

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(2) The Governor must not make a decision with regard to the person's extradition until one of these occurs—

- (a) the charge is disposed of;
- (b) the charge is withdrawn;
- (c) proceedings in respect of the charge are discontinued;
- (d) an order is made for the charge to lie on the file.

(3) If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the Governor may defer making a decision with regard to the person's extradition until the person is released from detention pursuant to the sentence (whether under early release provisions or otherwise).

Deferral: person serving sentence in Territory

98.—(1) This section applies if—

- (a) the appropriate judge sends a case to the Governor under this Part for his decision whether a person is to be extradited;
- (b) the person is detained pursuant to a sentence of imprisonment or another form of detention in the Territory.

(2) The Governor may defer making a decision with regard to the person's extradition until the person is released from detention pursuant to the sentence (whether under early release provisions or otherwise).

Time limit for order for extradition or discharge

99.—(1) This section applies if—

- (a) the appropriate judge sends a case to the Governor under this Part for his decision whether a person is to be extradited;
- (b) within the required period the Governor does not make an order for the person's extradition or discharge.

(2) If the person applies to the appropriate judge to be discharged, the judge must order his discharge.

(3) The required period is the period of 2 months starting with the appropriate day.

(4) If before the required period ends the Governor applies to the appropriate judge for it to be extended the judge may make an order accordingly; and this subsection may apply more than once.

Information

100.—(1) If the Governor orders a person's extradition under this Part he must—

- (a) inform the person of the order;
- (b) inform him in ordinary language that he has a right to appeal to the Supreme Court;
- (c) inform a person acting on behalf of the extradition territory of the order.

(2) But subsection (1)(b) does not apply if the person has consented to his extradition under section 127.

(3) If the Governor orders a person's extradition under this Part and he has received an assurance such as is mentioned in section 94(2), he must give the person a copy of the assurance when he informs him under subsection (1) of the order.

- (4) If the Governor orders a person's discharge under this Part he must—
 - (a) inform him of the order;
 - (b) inform a person acting on behalf of the extradition territory of the order.

Making of order for extradition or discharge

101.—(1) An order to which this section applies must be made under the hand of the Governor or any senior officer of the Territory designated in writing by him.

(2) *Subsection (2) of the Act does not apply.*

(3) This section applies to—

- (a) an order under section 93 for a person's extradition;
- (b) an order under section 93 or 123 for a person's discharge.

(4) A senior officer is any person in the Territory holding or acting in the office of Deputy Governor, Chief Secretary, Chief Executive or permanent secretary of a department of Government.

The appropriate day

102.—(1) This section applies for the purposes of sections 93 and 99 if the appropriate judge sends a case to the Governor under this Part for his decision whether a person is to be extradited.

(2) If the person is charged with an offence in the Territory, the appropriate day is the day on which one of these occurs—

- (a) the charge is disposed of;
- (b) the charge is withdrawn;
- (c) proceedings in respect of the charge are discontinued;
- (d) an order is made for the charge to lie on the file.

(3) If under section 97(3) or 98(2) the Governor defers making a decision, the appropriate day is the day on which the person is released from detention pursuant to the sentence (whether under early release provisions or otherwise).

(4) If section 126 applies in relation to the request for the person's extradition (the request concerned) the appropriate day is—

- (a) the day on which the Governor makes an order under that section, if the order is for proceedings on the other request to be deferred;
- (b) the day on which an order under section 180 is made, if the order under section 126 is for proceedings on the request concerned to be deferred and the order under section 180 is for the proceedings to be resumed.

(5) *Subsection (5) of the Act does not apply.*

(6) If more than one of subsections (2) to (4) applies, the appropriate day is the latest of the days found under the subsections which apply.

(7) In any other case, the appropriate day is the day on which the judge sends the case to the Governor for his decision whether the person is to be extradited.

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APPEALS

Appeal where case sent to Governor

103.—(1) If the judge sends a case to the Governor under this Part for his decision whether a person is to be extradited, the person may appeal to the Supreme Court against the relevant decision.

(2) But subsection (1) does not apply if the person consented to his extradition under section 127 before his case was sent to the Governor.

(3) The relevant decision is the decision that resulted in the case being sent to the Governor.

(4) An appeal under this section—

(a) may be brought on a question of law or fact, but

(b) lies only with the leave of the Supreme Court.

(5) If an appeal is brought under this section before the Governor has decided whether the person is to be extradited the appeal must not be heard until after the Governor has made his decision.

(6) If the Governor orders the person's discharge the appeal must not be proceeded with.

(7) No appeal may be brought under this section if the Governor has ordered the person's discharge.

(8) If notice of an appeal under section 110 against the decision which resulted in the order for the person's discharge is given in accordance with subsection (5) of that section—

(a) subsections (6) and (7) do not apply;

(b) no appeal may be brought under this section if the Supreme Court has made its decision on the appeal.

(9) Notice of application for leave to appeal under this section must be given before the end of the permitted period, which is 14 days starting with the day on which the Governor informs the person under section 100(1) or (4) of the order he has made in respect of the person.

(10) But where a person gives notice of application for leave to appeal after the end of the permitted period, the Supreme Court must not for that reason refuse to entertain the application if the person did everything reasonably possible to ensure that the notice was given as soon as it could be given.

Court's powers on appeal under section 103

104.—(1) On an appeal under section 103 the Supreme Court may—

(a) allow the appeal;

(b) direct the judge to decide again a question (or questions) which he decided at the extradition hearing;

(c) dismiss the appeal.

(2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.

(3) The conditions are that—

(a) the judge ought to have decided a question before him at the extradition hearing differently;

(b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge.

- (4) The conditions are that—
 - (a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;
 - (b) the issue or evidence would have resulted in the judge deciding a question before him at the extradition hearing differently;
 - (c) if he had decided the question in that way, he would have been required to order the person's discharge.
- (5) If the court allows the appeal it must—
 - (a) order the person's discharge;
 - (b) quash the order for his extradition.
- (6) If the judge comes to a different decision on any question that is the subject of a direction under subsection (1)(b) he must order the person's discharge.
- (7) If the judge comes to the same decision as he did at the extradition hearing on the question that is (or all the questions that are) the subject of a direction under subsection (1)(b) the appeal must be taken to have been dismissed by a decision of the Supreme Court.
- (8) If the court makes a direction under subsection (1)(b) it must remand the person in custody or on bail.
- (9) If the court remands the person in custody it may later grant bail.

Appeal against discharge at extradition hearing

105.—(1) If at the extradition hearing the judge orders a person's discharge, an appeal to the Supreme Court may be brought on behalf of the extradition territory against the relevant decision.

(2) But subsection (1) does not apply if the order for the person's discharge was under section 122.

(3) The relevant decision is the decision which resulted in the order for the person's discharge.

(4) An appeal under this section—

- (a) may be brought on a question of law or fact, but
- (b) lies only with the leave of the Supreme Court.

(5) Notice of application for leave to appeal under this section must be given before the end of the permitted period, which is 14 days starting with the day on which the order for the person's discharge is made.

Court's powers on appeal under section 105

106.—(1) On an appeal under section 105 the Supreme Court may—

- (a) allow the appeal;
- (b) direct the judge to decide the relevant question again;
- (c) dismiss the appeal.

(2) A question is the relevant question if the judge's decision on it resulted in the order for the person's discharge.

(3) The court may allow the appeal only if the conditions in subsection (4) or the conditions in subsection (5) are satisfied.

(4) The conditions are that—

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- (a) the judge ought to have decided the relevant question differently;
 - (b) if he had decided the question in the way he ought to have done, he would not have been required to order the person's discharge.
- (5) The conditions are that—
- (a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;
 - (b) the issue or evidence would have resulted in the judge deciding the relevant question differently;
 - (c) if he had decided the question in that way, he would not have been required to order the person's discharge.
- (6) If the court allows the appeal it must—
- (a) quash the order discharging the person;
 - (b) remit the case to the judge;
 - (c) direct him to proceed as he would have been required to do if he had decided the relevant question differently at the extradition hearing.
- (7) If the court makes a direction under subsection (1)(b) and the judge decides the relevant question differently he must proceed as he would have been required to do if he had decided that question differently at the extradition hearing.
- (8) If the court makes a direction under subsection (1)(b) and the judge does not decide the relevant question differently the appeal must be taken to have been dismissed by a decision of the Supreme Court.
- (9) If the court—
- (a) allows the appeal, or
 - (b) makes a direction under subsection (1)(b),
- it must remand the person in custody or on bail.
- (10) If the court remands the person in custody it may later grant bail.

Detention pending conclusion of appeal under section 105

107.—(1) This section applies if immediately after the judge orders the person's discharge the judge is informed on behalf of the extradition territory of an intention to appeal under section 105.

- (2) The judge must remand the person in custody or on bail while the appeal is pending.
- (3) If the person is remanded in custody, the appropriate judge may later grant bail.
- (4) An appeal under section 105 ceases to be pending at the earliest of these times—
 - (a) when the proceedings on the appeal are discontinued;
 - (b) when the Supreme Court—
 - (i) allows the appeal,
 - (ii) makes a direction under section 106(1)(b), or
 - (iii) dismisses the appeal,unless, where the appeal is dismissed, the court is immediately informed on behalf of the extradition territory of an intention to apply for leave to appeal to the Judicial Committee;

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- (c) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the Judicial Committee against the decision of the Supreme Court on the appeal is granted, if no appeal to the Judicial Committee is brought before the end of that period;
- (d) when there is no further step that can be taken on behalf of the extradition territory in relation to the appeal (ignoring any power of a court to grant leave to take a step out of time).

Appeal against extradition order

108.—(1) If the Governor orders a person’s extradition under this Part, the person may appeal to the Supreme Court against the order.

(2) But subsection (1) does not apply if the person has consented to his extradition under section 127.

(3) An appeal under this section—

- (a) may be brought on a question of law or fact, but
- (b) lies only with the leave of the Supreme Court.

(4) Notice of application for leave to appeal under this section must be given, subject to subsections (5) and (7A), before the end of the permitted period, which is 14 days starting with the day on which the Governor informs the person of the order under section 100(1).

(5) Notice of application for leave to appeal under this section may be given after the end of the permitted period if it is an application for leave to appeal on human rights grounds.

(6) Notice of application for leave to appeal on human rights grounds given after the end of the permitted period must be given before the person is extradited to the extradition territory in accordance with section 117.

(7) Where notice of application for leave to appeal is given in accordance with subsections (5) and (6), the Supreme Court is to grant leave only if it appears to the Supreme Court that—

- (a) the appeal is necessary to avoid real injustice, and
- (b) the circumstances are exceptional and make it appropriate for the appeal to be heard.

(7A) Where a person gives notice of application for leave to appeal after the end of the permitted period (whether or not the application is for leave to appeal on human rights grounds), the Supreme Court must not for that reason refuse to entertain the application if the person did everything reasonably possible to ensure that the notice was given as soon as it could be given.

(8) In this section “to appeal on human rights grounds” means to appeal against the order for the person’s extradition on the grounds (and only on the grounds) that the extradition would not be compatible with the Human Rights Convention.

Court’s powers on appeal under section 108

109.—(1) On an appeal under section 108 the Supreme Court may—

- (a) allow the appeal;
- (b) dismiss the appeal.

(2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.

(3) The conditions are that—

- (a) the Governor ought to have decided a question before him differently;

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- (b) if he had decided the question in the way he ought to have done, he would not have ordered the person's extradition.
- (4) The conditions are that—
 - (a) an issue is raised that was not raised when the case was being considered by the Governor or information is available that was not available at that time;
 - (b) the issue or information would have resulted in the Governor deciding the question before him differently;
 - (c) if he had decided the question in that way, he would not have ordered the person's extradition.
- (5) If the court allows the appeal it must—
 - (a) order the person's discharge;
 - (b) quash the order for his extradition.

Appeal against discharge by Governor

110.—(1) If the Governor makes an order for a person's discharge under this Part, an appeal to the Supreme Court may be brought on behalf of the extradition territory against the relevant decision.

(2) But subsection (1) does not apply if the order for the person's discharge was under section 123.

(3) The relevant decision is the decision which resulted in the order for the person's discharge.

- (4) An appeal under this section—
 - (a) may be brought on a question of law or fact, but
 - (b) lies only with the leave of the Supreme Court.

(5) Notice of application for leave to appeal under this section must be given before the end of the permitted period, which is 14 days starting with the day on which (under section 100(4)) the Governor informs a person acting on behalf of the extradition territory of the order.

Court's powers on appeal under section 110

111.—(1) On an appeal under section 110 the Supreme Court may—

- (a) allow the appeal;
- (b) dismiss the appeal.

(2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.

- (3) The conditions are that—
 - (a) the Governor ought to have decided a question before him differently;
 - (b) if he had decided the question in the way he ought to have done, he would have ordered the person's extradition.
- (4) The conditions are that—
 - (a) an issue is raised that was not raised when the case was being considered by the Governor or information is available that was not available at that time;
 - (b) the issue or information would have resulted in the Governor deciding a question before him differently;

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- (c) if he had decided the question in that way, he would have ordered the person's extradition.
- (5) If the court allows the appeal it must—
 - (a) quash the order discharging the person;
 - (b) order the person's extradition.
- (6) If the court allows the appeal it must remand the person in custody or on bail.
- (7) If the court remands the person in custody it may later grant bail.

Detention pending conclusion of appeal under section 110

112.—(1) This section applies in a case where the Governor orders the person's discharge under this Part.

- (2) Subject to subsection (3)—
 - (a) the order made by the appropriate judge under section 92(4) ("the remand order") remains in force until the end of the period of 3 days beginning with the day on which the person's discharge is ordered;
 - (b) if within that period the Governor is informed in writing on behalf of the extradition territory of an intention to appeal under section 110, the remand order remains in force while the appeal is pending.
- (3) If the person is remanded in custody under section 92(4), the appropriate judge may grant bail.
- (4) An appeal under section 110 ceases to be pending at the earliest of these times—
 - (a) when the proceedings on the appeal are discontinued;
 - (b) when the Supreme Court—
 - (i) allows the appeal, or
 - (ii) dismisses the appeal,unless, where the appeal is dismissed, the court is immediately informed on behalf of the extradition territory of an intention to apply for leave to appeal to the Judicial Committee;
 - (c) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the Judicial Committee against the decision of the Supreme Court on the appeal is granted, if no appeal to the Judicial Committee is brought before the end of that period;
 - (d) when there is no further step that can be taken on behalf of the extradition territory in relation to the appeal (ignoring any power of a court to grant leave to take a step out of time).

Appeal to Judicial Committee

114.—(1) An appeal lies to the Judicial Committee from a decision of the Supreme Court on an appeal under section 103, 105, 108 or 110.

- (2) An appeal under this section lies at the instance of—
 - (a) the person whose extradition is requested;
 - (b) a person acting on behalf of the extradition territory.
- (3) An appeal under this section lies only with the leave of the Supreme Court or the Judicial Committee.

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- (4) Leave to appeal under this section must not be granted unless—
- (a) the Supreme Court has certified that there is a point of law of general public importance involved in the decision, and
 - (b) it appears to the court granting leave that the point is one which ought to be considered by the Judicial Committee.
- (5) An application to the Supreme Court for leave to appeal under this section must be made before the end of the permitted period, which is 14 days starting with the day on which the court makes its decision on the appeal to it.
- (6) An application to the Judicial Committee for leave to appeal under this section must be made before the end of the permitted period, which is 14 days starting with the day on which the Supreme Court refuses leave to appeal.
- (7) If leave to appeal under this section is granted, the appeal must be brought before the end of the permitted period, which is 28 days starting with the day on which leave is granted.
- (8) If subsection (7) is not complied with—
- (a) the appeal must be taken to have been brought;
 - (b) the appeal must be taken to have been dismissed by the Judicial Committee immediately after the end of the period permitted under that subsection.
- (9) These must be ignored for the purposes of subsection (8)(b)—
- (a) any power of a court to extend the period permitted for bringing the appeal;
 - (b) any power of a court to grant leave to take a step out of time.
- (10) The Supreme Court may grant bail to a person appealing under this section, or applying for leave to appeal under this section, against the dismissal of his appeal under section 103 or 108.
- (11) This section and sections 107(4)(c), 112(4)(c), 115A(4)(b), 118(4)(d), 213(4)(d) and 214(3)(d) have effect notwithstanding any provision to the contrary in the Judicial Committee (Appellate Jurisdiction) Order 2009(3).

Powers of Judicial Committee on appeal under section 114

- 115.**—(1) On an appeal under section 114 the Judicial Committee may—
- (a) allow the appeal;
 - (b) dismiss the appeal.
- (2) Subsection (3) applies if—
- (a) the person whose extradition is requested brings an appeal under section 114, and
 - (b) the Judicial Committee allows the appeal.
- (3) The Judicial Committee must—
- (a) order the person's discharge;
 - (b) quash the order for his extradition, if the appeal was against a decision of the Supreme Court to dismiss an appeal under section 103 or 108 or to allow an appeal under section 110.
- (4) Subsection (5) applies if—

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- (a) the Supreme Court allows an appeal under section 103 or 108 by the person whose extradition is requested or dismisses an appeal under section 110 by a person acting on behalf of the extradition territory,
 - (b) a person acting on behalf of the extradition territory brings an appeal under section 114 against the decision of the Supreme Court, and
 - (c) the Judicial Committee allows the appeal.
- (5) The Judicial Committee must—
- (a) quash the order discharging the person made by the Supreme Court under section 104(5) or 109(5) or by the Governor under this Part;
 - (b) order the person to be extradited to the extradition territory.
- (6) Subsection (7) applies if—
- (a) the Supreme Court dismisses an appeal under section 105 against a decision made by the judge at the extradition hearing,
 - (b) a person acting on behalf of the extradition territory brings an appeal under section 114 against the decision of the Supreme Court, and
 - (c) the Judicial Committee allows the appeal.
- (7) The Judicial Committee must—
- (a) quash the order of the judge discharging the person whose extradition is requested;
 - (b) remit the case to the judge;
 - (c) direct him to proceed as he would have been required to do if he had decided the relevant question differently at the extradition hearing.
- (8) A question is the relevant question if the judge's decision on it resulted in the order for the person's discharge.
- (9) In a case where subsection (5) or (7) applies, the Judicial Committee must remand, in custody or on bail, the person whose extradition is requested.
- (10) If the Judicial Committee remands the person in custody the Supreme Court may later grant bail.

Detention pending conclusion of certain appeals under section 114

- 115A.**—(1) This section applies if—
- (a) on an appeal under section 103 or 108 the Supreme Court orders the person's discharge;
 - (b) immediately after it does so, the court is informed on behalf of the extradition territory of an intention to appeal under section 114.
- (2) The court must remand the person in custody or on bail while the appeal is pending.
- (3) If the court remands the person in custody it may later grant bail.
- (4) An appeal under section 114 ceases to be pending at the earliest of these times—
- (a) when the proceedings on the appeal are discontinued;
 - (b) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the Judicial Committee against the decision of the Supreme Court on the appeal under section 103 or 108 is granted, if no appeal to the Judicial Committee is brought before the end of that period;

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- (c) when there is no further step that can be taken on behalf of the extradition territory in relation to the appeal (ignoring any power of a court to grant leave to take a step out of time).

Appeals: general

116. A decision under this Part of the judge or the Governor may be questioned in legal proceedings only by means of an appeal under this Part.

TIME FOR EXTRADITION

Extradition where no appeal

117.—(1) This section applies if the Governor orders a person’s extradition to an extradition territory under this Part, and either—

- (a) no notice of application for leave to appeal under section 103 or 108 is given before the end of the permitted period, or
- (b) notice is given during that period but the Supreme Court refuses leave to appeal to it.

(2) The person must be extradited to the extradition territory as soon as practicable after the order is made.

(3) If subsection (2) is not complied with and the person applies to the appropriate judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay.

(4) These must be ignored for the purposes of subsections (1) and (2)—

- (a) any power of a court to extend the period permitted for giving notice of application for leave to appeal;
- (b) any power of a court to grant leave to take a step out of time.

(5) If leave to appeal to the Supreme Court is granted on an application notice of which was given after the permitted period, this section ceases to apply but section 118 applies instead.

(6) In this section, “permitted period” means 14 days starting with the day on which the Governor informs the person under section 100(1) that he has ordered his extradition.

Extradition following appeal

118.—(1) This section applies if—

- (a) there is an appeal to the Supreme Court under section 103, 108 or 110 against a decision or order relating to a person’s extradition to an extradition territory, and
- (b) the effect of the decision of the relevant court on the appeal is that the person is to be extradited there.

(2) The person must be extradited to the extradition territory as soon as practicable after—

- (a) the decision of the relevant court becomes final, or
- (b) proceedings on the appeal are discontinued.

(3) The relevant court is—

- (a) the Supreme Court, if there is no appeal to the Judicial Committee against the decision of the Supreme Court on the appeal;
- (b) the Judicial Committee, if there is such an appeal.

(4) The decision of the Supreme Court on the appeal becomes final—

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- (a) when the period permitted for applying to the Supreme Court for leave to appeal to the Judicial Committee ends, if there is no such application;
 - (b) when the period permitted for applying to the Judicial Committee for leave to appeal to it ends, if the Supreme Court refuses leave to appeal and there is no application to the Judicial Committee for leave to appeal;
 - (c) when the Judicial Committee refuses leave to appeal to it;
 - (d) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the Judicial Committee is granted, if no such appeal is brought before the end of that period.
- (5) These must be ignored for the purposes of subsection (4)—
- (a) any power of a court to extend the period permitted for applying for leave to appeal;
 - (b) any power of a court to grant leave to take a step out of time.
- (6) The decision of the Judicial Committee on the appeal becomes final when it is made.
- (7) If subsection (2) is not complied with and the person applies to the appropriate judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay.

Judge informed after extradition order that person is charged with offence in Territory

118C.—(1) This section applies if—

- (a) the Governor has made an order for a person's extradition under this Part, and
- (b) before the extradition order is carried out the appropriate judge is informed that the person is charged with an offence in the Territory.

(2) The appropriate judge must order the extradition order not to be carried out until one of these occurs—

- (a) the charge is disposed of;
- (b) the charge is withdrawn;
- (c) proceedings in respect of the charge are discontinued;
- (d) an order is made for the charge to lie on the file.

(3) If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the appropriate judge may order the extradition order not to be carried out until the person is released from detention pursuant to the sentence (whether under early release provisions or otherwise).

Judge informed after extradition order that person is serving sentence in Territory

118D.—(1) This section applies if—

- (a) the Governor has made an order for a person's extradition under this Part, and
- (b) before the extradition order is carried out the appropriate judge is informed that the person is serving a sentence of imprisonment or another form of detention in the Territory.

(2) The appropriate judge may order the extradition order not to be carried out until the person is released from detention pursuant to the sentence (whether under early release provisions or otherwise).

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Undertaking in relation to person serving sentence in Territory

119.—(1) This section applies if—

- (a) the Governor orders a person's extradition to an extradition territory under this Part;
- (b) the person is serving a sentence of imprisonment or another form of detention in the Territory, either—
 - (i) in detention pursuant to that sentence, or
 - (ii) under early release provisions.

(2) The Governor may make the order for extradition subject to the condition that extradition is not to take place before he receives an undertaking given on behalf of the extradition territory in terms specified by him.

(3) The terms which may be specified by the Governor in relation to a person within subsection (1)(b)(i) who is accused in an extradition territory of the commission of an offence include terms—

- (a) that the person be kept in custody until the conclusion of the proceedings against him for the offence and any other offence in respect of which he is permitted to be dealt with in the extradition territory;
- (b) that the person be returned to the Territory to serve the remainder of his sentence on the conclusion of those proceedings.

(3A) The terms which may be specified by the Governor in relation to a person within subsection (1)(b)(ii) who is accused in an extradition territory of the commission of an offence include terms that the person be returned to the Territory to serve the remainder of his sentence after serving the sentence imposed on him in the extradition territory for—

- (a) the offence, and
- (b) any other offence in respect of which he is permitted to be dealt with in the extradition territory.

(4) The terms which may be specified by the Governor in relation to a person alleged to be unlawfully at large after conviction of an offence by a court in an extradition territory include terms that the person be returned to the Territory to serve the remainder of his sentence after serving any sentence imposed on him in the extradition territory for—

- (a) the offence, and
- (b) any other offence in respect of which he is permitted to be dealt with in the extradition territory.

(5) Subsections (6) and (7) apply if the Governor makes an order for extradition subject to a condition under subsection (2).

(6) If the Governor does not receive the undertaking before the end of the period of 21 days starting with the day on which he makes the order and the person applies to the Supreme Court to be discharged, the court must order his discharge.

(7) If the Governor receives the undertaking before the end of that period—

- (a) in a case where section 117 applies, the obligation under section 117(2) applies from the day on which the Governor receives the undertaking;
- (b) in a case where section 118 applies, the obligation under section 118(2) applies from the day on which the decision of the relevant court on the appeal becomes final (within the meaning of that section) or (if later) the day on which the Governor receives the undertaking.

Extradition following deferral for competing claim

120.—(1) This section applies if—

- (a) an order is made under this Part for a person to be extradited to an extradition territory in pursuance of a request for his extradition;
- (b) before the person is extradited to the territory an order is made under section 126(2) for the person's extradition in pursuance of the request to be deferred;
- (c) the appropriate judge makes an order under section 181(2) for the person's extradition in pursuance of the request to cease to be deferred.

(2) In a case where section 117 applies, the obligation under section 117(2) applies from the day on which the order under section 181(2) is made.

(3) In a case where section 118 applies, the obligation under section 118(2) applies from the day on which the decision of the relevant court on the appeal becomes final (within the meaning of that section) or (if later) the day on which the order under section 181(2) is made.

Asylum claim

121.—(1) This section applies if—

- (a) an order is made under this Part for a person to be extradited in pursuance of a request, and
- (b) the person has made an asylum claim (whether before or after the making of the request).

(2) *Subsection (2) of the Act does not apply.*

(3) The person must not be extradited in pursuance of the request before the asylum claim is finally determined; and sections 117 and 118 have effect subject to this.

(4) If the asylum claim is allowed, the claim is finally determined when the decision to allow the asylum claim is made.

(5) If the asylum claim is rejected, the claim is finally determined when—

- (a) at the time of the decision, when there is no further right of appeal;
- (b) any period permitted for appealing the decision has ended if there is such a right but there is no such appeal;
- (c) any appeal has been determined, withdrawn or abandoned, if there is such an appeal.

(6) An appeal against a decision on an asylum claim is not finally determined for the purposes of subsection (5) at any time when a further appeal or an application for leave to bring a further appeal—

- (a) has been instituted and has not been finally determined or withdrawn or abandoned, or
- (b) may be brought.

(7) The remittal of an appeal is not a final determination for the purposes of subsection (6).

(8) The possibility of an appeal out of time with leave must be ignored for the purposes of subsections (5) and (6).

WITHDRAWAL OF EXTRADITION REQUEST

Withdrawal of request before end of extradition hearing

122.—(1) This section applies if at any time in the relevant period the appropriate judge is informed by the Governor that a request for a person's extradition has been withdrawn.

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- (2) The relevant period is the period—
 - (a) starting when the person first appears or is brought before the appropriate judge following his arrest under this Part;
 - (b) ending when the judge orders the person's discharge or sends the case to the Governor for his decision whether the person is to be extradited.
- (3) The judge must order the person's discharge.
- (4) If the person is not before the judge at the time the judge orders his discharge, the judge must inform him of the order as soon as practicable.

Withdrawal of request after case sent to Governor

123.—(1) This section applies if at any time in the relevant period the Governor is informed that a request for a person's extradition has been withdrawn.

- (2) The relevant period is the period—
 - (a) starting when the judge sends the case to the Governor for his decision whether the person is to be extradited;
 - (b) ending when the person is extradited in pursuance of the request or discharged.
- (3) The Governor must order the person's discharge.

Withdrawal of request while appeal to Supreme Court pending

124.—(1) This section applies if at any time in the relevant period the Supreme Court is informed by the Governor that a request for a person's extradition has been withdrawn.

- (2) The relevant period is the period—
 - (a) starting when notice of application for leave to appeal to the Supreme Court is given by the person whose extradition is requested or by a person acting on behalf of the extradition territory to which his extradition is requested;
 - (b) ending with the relevant day.
- (2A) "The relevant day" is—
 - (a) if the Supreme Court refuses leave to appeal to it, the day on which the decision to refuse leave becomes final;
 - (b) if leave to appeal is given but proceedings on the appeal are discontinued, the day of discontinuance;
 - (c) if leave to appeal is given and proceedings on the appeal are not discontinued, the day on which the court makes its decision on the appeal.

For the purposes of paragraph (a), the decision to refuse leave becomes final when, in accordance with rules of court, there is no further step that can be taken in relation to the application for leave to appeal (ignoring any power of a court to grant leave to take a step out of time).

- (3) If the application or appeal is under section 103 or 108, the court must—
 - (a) order the person's discharge;
 - (b) quash the order for his extradition, if the Governor has ordered his extradition.
- (4) If the application or appeal is under section 105 or 110, the court must dismiss the application or appeal.
- (5) If the person is not before the court at the time the court orders his discharge, the court must inform him of the order as soon as practicable.

Withdrawal of request while appeal to Judicial Committee pending

125.—(1) This section applies if at any time in the relevant period the Judicial Committee is informed by the Governor that a request for a person’s extradition has been withdrawn.

(2) The relevant period is the period—

- (a) starting when leave to appeal to the Judicial Committee is granted to the person whose extradition is requested or a person acting on behalf of the extradition territory to which his extradition is requested;
- (b) ending when proceedings on the appeal are discontinued or the Judicial Committee makes its decision on the appeal.

(3) If the appeal is brought by the person whose extradition is requested the Judicial Committee must—

- (a) order the person’s discharge;
- (b) quash the order for his extradition, in a case where the appeal was against a decision of the Supreme Court to dismiss an appeal under section 103 or 108.

(4) If the appeal is brought by a person acting on behalf of the extradition territory the Judicial Committee must dismiss the appeal.

(5) If the person whose extradition is requested is not before the Judicial Committee at the time it orders his discharge, the Judicial Committee must inform him of the order as soon as practicable.

COMPETING EXTRADITION REQUESTS

Competing extradition requests

126.—(1) This section applies if—

- (a) the Governor receives a valid request for a person’s extradition to an extradition territory;
- (b) the person is in the Territory;
- (c) before the person is extradited in pursuance of the request or discharged, the Governor receives another valid request for the person’s extradition.

(2) The Governor may—

- (a) order proceedings (or further proceedings) on one of the requests to be deferred until the other one has been disposed of, if neither of the requests has been disposed of;
- (b) order the person’s extradition in pursuance of the request under consideration to be deferred until the other request has been disposed of, if an order for his extradition in pursuance of the request under consideration has been made.

(3) In applying subsection (2) the Governor must take account in particular of these matters—

- (a) the relative seriousness of the offences concerned;
- (b) the place where each offence was committed (or was alleged to have been committed);
- (c) the date when each request was received;
- (d) whether, in the case of each offence, the person is accused of its commission (but not alleged to have been convicted) or is alleged to be unlawfully at large after conviction.

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CONSENT TO EXTRADITION

Consent to extradition: general

127.—(1) A person arrested under a warrant issued under section 71 may consent to his extradition to the extradition territory to which his extradition is requested.

(2) A person arrested under a provisional warrant may consent to his extradition to the extradition territory in which he is accused of the commission of an offence or is alleged to have been convicted of an offence.

(3) Consent under this section—

- (a) must be given in writing;
- (b) is irrevocable.

(4) Consent under this section which is given by a person before his case is sent to the Governor for the Governor's decision whether he is to be extradited must be given before the appropriate judge.

(5) Consent under this section which is given in any other case must be given to the Governor.

(6) A person may not give his consent under this section before the appropriate judge unless—

- (a) he is legally represented before the appropriate judge at the time he gives consent, or
- (b) he is a person to whom subsection (7) applies.

(7) This subsection applies to a person if—

- (a) he has been informed that, because the interests of justice so require it, he has a right to be represented by a legal representative at the public expense and has had the opportunity to apply for such representation, but he has refused or failed to apply;
- (b) he has applied for legal representation at the public expense but his application has been refused;
- (c) he was granted legal representation at the public expense but that representation was withdrawn.

(8) *Subsection (8) of the Act does not apply.*

(9) For the purposes of subsection (6) a person is to be treated as legally represented before the appropriate judge if (and only if) he has the assistance of counsel or a solicitor to represent him in the proceedings before the appropriate judge.

(10) Subsections (6), (7) and (9) do not apply to the British Antarctic Territory or the British Indian Ocean Territory.

Consent to extradition before case sent to Governor

128.—(1) This section applies if a person gives his consent under section 127 to the appropriate judge.

(2) If the judge has not fixed a date under section 75 or 76 on which the extradition hearing is to begin he is not required to do so.

(3) If the extradition hearing has begun the judge is no longer required to proceed or continue proceeding under sections 78 to 91.

(4) The judge must send the case to the Governor for his decision whether the person is to be extradited.

POST-EXTRADITION MATTERS

Consent to other offences being dealt with

129.—(1) This section applies if—

- (a) a person is extradited to an extradition territory in accordance with this Part;
- (b) the Governor receives a valid request for his consent to the person being dealt with in the territory for an offence other than the offence in respect of which he was extradited.

(2) A request for consent is valid if it is made by an authority which is an authority of the territory and which the Governor believes has the function of making requests for the consent referred to in subsection (1)(b) in that territory.

(3) The Governor must serve notice on the person that he has received the request for consent, unless he is satisfied that it would not be practicable to do so.

(4) The Governor must decide whether the offence is an extradition offence.

(5) If the Governor decides the question in subsection (4) in the negative he must refuse his consent.

(6) If the Governor decides that question in the affirmative he must decide whether the appropriate judge would send the case to him (for his decision whether the person was to be extradited) under sections 79 to 91 if—

- (a) the person were in the Territory, and
- (b) the judge were required to proceed under section 79 in respect of the offence for which the Governor's consent is requested.

(7) If the Governor decides the question in subsection (6) in the negative he must refuse his consent.

(8) If the Governor decides that question in the affirmative he must decide whether, if the person were in the Territory, his extradition in respect of the offence would be prohibited under section 94, 95 or 96.

(9) If the Governor decides the question in subsection (8) in the affirmative he must refuse his consent.

(10) If the Governor decides that question in the negative he may give his consent.

Consent to further extradition to extradition territory

130.—(1) This section applies if—

- (a) a person is extradited to an extradition territory (the requesting territory) in accordance with this Part;
- (b) the Governor receives a valid request for his consent to the person's extradition to another extradition territory for an offence other than the offence in respect of which he was extradited.

(2) A request for consent is valid if it is made by an authority which is an authority of the requesting territory and which the Governor believes has the function of making requests for the consent referred to in subsection (1)(b) in that territory.

(3) The Governor must serve notice on the person that he has received the request for consent, unless he is satisfied that it would not be practicable to do so.

(4) The Governor must decide whether the offence is an extradition offence in relation to the extradition territory referred to in subsection (1)(b).

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(5) If the Governor decides the question in subsection (4) in the negative he must refuse his consent.

(6) If the Governor decides that question in the affirmative he must decide whether the appropriate judge would send the case to him (for his decision whether the person was to be extradited) under sections 79 to 91 if—

- (a) the person were in the Territory, and
- (b) the judge were required to proceed under section 79 in respect of the offence for which the Governor's consent is requested.

(7) If the Governor decides the question in subsection (6) in the negative he must refuse his consent.

(8) If the Governor decides that question in the affirmative he must decide whether, if the person were in the Territory, his extradition in respect of the offence would be prohibited under section 94, 95 or 96.

(9) If the Governor decides the question in subsection (8) in the affirmative he must refuse his consent.

(10) If the Governor decides that question in the negative he may give his consent.

Return of person to serve remainder of sentence

132.—(1) This section applies if—

- (a) a person who is serving a sentence of imprisonment or another form of detention in the Territory is extradited to an extradition territory in accordance with this Part;
- (b) the person is returned to the Territory to serve the remainder of his sentence or the person otherwise returns to the Territory.

(2) Time during which the person was outside the Territory as a result of the extradition does not count as time served by the person as part of the sentence.

(3) But subsection (2) does not apply if—

- (a) the person was extradited for the purpose of being prosecuted for an offence, and
- (b) the person has not been convicted of the offence or of any other offence in respect of which the person was permitted to be dealt with in the extradition territory.

(4) In a case falling within subsection (3), time during which the person was outside the Territory as a result of the extradition counts as time served by the person as part of the sentence if (and only if) it was spent in custody in connection with the offence or any other offence in respect of which the person was permitted to be dealt with in the extradition territory.

(5) In a case where the person is not entitled to be released from detention pursuant to the sentence—

- (a) the person is liable to be detained in pursuance of the sentence, and
- (b) if at large, the person must be treated as being unlawfully at large.

(6) In a case where the person is entitled to be released from detention under early release provisions pursuant to the sentence—

- (a) if the person was released under early release provisions at the time of extradition, the application of the early release provisions is suspended until the person's return;
- (b) if the person was not released under early release provisions at that time, subsections (7) to (9) apply in relation to the person ("the offender").

(7) The offender is liable to be detained, on return, in any place in which the offender could have been detained pursuant to the sentence before the time of extradition.

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(8) A constable may—

- (a) take the offender into custody, and
- (b) convey the offender to the place mentioned in subsection (7).

(9) The offender must be released under early release provisions within the period of 5 days beginning when the offender is taken (or retaken) into custody under this section.

(10) In Pitcairn, subsection (11) applies if a person (“the offender”) is not entitled to be released from detention under early release provisions pursuant to the sentence, but has passed his parole eligibility date as defined in the Parole Ordinance of Pitcairn.

(11) As soon as practicable after the offender is taken into custody under this section, the Parole Commission of Pitcairn must consider the offender for release on parole in accordance with the Parole Ordinance of Pitcairn.

(12) In Pitcairn, for the purposes of this section, a person is not entitled to be released from detention pursuant to the sentence, irrespective of his parole eligibility date, if, at the time of extradition—

- (a) that person had not been considered for release by the Parole Commission of Pitcairn,
- (b) the Parole Commission of Pitcairn had declined to direct that the person be released on parole, or
- (c) a recall order was in force in respect of that person.

COSTS

Costs where extradition ordered

133.—(1) This section applies if any of the following occurs in relation to a person whose extradition is requested under this Part—

- (a) an order for the person’s extradition is made under this Part;
- (aa) the Supreme Court dismisses an application for leave to appeal to it under section 103 or 108;
- (b) the Supreme Court dismisses an appeal under section 103 or 108;
- (c) the Supreme Court or the Judicial Committee dismisses an application for leave to appeal to the Judicial Committee under section 114, if the application is made by the person;
- (d) the Judicial Committee dismisses an appeal under section 114, if the appeal is brought by the person.

(2) In a case falling within subsection (1)(a), the appropriate judge may make such order as he considers just and reasonable with regard to the costs to be paid by the person.

(2A) In a case falling within subsection (1)(aa), the Supreme Court may make such order as it considers just and reasonable with regard to the costs to be paid by the person.

(3) In a case falling within subsection (1)(b) by virtue of section 104(7), the judge who decides the question that is (or all the questions that are) the subject of a direction under section 104(1)(b) may make such order as he considers just and reasonable with regard to the costs to be paid by the person.

(4) In any other case falling within subsection (1)(b), the Supreme Court may make such order as it considers just and reasonable with regard to the costs to be paid by the person.

(5) In a case falling within subsection (1)(c) or (d), the court by which the application or appeal is dismissed may make such order as it considers just and reasonable with regard to the costs to be paid by the person.

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- (6) An order for costs under this section—
 - (a) must specify their amount;
 - (b) may name the person to whom they are to be paid.

Costs where discharge ordered

134.—(1) This section applies if any of the following occurs in relation to a person whose extradition to an extradition territory is requested under this Part—

- (a) an order for the person’s discharge is made under this Part;
- (b) the person is taken to be discharged under this Part;
- (ba) the Supreme Court dismisses an application for leave to appeal to it under section 105 or 110;
- (c) the Supreme Court dismisses an appeal under section 105 or 110;
- (d) the Supreme Court or the Judicial Committee dismisses an application for leave to appeal to the Judicial Committee under section 114, if the application is made on behalf of the extradition territory;
- (e) the Judicial Committee dismisses an appeal under section 114, if the appeal is brought on behalf of the extradition territory.

(2) In a case falling within subsection (1)(a), an order in favour of the person may be made by—

- (a) the appropriate judge, if the order for the person’s discharge is made by him or by the Governor;
- (b) the Supreme Court, if the order for the person’s discharge is made by it;
- (c) the Judicial Committee, if the order for the person’s discharge is made by it;

and such an order in favour of the person is to be such as the judge, the Supreme Court or the Judicial Committee considers just and reasonable to compensate the person for any expenses properly incurred by the person in the proceedings under this Part.

(3) In a case falling within subsection (1)(b), the appropriate judge may make such order for payment in favour of the person as he considers just and reasonable to compensate the person for any expenses properly incurred by the person in the proceedings under this Part.

(4) In a case falling within subsection (1)(ba), (c), (d) or (e), the court by which the application or appeal is dismissed may make such order for payment in favour of the person as it considers just and reasonable to compensate the person for any expenses properly incurred by the person in the proceedings under this Part.

REPATRIATION CASES

Persons serving sentences outside territory where convicted

136.—(1) This section applies if—

- (a) a request is made for a person’s extradition to an extradition territory and the request contains the statement referred to in subsection (2), or
- (b) a provisional warrant for a person’s arrest is sought on behalf of an extradition territory and the information laid before the magistrate contains the statement referred to in subsection (2).

(2) The statement is one that the person—

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- (a) is alleged to be unlawfully at large in one territory (the imprisoning territory) in which he was serving a sentence after conviction of an offence specified in the request by a court in another territory (the convicting territory), and
 - (b) was serving the sentence in pursuance of international arrangements for prisoners sentenced in one territory to be repatriated to another territory in order to serve their sentence.
- (3) If the extradition territory is either the imprisoning territory or the convicting territory—
- (a) section 70(3) has effect as if the reference to the statement referred to in subsection (4) of that section were a reference to the statement referred to in subsection (2) of this section;
 - (b) section 73(1) has effect as if the reference to a person within subsection (2) of that section were a reference to the person referred to in subsection (1)(b) of this section.
- (4) If the extradition territory is the imprisoning territory—
- (a) sections 71(2)(a), 73(3)(a) and 78(4)(b) have effect as if “an extradition offence” read “an extradition offence in relation to the convicting territory”;
 - (b) sections 74(8)(a) and 127(2) have effect as if “the extradition territory in which he is accused of the commission of an offence or is alleged to have been convicted of an offence” read “the imprisoning territory”;
 - (c) section 74(11)(b) has effect as if “the extradition territory” read “the imprisoning territory”;
 - (d) section 78(2)(e) has effect as if “the extradition territory” read “the convicting territory”;
 - (e) section 85(5) has effect as if after “entitled” there were inserted “in the convicting territory”;
 - (f) section 119(4) has effect as if “an extradition territory” read “the convicting territory” and as if “the extradition territory” in both places read “the convicting territory”;
 - (g) section 138(1) has effect as if “the extradition territory” read “the convicting territory”;
 - (h) in section 138, subsections (2), (3), (4), (5) and (7) have effect as if “the extradition territory” read “the convicting territory”.

INTERPRETATION

Extradition offences: person not sentenced for offence

137.—(1) This section sets out whether a person’s conduct constitutes an “extradition offence” for the purposes of this Part in a case where the person—

- (a) is accused in an extradition territory of an offence constituted by the conduct, or
- (b) has been convicted in that territory of an offence constituted by the conduct but not sentenced for it.

(2) The conduct constitutes an extradition offence in relation to the extradition territory if the conditions in subsection (3), (4) or (5) are satisfied.

(3) The conditions in this subsection are that—

- (a) the conduct occurs in the extradition territory;
- (b) the conduct would constitute an offence under the law of the Territory punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in the Territory;

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- (c) the conduct is so punishable under the law of the extradition territory.
- (4) The conditions in this subsection are that—
 - (a) the conduct occurs outside the extradition territory;
 - (b) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the Territory punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment;
 - (c) the conduct is so punishable under the law of the extradition territory.
- (5) The conditions in this subsection are that—
 - (a) the conduct occurs outside the extradition territory;
 - (b) no part of the conduct occurs in the Territory;
 - (c) the conduct constitutes, or if committed in the Territory would constitute, an offence mentioned in subsection (6);
 - (d) the conduct is punishable under the law of the extradition territory with imprisonment or another form of detention for a term of 12 months or a greater punishment.
- (6) The offences are—
 - (a) an offence under section 51 of Annex 1 to the International Criminal Court Act 2001 (Overseas Territories) Order 2009⁽⁴⁾ (genocide, crimes against humanity and war crimes);
 - (b) an offence under section 52 of Annex 1 to that Order (conduct ancillary to genocide etc committed outside the jurisdiction);
 - (c) an ancillary act, as defined in section 55 of Annex 1 to that Order, in relation to an offence falling within paragraph (a) or (b).
- (7) If the conduct constitutes an offence under the military law of the extradition territory but does not constitute an offence under the general criminal law of the Territory it does not constitute an extradition offence; and subsections (1) to (6) have effect subject to this.
- (7A) References in this section to “conduct” (except in the expression “equivalent conduct”) are to the conduct specified in the request for the person’s extradition.

Extradition offences: person sentenced for offence

- 138.**—(1) This section sets out whether a person’s conduct constitutes an “extradition offence” for the purposes of this Part where the person—
- (a) has been convicted, in the extradition territory to which extradition is requested, of an offence constituted by the conduct, and
 - (b) has been sentenced for the offence.
- (2) The conduct constitutes an extradition offence in relation to the extradition territory if the conditions in subsection (3), (4) or (5) are satisfied.
- (3) The conditions in this subsection are that—
- (a) the conduct occurs in the extradition territory;
 - (b) the conduct would constitute an offence under the law of the Territory punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in the Territory;

⁽⁴⁾ [S.I. 2009/1738](#), as amended by the International Criminal Court Act 2001 (Overseas Territories) (Amendment) Order 2010 [S.I. 2010/763](#).

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- (c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the extradition territory in respect of the conduct.
- (4) The conditions in this subsection are that—
 - (a) the conduct occurs outside the extradition territory;
 - (b) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the Territory punishable as mentioned in subsection (3)(b);
 - (c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the extradition territory in respect of the conduct.
- (5) The conditions in this subsection are that—
 - (a) the conduct occurs outside the extradition territory;
 - (b) no part of the conduct occurs in the Territory;
 - (c) the conduct constitutes, or if committed in the Territory would constitute, an offence mentioned in subsection (6);
 - (d) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the extradition territory in respect of the conduct.
- (6) The offences are—
 - (a) an offence under section 51 of Annex 1 to the International Criminal Court Act 2001 (Overseas Territories) Order 2009 (genocide, crimes against humanity and war crimes);
 - (b) an offence under section 52 of Annex 1 to that Order (conduct ancillary to genocide etc committed outside the jurisdiction);
 - (c) an ancillary offence, as defined in section 55 of Annex 1 to that Order, in relation to an offence falling within paragraph (a) or (b).
- (7) If the conduct constitutes an offence under the military law of the extradition territory but does not constitute an offence under the general criminal law of the Territory it does not constitute an extradition offence; and subsections (1) to (6) have effect subject to this.
- (7A) References in this section to “conduct” (except in the expression “equivalent conduct”) are to the conduct specified in the request for the person’s extradition.

The appropriate judge

139.—(1) The appropriate judge is a magistrate of the Territory, except the Island Magistrate of Pitcairn.

(2) *Subsection (2) of the Act does not apply.*

(3) *Subsection (3) of the Act does not apply.*

(3A) The use of the expression “the judge” in a section containing a previous reference to “the appropriate judge” or “the judge” does not in itself require both references to be read as referring to the same individual.

(4) This section applies for the purposes of this Part.

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The extradition hearing

140.—(1) The extradition hearing is the hearing at which the appropriate judge is to deal with a request for extradition to an extradition territory.

(2) This section applies for the purposes of this Part.

Unlawfully at large

140A.—(1) A person is alleged to be unlawfully at large after conviction of an offence if—

- (a) he is alleged to have been convicted of it, and
- (b) his extradition is sought for the purpose of his being sentenced for the offence or of his serving a sentence of imprisonment or another form of detention imposed in respect of the offence.

(2) This section applies for the purposes of this Part, other than sections 82 and 136.

Part 3

Extradition to the Territory

EXTRADITION TO THE TERRITORY FROM EXTRADITION OR OTHER TERRITORIES

Power to request extradition to the Territory

149A.—(1) The Governor may request the extradition of a person to the Territory from an extradition territory or any other territory.

(2) A request under subsection (1) must at least contain—

- (a) the statement referred to in subsection (3) and the information referred to in subsection (4); or
- (b) the statement referred to in subsection (5) and the information referred to in subsection (6).

(3) The statement is one that—

- (a) the person is accused in the Territory of the commission of an offence specified in the request, and
- (b) the request is made with a view to his arrest and extradition to the Territory for the purpose of being prosecuted for the offence.

(4) The information is—

- (a) particulars of the person's identity;
- (b) particulars of any other warrant issued in the Territory for the person's arrest in respect of that offence;
- (c) particulars of the circumstances in which the person is alleged to have committed the offence, including the conduct alleged to constitute the offence, the time and place at which he is alleged to have committed the offence and any provision of the law of the Territory under which the conduct is alleged to constitute an offence;
- (d) particulars of the sentence which may be imposed under the law of the Territory in respect of the offence if the person is convicted of it.

(5) The statement is one that—

- (a) the person has been convicted of an offence specified in the request by a court of the Territory, and
 - (b) the request is made with a view to his arrest and extradition to the Territory for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence.
- (6) The information is—
- (a) particulars of the person’s identity;
 - (b) particulars of the conviction;
 - (c) particulars of any other warrant issued in the Territory for the person’s arrest in respect of the offence;
 - (d) particulars of the sentence which may be imposed under the law of the Territory in respect of the offence, if the person has not been sentenced for the offence;
 - (e) particulars of the sentence which has been imposed under the law of the Territory in respect of the offence, if the person has been sentenced for the offence.
- (7) The Governor may only make a request under subsection (1) after having received advice from the designated prosecutor.
- (8) In this section, “designated prosecutor” has the same meaning as in section 83E(2).
- (9) This section does not apply to Bermuda.

Dealing with person for other offences: Commonwealth countries etc

- 150.**—(1) This section applies if—
- (a) a person is extradited to the Territory from an extradition territory under law of the territory corresponding to Part 2 of the Act, and
 - (b) the territory is a Commonwealth country, a British overseas territory, Guernsey, Jersey, the Isle of Man or the Hong Kong Special Administrative Region of the People’s Republic of China.
- (2) The person may be dealt with in the Territory for an offence committed before his extradition only if—
- (a) the offence is one falling within subsection (3), or
 - (b) the person has been given a reasonable opportunity to leave the Territory.
- (3) The offences are—
- (a) the offence in respect of which the person is extradited;
 - (b) a lesser offence disclosed by the information provided to the extradition territory in respect of that offence;
 - (c) an offence in respect of which consent to the person being dealt with is given by or on behalf of the relevant authority.
- (4) An offence is a lesser offence in relation to another offence if the maximum punishment for it is less severe than the maximum punishment for the other offence.
- (5) The relevant authority is—
- (a) if the person has been extradited from a Commonwealth country, the government of that country;
 - (b) if the person has been extradited from a British overseas territory, the Governor of that British overseas territory;

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- (c) if the person has been extradited from Guernsey, Jersey or the Isle of Man, the government of the island concerned;
 - (d) if the person has been extradited from the Hong Kong Special Administrative Region of the People's Republic of China, the government of the Region.
- (6) *Subsection (6) of the Act does not apply.*
- (7) *Subsection (7) of the Act does not apply.*
- (8) A person is dealt with in the Territory for an offence if—
- (a) he is tried there for it;
 - (b) he is detained with a view to trial there for it.

Dealing with person for other offences

151A.—(1) This section applies if a person is extradited to the Territory from an extradition territory which is not a territory falling within section 150(1)(b).

(2) The person may be dealt with in the Territory for an offence committed before the person's extradition only if—

- (a) the offence is one falling within subsection (3), or
 - (b) the condition in subsection (4) is satisfied.
- (3) The offences are—
- (a) the offence in respect of which the person is extradited;
 - (b) an offence disclosed by the information provided to the territory in respect of that offence;
 - (c) an offence in respect of which consent to the person being dealt with is given on behalf of the territory.
- (4) The condition is that—
- (a) the person has returned to the territory from which the person was extradited, or
 - (b) the person has been given a reasonable opportunity to leave the Territory.
- (5) A person is dealt with in the Territory for an offence if—
- (a) he is tried there for it;
 - (b) he is detained with a view to trial there for it.

Remission of punishment for other offences

152.—(1) This section applies if—

- (a) a person is extradited to the Territory from an extradition territory;
- (b) before his extradition he has been convicted of an offence in the Territory;
- (c) he has not been extradited in respect of that offence.

(2) The sentence for the offence must be treated as served but the person's conviction for the offence must be treated as a conviction for all other purposes.

Return of person acquitted or not tried

153.—(1) This section applies if—

- (a) a person is accused in the Territory of the commission of an offence;

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- (b) the person is extradited to the Territory in respect of the offence from an extradition territory;
 - (c) the condition in subsection (2) or the condition in subsection (3) is satisfied.
- (2) The condition is that—
- (a) proceedings against the person for the offence are not begun before the end of the required period, which is 6 months starting with the day on which the person arrives in the Territory on his extradition, and
 - (b) before the end of the period of 3 months starting immediately after the end of the required period the person asks the Governor to return him to the territory from which he was extradited.
- (3) The condition is that—
- (a) at his trial for the offence the person is acquitted or is discharged without conviction, and
 - (b) before the end of the period of 3 months starting immediately after the date of his acquittal or discharge the person asks the Governor to return him to the territory from which he was extradited.
- (4) *Subsection (4) of the Act does not apply.*
- (5) The Governor must arrange for him to be sent back, free of charge and with as little delay as possible, to the territory from which he was extradited to the Territory in respect of the offence.

Undertaking in relation to person serving sentence

- 153A.**—(1) This section applies if—
- (a) a person is accused in the Territory of the commission of an offence or has been convicted of an offence by or before a court of the Territory;
 - (b) the Governor makes a request for the extradition of the person;
 - (c) the person is serving a sentence of imprisonment or another form of detention in an extradition territory;
 - (d) the person's extradition to the Territory from the territory in pursuance of the request is made subject to a condition that an undertaking is given by or on behalf of the Territory with regard to the person's treatment or return to the territory (or both).
- (2) The Governor may give an undertaking to a person acting on behalf of the territory with regard to either or both of these things—
- (a) the treatment in the Territory of the person in respect of whom the request for extradition is made;
 - (b) the return of that person to the territory.
- (3) The terms which may be included by the Governor in an undertaking given under subsection (2) in relation to a person accused in the Territory of the commission of an offence include terms—
- (a) that the person be kept in custody until the conclusion of the proceedings against the person for the offence and any other offence in respect of which the person is permitted to be dealt with in the Territory;
 - (b) that the person be returned to the territory to serve the remainder of the sentence on the conclusion of those proceedings.

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(4) The terms which may be included by the Governor in an undertaking given under subsection (2) in relation to a person who has been convicted of an offence by or before a court of the Territory include terms that the person be returned to the territory to serve the remainder of his sentence after the person would otherwise be released from detention pursuant to the sentence imposed in the Territory (whether or not under early release provisions).

(5) If the person is to be returned to a territory by virtue of an undertaking given under subsection (2), the undertaking is sufficient authority for a constable—

- (a) to remove the person from any prison or other institution where the person is detained;
- (b) to keep the person in custody until returned;
- (c) to convey the person to the territory.

Return of person in pursuance of undertaking

153B.—(1) This section applies if—

- (a) an undertaking is given under section 153A(2) as to the return of a person to an extradition territory;
- (b) the person is returned to the territory in pursuance of the undertaking;
- (c) the person is returned to the Territory to serve the remainder of any sentence imposed in the Territory or the person otherwise returns to the Territory.

(2) Time during which the person was outside the Territory as a result of the undertaking given under section 153A(2) does not count as time served by the person as part of the sentence.

(3) If the person is not entitled to be released from detention pursuant to the sentence—

- (a) the person is liable to be detained in pursuance of the sentence, and
- (b) if at large, the person must be treated as being unlawfully at large.

(4) If the person is entitled to be released from detention under early release provisions pursuant to the sentence—

- (a) if the person was released under early release provisions at the time of return to the territory, the early release is suspended until the person's return to the Territory;
- (b) if the person was not released under early release provisions at that time, subsections (5) to (7) apply in relation to the person ("the offender").

(5) The offender is liable to be detained, on return to the Territory, in any place in which the offender could have been detained pursuant to the sentence before the time of return to the territory.

(6) A constable may—

- (a) take the offender into custody, and
- (b) convey the offender to the place mentioned in subsection (5).

(7) The offender must be released under early release provisions within the period of 5 days beginning when the offender is taken (or retaken) into custody under this section.

(8) In Pitcairn, subsection (9) applies if a person ("the offender") is not entitled to be released from detention under early release provisions pursuant to the sentence, but has passed his parole eligibility date, as defined in the Parole Ordinance of Pitcairn.

(9) As soon as practicable after the offender is taken into custody under this section, the Parole Commission of Pitcairn must consider the offender for release on parole in accordance with the Parole Ordinance of Pitcairn.

(10) In Pitcairn, for the purposes of this section a person is not entitled to be released from detention pursuant to the sentence, irrespective of his parole eligibility date, if at the time of extradition—

- (a) that person had not been considered for release by the Parole Commission of Pitcairn;
- (b) the Parole Commission of Pitcairn had declined to direct that the person be released on parole; or
- (c) a recall order was in force in respect of that person.

Return to extraditing territory to serve sentence

153C.—(1) This section applies if—

- (a) a person is extradited to the Territory from an extradition territory for the purposes of being prosecuted for an offence;
- (b) the person's extradition is made subject to a condition that an undertaking is given by or on behalf of the Territory as to the person's return to the territory.

(2) The Governor may give an undertaking to a person acting on behalf of the territory as to the person's return to that territory.

(3) The terms which may be included by the Governor in an undertaking given under subsection (2) in relation to a person include terms that if the person is convicted of an offence and a sentence of imprisonment or another form of detention is imposed in respect of it, the person is to be returned to the territory to serve the sentence.

(4) A person who is to be returned to a territory by virtue of an undertaking given under subsection (2) must be returned as soon as is reasonably practicable after the sentence is imposed and any other proceedings in respect of the offence are concluded.

(5) If subsection (4) is complied with the sentence for the offence is treated as served but the person's conviction for the offence must be treated as a conviction for all other purposes.

(6) The sentence for the offence is treated as served under subsection (5) only in so far as it consists of the sentence of imprisonment or another form of detention mentioned in subsection (3).

(7) Subsection (8) applies if—

- (a) subsection (4) is not complied with, and
- (b) the person applies to the court which imposed the sentence to expedite return to the territory.

(8) The court must order return by such date as is specified in the order unless reasonable cause is shown for the delay.

(9) If a person is to be returned by virtue of an undertaking given under subsection (2), a constable may—

- (a) remove the person from any prison or other institution where the person is detained;
- (b) keep the person in custody until returned;
- (c) convey the person to the territory to which the person is to be returned.

Sections 153A and 153C etc: supplementary

153D. Nothing in section 153A or 153C requires the return of a person to an extradition territory in a case in which the Governor is not satisfied that the return is compatible with the Human Rights Convention or with the principle of non-refoulement whether under the Refugee Convention or otherwise.

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Restriction on bail where undertaking given by Governor

- 154.**—(1) This section applies in relation to a person if—
- (a) the Governor has given an undertaking in connection with the person’s extradition to the Territory, and
 - (b) the undertaking includes terms that the person be kept in custody until the conclusion of any proceedings against him in the Territory for an offence.
- (2) A court, judge or magistrate may grant bail to the person in the proceedings only if the court, judge or magistrate considers that there are exceptional circumstances which justify it.

Part 4

Police Powers

WARRANTS AND ORDERS

Search and seizure warrants

156.—(1) A magistrate may, on an application made to him by a constable, issue a search and seizure warrant if he is satisfied that the requirements for the issue of a search and seizure warrant are fulfilled.

- (2) The application for a search and seizure warrant must state that—
- (a) the extradition of a person specified in the application is sought under Part 2;
 - (b) the warrant is sought in relation to premises specified in the application;
 - (c) the warrant is sought in relation to material, or material of a description, specified in the application;
 - (d) that material, or material of that description, is believed to be on the premises.
- (3) *Subsection (3) of the Act does not apply.*
- (4) The application must also state that the person is accused in an extradition territory specified in the application of the commission of an offence—
- (a) which is specified in the application, and
 - (b) which is an extradition offence within the meaning given by section 137.
- (5) A search and seizure warrant is a warrant authorising a constable—
- (a) to enter and search the premises specified in the application for the warrant, and
 - (b) to seize and retain any material found there which falls within subsection (6).
- (6) Material falls within this subsection if—
- (a) it would be likely to be admissible evidence at a trial in the Territory for the offence specified in the application for the warrant (on the assumption that conduct constituting the offence would constitute an offence in the Territory), and
 - (b) it does not consist of or include items subject to legal privilege, excluded material or special procedure material.
- (7) *Subsection (7) of the Act does not apply.*
- (8) The requirements for the issue of a search and seizure warrant are that there are reasonable grounds for believing that—
- (a) the offence specified in the application has been committed by the person so specified;

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- (b) the person is in the Territory or is on his way to the Territory;
 - (c) the offence is an extradition offence within the meaning given by section 137;
 - (d) there is material on premises specified in the application which falls within subsection (6);
 - (e) any of the conditions referred to in subsection (9) is satisfied.
- (9) The conditions are—
- (a) that it is not practicable to communicate with a person entitled to grant entry to the premises;
 - (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with a person entitled to grant access to the material referred to in subsection (8)(d);
 - (c) that entry to the premises will not be granted unless a warrant is produced;
 - (d) that the purpose of the search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.

Production orders

157.—(1) A magistrate may, on an application made to him by a constable, make a production order if he is satisfied that the requirements for the making of a production order are fulfilled.

- (2) The application for a production order must state that—
- (a) the extradition of a person specified in the application is sought under Part 2;
 - (b) the order is sought in relation to premises specified in the application;
 - (c) the order is sought in relation to material, or material of a description, specified in the application;
 - (d) the material is special procedure material or excluded material;
 - (e) a person specified in the application appears to be in possession or control of the material.
- (3) *Subsection (3) of the Act does not apply.*
- (4) The application must also state that the person is accused in an extradition territory specified in the application of the commission of an offence—
- (a) which is specified in the application, and
 - (b) which is an extradition offence within the meaning given by section 137.
- (5) A production order is an order either—
- (a) requiring the person the application for the order specifies as appearing to be in possession or control of special procedure material or excluded material to produce it to a constable (within the period stated in the order) for him to take away, or
 - (b) requiring that person to give a constable access to the special procedure material or excluded material within the period stated in the order.
- (6) The period stated in a production order must be a period of 7 days starting with the day on which the order is made, unless it appears to the magistrate by whom the order is made that a longer period would be appropriate.
- (7) Production orders have effect as if they were orders of the court.

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Requirements for making of production order

- 158.**—(1) These are the requirements for the making of a production order.
- (2) There must be reasonable grounds for believing that—
- (a) the offence specified in the application has been committed by the person so specified;
 - (b) the person is in the Territory or on his way to the Territory;
 - (c) the offence is an extradition offence within the meaning given by section 137;
 - (d) there is material which consists of or includes special procedure material or excluded material on premises specified in the application;
 - (e) the material would be likely to be admissible evidence at a trial in the Territory for the offence specified in the application (on the assumption that conduct constituting that offence would constitute an offence in the Territory).
- (3) *Subsection (3) of the Act does not apply.*
- (4) It must appear that other methods of obtaining the material—
- (a) have been tried without success, or
 - (b) have not been tried because they were bound to fail.
- (5) It must be in the public interest that the material should be produced or that access to it should be given.

Computer information

- 159.**—(1) This section applies if any of the special procedure material or excluded material specified in an application for a production order consists of information stored in any electronic form.
- (2) If the order is an order requiring a person to produce the material to a constable for him to take away, it has effect as an order to produce the material in a form—
- (a) in which it can be taken away by him;
 - (b) in which it is visible and legible or from which it can readily be produced in a visible and legible form.
- (3) If the order is an order requiring a person to give a constable access to the material, it has effect as an order to give him access to the material in a form—
- (a) in which it is visible and legible, or
 - (b) from which it can readily be produced in a visible and legible form.

Warrants: special procedure material and excluded material

- 160.**—(1) A magistrate may, on an application made to him by a constable, issue a warrant under this section if he is satisfied that—
- (a) the requirements for the making of a production order are fulfilled, and
 - (b) the further requirement for the issue of a warrant under this section is fulfilled.
- (2) The application for a warrant under this section must state that—
- (a) the extradition of a person specified in the application is sought under Part 2;
 - (b) the warrant is sought in relation to premises specified in the application;
 - (c) the warrant is sought in relation to material, or material of a description, specified in the application;

- (d) the material is special procedure material or excluded material.
- (3) *Subsection (3) of the Act does not apply.*
- (4) The application must also state that the person is accused in an extradition territory specified in the application of the commission of an offence—
 - (a) which is specified in the application, and
 - (b) which is an extradition offence within the meaning given by section 137.
- (5) A warrant under this section authorises a constable to enter and search the premises specified in the application for the warrant and—
 - (a) to seize and retain any material found there which falls within subsection (6) and which is special procedure material, if the application for the warrant states that the warrant is sought in relation to special procedure material;
 - (b) to seize and retain any material found there which falls within subsection (6) and which is excluded material, if the application for the warrant is sought in relation to excluded material.
- (6) Material falls within this subsection if it would be likely to be admissible evidence at a trial in the Territory for the offence specified in the application for the warrant (on the assumption that conduct constituting that offence would constitute an offence in the Territory).
- (7) *Subsection (7) of the Act does not apply.*
- (8) The further requirement for the issue of a warrant under this section is that any of these conditions is satisfied—
 - (a) it is not practicable to communicate with a person entitled to grant entry to the premises;
 - (b) it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with a person entitled to grant access to the material referred to in section 158(2)(d);
 - (c) the material contains information which is subject to a restriction on disclosure or an obligation of secrecy contained in an enactment (including one passed after the Act) and is likely to be disclosed in breach of the restriction or obligation if a warrant is not issued.

SEARCH AND SEIZURE WITHOUT WARRANT

Entry and search of premises for purposes of arrest

161.—(1) This section applies if a constable has power to arrest a person under an extradition arrest power.

(2) A constable may enter and search any premises for the purpose of exercising the power of arrest if he has reasonable grounds for believing that the person is on the premises.

(3) The power to search conferred by subsection (2) is exercisable only to the extent that is reasonably required for the purpose of exercising the power of arrest.

(4) A constable who has entered premises in exercise of the power conferred by subsection (2) may seize and retain anything which is on the premises if he has reasonable grounds for believing—

- (a) that it has been obtained in consequence of the commission of an offence or it is evidence in relation to an offence, and
- (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

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- (5) An offence includes an offence committed outside the Territory.
- (6) If the premises contain 2 or more separate dwellings, the power conferred by subsection (2) is a power to enter and search only—
 - (a) any parts of the premises which the occupiers of any dwelling comprised in the premises use in common with the occupiers of any other dwelling comprised in the premises, and
 - (b) any dwelling comprised in the premises in which the constable has reasonable grounds for believing that the person may be.

Entry and search of premises on arrest

162.—(1) This section applies if a person has been arrested under an extradition arrest power at a place other than a police station.

(2) A constable may enter and search any premises in which the person was at the time of his arrest or immediately before his arrest if he has reasonable grounds for believing—

- (a) if the person has not been convicted of the relevant offence, that there is on the premises evidence (other than items subject to legal privilege) relating to the relevant offence;
 - (b) in any case, that there is on the premises evidence (other than items subject to legal privilege) relating to the identity of the person.
- (3) The relevant offence is the offence—
- (a) *Paragraph (a) of the Act does not apply; and*
 - (b) *Paragraph (b) of the Act does not apply.*
 - (c) in respect of which extradition is requested, if the arrest was under a warrant issued under section 71;
 - (d) of which the person is accused, if the arrest was under a provisional warrant.

(4) The power to search conferred by subsection (2)—

- (a) if the person has not been convicted of the relevant offence, is a power to search for evidence (other than items subject to legal privilege) relating to the relevant offence;
- (b) in any case, is a power to search for evidence (other than items subject to legal privilege) relating to the identity of the person.

(5) The power to search conferred by subsection (2) is exercisable only to the extent that it is reasonably required for the purpose of discovering evidence in respect of which the power is available by virtue of subsection (4).

(6) A constable may seize and retain anything for which he may search by virtue of subsections (4) and (5).

(7) A constable who has entered premises in exercise of the power conferred by subsection (2) may seize and retain anything which is on the premises if he has reasonable grounds for believing—

- (a) that it has been obtained in consequence of the commission of an offence or it is evidence in relation to an offence, and
- (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

(8) An offence includes an offence committed outside the Territory.

(9) If the premises contain 2 or more separate dwellings, the power conferred by subsection (2) is a power to enter and search only—

- (a) any dwelling in which the arrest took place or in which the person was immediately before his arrest, and
- (b) any parts of the premises which the occupier of any such dwelling uses in common with the occupiers of any other dwelling comprised in the premises.

Search of person on arrest

163.—(1) This section applies if a person has been arrested under an extradition arrest power at a place other than a police station.

(2) A constable may search the person if he has reasonable grounds for believing that the person may present a danger to himself or others.

(3) A constable may search the person if he has reasonable grounds for believing that the person may have concealed on him anything—

- (a) which he might use to assist him to escape from lawful custody;
- (b) which might be evidence relating to an offence or to the identity of the person.

(4) The power to search conferred by subsection (3)—

- (a) is a power to search for anything falling within paragraph (a) or (b) of that subsection;
- (b) is exercisable only to the extent that is reasonably required for the purpose of discovering such a thing.

(5) The powers conferred by subsections (2) and (3)—

- (a) do not authorise a constable to require a person to remove any of his clothing in public, other than an outer coat, jacket or gloves;
- (b) authorise a search of a person's mouth.

(6) A constable searching a person in exercise of the power conferred by subsection (2) may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to any other person.

(7) A constable searching a person in exercise of the power conferred by subsection (3) may seize and retain anything he finds if he has reasonable grounds for believing—

- (a) that the person might use it to assist him to escape from lawful custody;
- (b) that it is evidence of an offence or of the identity of the person or has been obtained in consequence of the commission of an offence.

(8) An offence includes an offence committed outside the Territory.

Entry and search of premises after arrest

164.—(1) This section applies if a person has been arrested under an extradition arrest power.

(2) A constable may enter and search any premises occupied or controlled by the person if the constable has reasonable grounds for suspecting—

- (a) if the person has not been convicted of the relevant offence, that there is on the premises evidence (other than items subject to legal privilege) relating to the relevant offence;
- (b) in any case, that there is on the premises evidence (other than items subject to legal privilege) relating to the identity of the person.

(3) The relevant offence is the offence—

- (a) *Paragraph (a) of the Act does not apply; and*

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- (b) *Paragraph (b) of the Act does not apply.*
 - (c) in respect of which extradition is requested, if the arrest was under a warrant issued under section 71;
 - (d) of which the person is accused, if the arrest was under a provisional warrant.
- (4) The power to search conferred by subsection (2)—
- (a) if the person has not been convicted of the relevant offence, is a power to search for evidence (other than items subject to legal privilege) relating to the relevant offence;
 - (b) in any case, is a power to search for evidence (other than items subject to legal privilege) relating to the identity of the person.
- (5) The power to search conferred by subsection (2) is exercisable only to the extent that it is reasonably required for the purpose of discovering evidence in respect of which the power is available by virtue of subsection (4).
- (6) A constable may seize and retain anything for which he may search by virtue of subsections (4) and (5).
- (7) A constable who has entered premises in exercise of the power conferred by subsection (2) may seize and retain anything which is on the premises if he has reasonable grounds for believing—
- (a) that it has been obtained in consequence of the commission of an offence or it is evidence in relation to an offence, and
 - (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.
- (8) An offence includes an offence committed outside the Territory.

TREATMENT FOLLOWING ARREST

Fingerprints and samples

- 166.**—(1) This section applies if a person has been arrested under an extradition arrest power and is detained at a police station.
- (2) Fingerprints may be taken from the person only if they are taken by a constable—
- (a) with the appropriate consent given in writing, or
 - (b) without that consent, under subsection (4).
- (3) A non-intimate sample may be taken from the person only if it is taken by a constable—
- (a) with the appropriate consent given in writing, or
 - (b) without that consent, under subsection (4).
- (4) Fingerprints or a non-intimate sample may be taken from a person without the appropriate consent only if a police officer of at least the rank of inspector authorises the fingerprints or sample to be taken.

Searches and examination

- 167.**—(1) This section applies if a person has been arrested under an extradition arrest power and is detained at a police station.
- (2) The person may be searched or examined, or both, for the purpose of facilitating the ascertainment of his identity.
- (3) An identifying mark found on a search or examination under this section may be photographed—

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- (a) with the appropriate consent, or
 - (b) without the appropriate consent, if that consent is withheld or it is not practicable to obtain it.
- (4) The only persons entitled to carry out a search or examination, or take a photograph, under this section are—
- (a) constables;
 - (b) persons designated for the purposes of this section by a constable.
- (5) A person may not under this section—
- (a) carry out a search or examination of a person of the opposite sex;
 - (b) take a photograph of any part of the body (other than the face) of a person of the opposite sex.
- (6) An intimate search may not be carried out under this section.
- (7) Ascertaining a person's identity includes showing that he is not a particular person.
- (8) Taking a photograph includes using a process by means of which a visual image may be produced; and photographing a person must be construed accordingly.
- (9) Mark includes features and injuries and a mark is an identifying mark if its existence in a person's case facilitates the ascertainment of his identity.

Photographs

- 168.**—(1) This section applies if a person has been arrested under an extradition arrest power and is detained at a police station.
- (2) The person may be photographed—
- (a) with the appropriate consent, or
 - (b) without the appropriate consent, if that consent is withheld or it is not practicable to obtain it.
- (3) A person proposing to take a photograph of a person under this section—
- (a) may for the purpose of doing so require the removal of any item or substance worn on or over the whole or any part of the head or face of the person to be photographed, and
 - (b) if the requirement is not complied with may remove the item or substance himself.
- (4) The only persons entitled to take a photograph under this section are—
- (a) constables;
 - (b) persons designated for the purposes of this section by a constable.
- (5) Taking a photograph includes using a process by means of which a visual image may be produced; and photographing a person must be construed accordingly.

DELIVERY OF SEIZED PROPERTY

Delivery of seized property

- 172.**—(1) This section applies to anything which has been seized or produced under this Part.
- (2) A constable may deliver any such thing to a person who is acting on behalf of an authority if the constable has reasonable grounds for believing that the authority—
- (a) is an authority of the relevant territory, and

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- (b) has functions such that it is appropriate for the thing to be delivered to it.
- (3) If the relevant seizure power was a warrant issued under this Part, or the thing was produced under an order made under this Part, the relevant territory is the extradition territory specified in the application for the warrant or order.
- (4) If the relevant seizure power was section 161(4), 162(6) or (7), 163(6) or (7) or 164(6) or (7), the relevant territory is—
 - (a) *Paragraph (a) of the Act does not apply; and*
 - (b) *Paragraph (b) of the Act does not apply.*
 - (c) the territory to which a person’s extradition is requested, in a case where the applicable extradition arrest power is a warrant issued under section 71;
 - (d) the territory in which a person is accused of the commission of an offence or has been convicted of an offence, in a case where the applicable extradition arrest power is a provisional warrant.
- (5) The applicable extradition arrest power is—
 - (a) the extradition arrest power under which a constable had a power of arrest, if the relevant seizure power was section 161(4);
 - (b) the extradition arrest power under which a person was arrested, if the relevant seizure power was section 162(6) or (7), 163(6) or (7) or 164(6) or (7).
- (6) The relevant seizure power is the power under which the thing was seized.

GENERAL

Interpretation

- 174.**—(1) Subsections (2) to (8) apply for the purposes of this Part.
- (2) Each of these is an extradition arrest power—
 - (a) *Paragraph (a) of the Act does not apply; and*
 - (b) *Paragraph (b) of the Act does not apply.*
 - (c) a warrant issued under section 71;
 - (d) a provisional warrant.
 - (3) “Excluded material” has the meaning given by section 174A.
 - (4) “Items subject to legal privilege” has the meaning given by section 174B.
 - (5) “Premises” includes any place and, in particular, includes—
 - (a) any vehicle, vessel, aircraft or hovercraft;
 - (b) any offshore installation;
 - (c) any tent or moveable structure.
 - (6) “Special procedure material” has the meaning given by section 174C.
 - (7) The expressions in subsection (8) have the meanings given by section 174D.
 - (8) The expressions are—
 - (a) appropriate consent;
 - (b) fingerprints;
 - (c) intimate search;
 - (d) non-intimate sample.

Meaning of “excluded material”

174A.—(1) Subject to the following provisions of this section, in this Part “excluded material” means—

- (a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence;
- (b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence;
- (c) journalistic material which a person holds in confidence and which consists—
 - (i) of documents, or
 - (ii) of records other than documents.

(2) A person holds material other than journalistic material in confidence for the purposes of this section if he holds it subject—

- (a) to an express or implied undertaking to hold it in confidence, or
- (b) to a restriction on disclosure or an obligation of secrecy contained in any enactment, including an enactment passed after the Act.

(3) A person holds journalistic material in confidence for the purposes of this section if—

- (a) he holds it subject to such an undertaking, restriction or obligation, and
- (b) it has been continuously held (by one or more persons) subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism.

(4) In this section, “personal records” means documentary and other records concerning a person (whether living or dead) who can be identified from them and relating to—

- (a) the physical or mental health of the person;
- (b) spiritual counselling or assistance given or to be given to the person;
- (c) counselling or assistance given or to be given to the person, for the purposes of personal welfare, by any voluntary organisation or by any person who,—
 - (i) by reason of their office or occupation, has responsibilities for the personal welfare of the person; or
 - (ii) by reason of an order of a court, has responsibilities for the supervision of the person.

(5) In this section, “journalistic material” means material acquired or created for the purposes of journalism; but material is only journalistic material for the purposes of the Act if it is in the possession of a person who acquired or created it for the purposes of journalism.

(6) A person who receives material from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for that purpose.

Meaning of “items subject to legal privilege”

174B.—(1) Subject to subsection (2), in this Part “items subject to legal privilege” means—

- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such

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representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

- (c) items enclosed with or referred to in such communications and made—
 - (i) in connection with the giving of legal advice, or
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,when they are in the possession of a person who is entitled to possession of them.

(2) Items held with the intention of furthering a criminal purpose are not items subject to legal privilege.

Meaning of “special procedure material”

174C.—(1) In this Part “special procedure material” means—

- (a) material to which subsection (2) applies, and
- (b) journalistic material, other than excluded material.

(2) Subject to the following provisions of this section, this subsection applies to material, other than items subject to legal privilege and excluded material, in the possession of a person who—

- (a) acquired or created it in the course of any trade, business, profession or other occupation or for the purpose of any paid or unpaid office, and
- (b) holds it subject—
 - (i) to an express or implied undertaking to hold it in confidence, or
 - (ii) to a restriction or obligation such as is mentioned in section 174A(2)(b).

(3) Where material is acquired—

- (a) by an employee from his employer and in the course of his employment, or
- (b) by a company from an associated company,

it is only special procedure material if it was special procedure material immediately before the acquisition.

(4) Where material is created by an employee in the course of his employment, it is only special procedure material if it would have been special procedure material had his employer created it.

(5) Where material is created by a company on behalf of an associated company, it is only special procedure material if it would have been special procedure material had the associated company created it.

(6) For the purposes of this section, a company is another’s “associated company” at a particular time if, at that time or at any other time within the preceding 12 months—

- (a) one of them has control of the other, or
- (b) both are under the control of the same person or persons.

(7) In this section, “journalistic material” means material acquired or created for the purposes of journalism; but material is only journalistic material for the purposes of the Act if it is in the possession of a person who acquired or created it for the purposes of journalism.

(8) A person who receives material from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for that purpose.

Meaning of miscellaneous expressions

174D. In this Part—

“appropriate consent” means—

- (a) in relation to a person who has attained the age of 17 years, the consent of that person;
- (b) in relation to a person who has not attained that age but has attained the age of 14 years, the consent of that person and his parent or guardian; and
- (c) in relation to a person who has not attained the age of 14 years, the consent of his parent or guardian;

“fingerprints”, in relation to any person, means a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of—

- (a) any of that person’s fingers, or
- (b) either of his palms;

“intimate sample” means—

- (a) a sample of blood, semen or any other tissue fluid, urine or pubic hairs;
- (b) a dental impression;
- (c) a swab taken from any part of a person’s genitals (including pubic hair) or from a person’s body orifice other than the mouth;

“intimate search” means a search which consists of the physical examination of a person’s body orifices other than the mouth;

“non-intimate sample” means—

- (a) a sample of hair other than pubic hair;
- (b) a sample taken from a nail or from under a nail;
- (c) a swab taken from any part of a person’s body other than a part from which a swab taken would be an intimate sample;
- (d) saliva;
- (e) a skin impression.

Part 5

Miscellaneous and General

COMPETING EXTRADITION CLAIMS

Proceedings on deferred request

180.—(1) This section applies if—

- (a) an order is made under the Act deferring proceedings on an extradition claim in respect of a person (the deferred claim) until another extradition claim in respect of the person has been disposed of, and
 - (b) the other extradition claim is disposed of in the person’s favour.
- (2) The judge may make an order for proceedings on the deferred claim to be resumed.
- (3) No order under subsection (2) may be made after the end of the required period.

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(4) If the person applies to the appropriate judge to be discharged, the judge may order his discharge.

(5) If the person applies to the appropriate judge to be discharged, the judge must order his discharge if—

(a) the required period has ended, and

(b) the judge has not made an order under subsection (2) or ordered the person's discharge.

(6) The required period is 21 days starting with the day on which the other extradition claim is disposed of.

(7) *Subsection (7) of the Act does not apply.*

(8) Section 139 applies for determining the appropriate judge.

(9) An extradition claim is made in respect of a person if a request for his extradition is made.

(10) An extradition claim made in respect of a person is disposed of in the person's favour if the request is disposed of as mentioned in subsection (2)(a) or (b) of section 213.

Proceedings where extradition deferred

181.—(1) This section applies if—

(a) an order is made under the Act deferring a person's extradition in pursuance of an extradition claim (the deferred claim) until another extradition claim in respect of him has been disposed of;

(b) the other extradition claim is disposed of in the person's favour.

(2) The judge may make an order for the person's extradition in pursuance of the deferred claim to cease to be deferred.

(3) No order under subsection (2) may be made after the end of the required period.

(4) If the person applies to the appropriate judge to be discharged, the judge may order his discharge.

(5) If the person applies to the appropriate judge to be discharged, the judge must order his discharge if—

(a) the required period has ended, and

(b) the judge has not made an order under subsection (2) or ordered the person's discharge.

(6) The required period is 21 days starting with the day on which the other extradition claim is disposed of.

(7) *Subsection (7) of the Act does not apply.*

(8) Section 139 applies for determining the appropriate judge.

(9) An extradition claim is made in respect of a person if a request for his extradition is made.

(10) An extradition claim made in respect of a person is disposed of in a person's favour if the request is disposed of as mentioned in subsection (2)(a) or (b) of section 213.

RE-EXTRADITION

Re-extradition: preliminary

186.—(1) Section 187 applies in relation to a person if the conditions in subsections (2) to (6) are satisfied.

(2) The first condition is that the person was extradited to an extradition territory in accordance with Part 2.

(3) The second condition is that the person was serving a sentence of imprisonment or another form of detention in the Territory (the Territory sentence) before he was extradited.

(4) The third condition is that the request in pursuance of which he was extradited contained a statement that the person was accused of the commission of an offence.

(5) The fourth condition is that a certificate issued by a judicial authority of the extradition territory shows that—

(a) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment (the overseas sentence) was imposed on the person in the extradition territory;

(b) the overseas sentence was imposed on him in respect of—

(i) the offence specified in the request, or

(ii) any other offence committed before his extradition in respect of which he was permitted to be dealt with in the extradition territory.

(6) The fifth condition is that before serving the overseas sentence the person was returned to the Territory to serve the remainder of the Territory sentence.

Re-extradition hearing

187.—(1) If this section applies in relation to a person, as soon as practicable after the relevant time the person must be brought before the appropriate judge for the judge to decide whether the person is to be extradited again to the extradition territory in which the overseas sentence was imposed.

(2) The relevant time is the time at which the person would otherwise be released from detention pursuant to the Territory sentence (whether or not under early release provisions).

(3) If subsection (1) is not complied with and the person applies to the judge to be discharged, the judge must order his discharge.

(4) The person must be treated as continuing in legal custody until he is brought before the appropriate judge under subsection (1) or he is discharged under subsection (3).

(5) If the person is brought before the appropriate judge under subsection (1) the judge must decide whether the territory in which the overseas sentence was imposed is an extradition territory or is not an extradition territory.

(6) *Subsection (6) of the Act does not apply.*

(7) If the judge decides that the territory is an extradition territory, section 189 applies.

(8) If the judge decides that the territory is not an extradition territory, he must order the person's discharge.

(9) A person's discharge as a result of this section or section 189 does not affect any conditions on which he is released from detention pursuant to the Territory sentence.

(10) Section 139 applies for the purposes of this section as it applies for the purposes of Part 2.

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Re-extradition to extradition territories

- 189.**—(1) If this section applies, the Act applies as it would if—
- (a) a valid request for the person’s extradition to the extradition territory had been made;
 - (b) the request contained a statement that the person had been convicted of the relevant offence;
 - (c) the relevant offence were specified in the request;
 - (d) the hearing at which the appropriate judge is to make the decision referred to in section 187(1) were the extradition hearing;
 - (e) the proceedings before the judge were under Part 2.
- (2) As applied by subsection (1) the Act has effect with the modifications set out in Part 2 of Schedule 1 to the Act.
- (3) The relevant offence is the offence in respect of which the overseas sentence is imposed.

SPECIAL EXTRADITION ARRANGEMENTS

Special extradition arrangements

- 194.**—(1) This section applies if the Governor believes that—
- (a) arrangements have been made between the Territory and another territory for the extradition of a person to or from the territory; and
 - (b) the territory is not an extradition territory.
- (2) The Governor may certify that the conditions in paragraphs (a) and (b) are satisfied in relation to the extradition of the person.
- (3) If the Governor issues a certificate under subsection (2) the Act applies to the territory as if the territory were an extradition territory.
- (4) As applied by subsection (3), the Act has effect—
- (a) as if sections 71(4), 73(5), 74(11)(b), 84(7) and 86(7) were omitted; and
 - (b) with any other modifications specified in the certificate.
- (5) A certificate under subsection (2) in relation to a person is conclusive evidence that the conditions in paragraphs (a) and (b) of subsection (1) are satisfied in relation to the person’s extradition.
- (6) This section does not apply to Bermuda.

GENOCIDE ETC

Genocide, crimes against humanity and war crimes

- 196.**—(1) This section applies if a valid request for a person’s extradition is made in respect of an offence mentioned in subsection (2).
- (2) The offences are—
- (a) an offence that if committed in the Territory would be punishable as an offence under section 51 of Annex 1 to the International Criminal Court Act 2001 (Overseas Territories) Order 2009⁽⁵⁾ (genocide, crimes against humanity and war crimes);

(5) [S.I. 2009/1738](#), as amended by the International Criminal Court Act 2001 (Overseas Territories) (Amendment) Order 2010 [S.I. 2010/763](#).

- (b) an offence that if committed in the Territory would be punishable as an offence under section 52 of Annex 1 to that Order (conduct ancillary to genocide, etc committed outside the jurisdiction);
- (c) an offence that if committed in the Territory would be punishable as an ancillary offence, as defined in section 55 of Annex 1 to that Order, in relation to an offence falling within paragraph (a) or (b);
- (d) any offence punishable in the Territory under section 1 of the Geneva Conventions Act 1957⁽⁶⁾ as extended by the Geneva Conventions (Overseas Territories) Order 2010⁽⁷⁾ (grave breach of scheduled conventions).

(3) It is not an objection to extradition under the Act that the person could not have been punished for the offence 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 has been convicted.

CUSTODY

Custody

197.—(1) If a judge or magistrate remands a person in custody under the Act, the person must be committed to the institution to which he would have been committed if charged with an offence before the judge or magistrate.

(2) If a person in custody following his arrest under Part 2, or kept in custody by virtue of a power in Part 3, escapes from custody, he may be retaken in the Territory in the same way as he could have been if he had been in custody following his arrest or apprehension under a relevant domestic warrant.

(3) A relevant domestic warrant is a warrant for his arrest or apprehension issued in the Territory in respect of an offence committed there.

(4) Subsection (5) applies if—

- (a) a person is in custody in a Territory (whether under this Act or otherwise);
- (b) he is required to be removed to another part of the Territory, or to or from another territory in accordance with article 5 of the Order, after being remanded in custody under the Act; and
- (c) the person is so removed by sea or air.

(5) The person must be treated as continuing in legal custody until he reaches the place to which he is required to be removed.

(6) An order for a person's extradition under the Act is sufficient authority for an appropriate person—

- (a) to receive him;
- (b) to keep him in custody until he is extradited under the Act;
- (c) to convey him to the territory to which he is to be extradited under the Act.

(7) An appropriate person is—

- (a) a person to whom the order is directed;
- (b) a constable.

⁽⁶⁾ 1957 c. 52.
⁽⁷⁾ S.I. 2010/2963.

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Extradition of serving prisoner

197A. If an order is made under Part 2 for the extradition of a person who is detained pursuant to a sentence of imprisonment or another form of detention in the Territory, the order is sufficient authority for the person to be removed from the prison or other institution where he is detained.

EVIDENCE

Receivable documents

202.—(1) *Subsection (1) of the Act does not apply.*

(2) *Subsection (2) of the Act does not apply.*

(3) A document issued in an extradition territory may be received in evidence in proceedings under the Act if it is duly authenticated.

(4) A document issued in an extradition territory is duly authenticated if (and only if) one of these applies—

- (a) it purports to be signed by a judge, magistrate or officer of the territory;
- (b) it purports to be certified, whether by seal or otherwise, by the Ministry or Department of the territory responsible for justice or for foreign affairs;
- (c) it purports to be authenticated by the oath or affirmation of a witness.

(5) Subsection (3) does not prevent a document that is not duly authenticated from being received in evidence in proceedings under the Act.

Documents sent by facsimile or electronic transmission

203.—(1) This section applies if a document to be sent in connection with proceedings under the Act is sent by facsimile transmission or by electronic transmission.

(2) The Act has effect as if the document received by facsimile transmission were the document used to make the transmission.

(3) The Act has effect as if the document received by electronic transmission were the original document.

Written statements and admissions

205.—(1) This section applies if, in proceedings under the Act, a written statement or a formal admission of any fact of which oral evidence may be given is sought to be admitted as evidence.

(2) The question of admissibility of the evidence must be decided by applying any enactment or rule of law that would apply if the proceedings were proceedings for an offence.

(3) Any enactment or rule of law applied under subsection (2) to proceedings under the Act must be applied as if—

- (a) the person whose extradition is sought (or who has been extradited) were accused of an offence;
- (b) the extradition territory concerned were the prosecution.

(4) Subsections (2) and (3) are subject to any express provision of the Act.

Burden and standard of proof

206.—(1) This section applies if, in proceedings under the Act, a question arises as to burden or standard of proof.

(2) The question must be decided by applying any enactment or rule of law that would apply if the proceedings were proceedings for an offence.

(3) Any enactment or rule of law applied under subsection (2) to proceedings under the Act must be applied as if—

- (a) the person whose extradition is sought (or who has been extradited) were accused of an offence;
- (b) the extradition territory concerned were the prosecution.

(4) Subsections (2) and (3) are subject to any express provision of the Act.

LIVE LINKS

Use of live links at certain hearings

206A.—(1) This section applies in relation to a hearing before the appropriate judge in proceedings under Part 2, other than an extradition hearing within the meaning of that Part.

(2) If satisfied that the person affected by an extradition claim is likely to be in custody during the hearing, the appropriate judge may give a live link direction at any time before the hearing.

(3) A live link direction is a direction that, if the person is being held in custody at the time of the hearing, any attendance at the hearing is to be through a live link from the place at which the person is held.

(4) Such a direction—

- (a) may be given on the appropriate judge's own motion or on the application of a party to the proceedings, and
- (b) may be given in relation to all subsequent hearings to which this section applies, or to such hearing or hearings to which this section applies as may be specified or described in the direction.

(5) The appropriate judge may give such a direction only if satisfied that it is not contrary to the interests of justice to give the direction.

(6) A person affected by an extradition claim is to be treated as present in court when, by virtue of a live link direction, the person attends a hearing through a live link.

(7) This section and sections 206B and 206C do not apply to Pitcairn.

Live links: supplementary

206B.—(1) The appropriate judge may rescind a live link direction at any time before or during a hearing to which it relates.

(2) The appropriate judge must not give a live link direction or rescind such a direction unless the parties to the proceedings have been given the opportunity to make representations.

(3) If a hearing takes place in relation to the giving or rescinding of a live link direction, the appropriate judge may require or permit any party to the proceedings who wishes to make representations to do so through a live link.

(4) In a case where an appropriate judge has power to give a live link direction but decides not to do so, the appropriate judge must—

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- (a) state in open court the reasons for not doing so, and
 - (b) cause those reasons to be entered in the register of proceedings.
- (5) Subsection (7) applies if—
- (a) an application for a live link direction is made under section 206A(4) in relation to a qualifying hearing but the application is refused, or
 - (b) a live link direction is given in relation to a qualifying hearing but the direction is rescinded before the hearing takes place.
- (6) A hearing is a qualifying hearing, in relation to proceedings under Part 2, if it is a hearing by virtue of which section 72(3) or 74(3) would be complied with.
- (7) The requirement in section 72(3) or 74(3) (as the case requires) to bring the person as soon as practicable before the appropriate judge is to be read as a requirement to bring the person before that judge as soon as practicable after the application is refused or the direction is rescinded.

Live links: interpretation

206C.—(1) This section applies for the purposes of section 206A and subsection (3) also applies for the purposes of section 206B.

- (2) *Subsection (2) of the Act does not apply.*
- (3) Section 139 applies for determining the appropriate judge.
- (4) A person is affected by an extradition claim if—
 - (a) *Paragraph (a) of the Act does not apply; and*
 - (b) *Paragraph (b) of the Act does not apply.*
 - (c) a request for the person’s extradition is made; or
 - (d) a warrant under section 73 is issued in respect of the person.
- (5) References to being in custody include references to being in police detention.
- (6) “Live link” means an arrangement by which a person, while absent from the place where the hearing is being held, is able—
 - (a) to see and hear the appropriate judge, and other persons,
 - (b) to be seen and heard by the judge, and other persons,and for this purpose any impairment of eyesight or hearing is to be disregarded.

OTHER MISCELLANEOUS PROVISIONS

National security

- 208.**—(1) This section applies if the Governor believes that the conditions in subsections (2) to (4) are satisfied in relation to a person.
- (2) The first condition is that the person’s extradition is sought or will be sought under Part 2 in respect of an offence.
 - (3) The second condition is that—
 - (a) in engaging in the conduct constituting (or alleged to constitute) the offence the person was acting for the purpose of assisting in the exercise of a function conferred or imposed by or under an enactment, or

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- (b) as a result of an authorisation given by the Governor the person is not liable under the criminal law of the Territory for the conduct constituting (or alleged to constitute) the offence.
- (4) The third condition is that the person's extradition in respect of the offence would be against the interests of national security.
- (5) The Governor may, with the consent of the Secretary of State, certify that the conditions in subsections (2) to (4) are satisfied in relation to the person.
- (6) If the Governor issues a certificate under subsection (5) he may direct that a request for the person's extradition in respect of the offence is not to be proceeded with.
- (7) If the Governor issues a certificate under subsection (5) he may order the person's discharge (instead of or in addition to giving a direction under subsection (6)).
- (8) *Subsection (8) of the Act does not apply.*
- (9) These rules apply if the Governor gives a direction under subsection (6) in respect of a request—
 - (a) if he has not issued a certificate under section 70 in respect of the request he is no longer required to do so;
 - (b) if the person is arrested under a warrant issued under section 71 or under a provisional warrant there is no requirement for him to appear or be brought before the appropriate judge and he must be discharged;
 - (c) if the person appears or is brought before the appropriate judge the judge is no longer required to proceed or continue proceeding under sections 72, 74, 75 and 76;
 - (d) if the extradition hearing has begun the judge is no longer required to proceed or continue proceeding under sections 78 to 91;
 - (e) if the person has given his consent to his extradition to the appropriate judge, the judge is no longer required to send the case to the Governor for his decision whether the person is to be extradited;
 - (f) if an appeal to the Supreme Court or the Judicial Committee has been brought, the court or Committee is no longer required to hear or continue hearing the appeal;
 - (g) if the person's extradition has been ordered there is no requirement for him to be extradited.
- (10) These must be made under the hand of the Governor—
 - (a) a certificate under subsection (5);
 - (b) a direction under subsection (6);
 - (c) an order under subsection (7).
- (11) *Subsection (11) of the Act does not apply.*
- (12) *Subsection (12) of the Act does not apply.*
- (13) In this section, "appeal" includes an application for leave to appeal.

Reasonable force

209. A person may use reasonable force, if necessary, in the exercise of a power conferred by the Act.

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Rules of court

210. The Supreme Court of any Territory may make rules of court that make provision as to the practice and procedure to be followed in connection with proceedings under the Act; but in the Sovereign Base Areas such rules may only be made by the Governor after consultation with the Presiding Judge of the Senior Judges' Court of those Areas.

Service of notices

211. Service of a notice on a person under section 129 or 130 may be effected in any of these ways—

- (a) by delivering the notice to the person;
- (b) by leaving it for him with another person at his last known or usual place of abode;
- (c) by sending it by post in a letter addressed to him at his last known or usual place of abode.

INTERPRETATION

Disposal of extradition request

213.—(1) *Subsection (1) of the Act does not apply.*

(2) A request for a person's extradition is disposed of—

- (a) when an order is made for a person's discharge in respect of the request and there is no further possibility of an appeal;
- (b) when the person is taken to be discharged in respect of the request;
- (c) when an order is made for the person's extradition in pursuance of the request and there is no further possibility of an appeal.

(3) There is no further possibility of an appeal against an order for a person's discharge or extradition—

- (a) when the period permitted for giving notice of application for leave to appeal to the Supreme Court ends, if notice is not given before the end of that period;
- (aa) when the decision of the Supreme Court refusing leave to appeal to it becomes final;
- (b) when the decision of the Supreme Court on an appeal becomes final, if there is no appeal to the Judicial Committee against that decision;
- (c) when the decision of the Judicial Committee on an appeal is made, if there is such an appeal.

(3A) The decision of the Supreme Court refusing leave to appeal becomes final when, in accordance with rules of court, there is no further step that can be taken in relation to the application for leave to appeal.

(4) The decision of the Supreme Court on an appeal becomes final—

- (a) when the period permitted for applying to the Supreme Court for leave to appeal to the Judicial Committee ends, if there is no such application;
- (b) when the period permitted for applying to the Judicial Committee for leave to appeal to it ends, if the Supreme Court refuses leave to appeal and there is no application to the Judicial Committee for leave to appeal;
- (c) when the Judicial Committee refuses leave to appeal to it;

- (d) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the Judicial Committee is granted, if no such appeal is brought before the end of that period.
- (5) These must be ignored for the purposes of subsections (3) to (4)—
 - (a) any power of a court to extend the period permitted for giving notice of appeal or of application for leave to appeal or for applying for leave to appeal;
 - (b) any power of a court to grant leave to take a step out of time.

Disposal of charge

- 214.**—(1) A charge against a person is disposed of—
- (a) if the person is acquitted in respect of it, when he is acquitted;
 - (b) if the person is convicted in respect of it, when there is no further possibility of an appeal against the conviction.
- (2) There is no further possibility of an appeal against a conviction—
- (a) when the period permitted for giving notice of application for leave to appeal to the Court of Appeal against the conviction ends, if the leave of the Court of Appeal is required and no such notice is given before the end of that period;
 - (b) when the Court of Appeal refuses leave to appeal against the conviction, if the leave of the Court of Appeal is required and notice of application for leave is given before the end of that period;
 - (c) when the period permitted for giving notice of appeal to the Court of Appeal against the conviction ends, if notice is not given before the end of that period;
 - (d) when the decision of the Court of Appeal on an appeal becomes final, if there is no appeal to the Judicial Committee against that decision;
 - (e) when the decision of the Judicial Committee on an appeal is made, if there is such an appeal.
- (3) The decision of the Court of Appeal on an appeal becomes final—
- (a) when the period permitted for applying to the Court of Appeal for leave to appeal to the Judicial Committee ends, if there is no such application;
 - (b) when the period permitted for applying to the Judicial Committee for leave to appeal to it ends, if the Court of Appeal refuses leave to appeal and there is no application to the Judicial Committee for leave to appeal;
 - (c) when the Judicial Committee refuses leave to appeal to it;
 - (d) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the Judicial Committee is granted, if no such appeal is brought before the end of that period.
- (4) These must be ignored for the purposes of subsections (2) and (3)—
- (a) any power of a court to extend the period permitted for giving notice of appeal or of application for leave to appeal or for applying for leave to appeal;
 - (b) any power of a court to grant leave to take a step out of time.
- (5) In this section, “Court of Appeal” means the Court of Appeal of the Territory, except that—
- (a) in relation to Anguilla, Montserrat and the Virgin Islands, it means the Court of Appeal of the Eastern Caribbean Supreme Court;

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- (b) in relation to South Georgia and the South Sandwich Islands, it means the Court of Appeal of the Falkland Islands;
- (c) in relation to the Sovereign Base Areas, it means the Senior Judges' Court of those Areas.

SCHEDULE 1

Re-Extradition: Modifications

PART 2

Extradition Territories

1. In section 78, omit subsections (2), (3), (5) and (8).
2. In section 78, for subsection (4) substitute—
“(4) The judge must decide whether the offence specified in the request is an extradition offence.”.
3. In section 78(6), for “any of the questions” substitute “the question”.
4. In section 78(7), for “those questions” substitute “that question”.
5. In section 79(1), omit paragraph (c).
6. Omit section 82.
7. In section 87(3), for the words from “must send the case” to “extradited” substitute “may order the person to be extradited to the extradition territory”.
8. In section 87, after subsection (3) insert—
“(4) If the judge makes an order under subsection (3) he must remand the person in custody or on bail to wait for his extradition to the territory.
(5) If the person is remanded in custody, the appropriate judge may later grant bail.”.
9. In section 103(1)—
 - (a) for the words from “sends a case” to “extradited” substitute “orders a person’s extradition under this Part”, and
 - (b) for “the relevant decision” substitute “the order”.
10. In section 103(2), for the words from “the person” to “the Governor” substitute “the order is made under section 128”.
11. In section 103, omit subsections (3), (5), (6), (7) and (8).
12. In section 103(9), for the words from “the Governor” to “person” substitute “the order is made”.
13. In section 104, omit subsections (1)(b), (6) and (7).
14. In section 106, omit subsections (1)(b), (7) and (8).
15. In section 117(1), for “the Governor” substitute “the appropriate judge”.
16. In section 117, after subsection (1) insert—

“(1A) But this section does not apply if the order is made under section 128.”.

17. In section 119(1)(a), for “the Governor” substitute “the appropriate judge”.

18. In section 119, in subsections (2) to (6) and in each place in subsection (7), for “the Governor” substitute “the judge”.

19. In section 120, after subsection (1) insert—

“(1A) But this section does not apply if the order for the person’s extradition is made under section 128.”.

20. In section 127(1), for the words from “arrested” to “requested” substitute “brought before the appropriate judge under section 187(1) may consent to his extradition to the territory in which the overseas sentence was imposed”.

21. In section 127(3), before paragraph (a) insert—

“(aa) must be given before the appropriate judge;”.

22. In section 127, omit subsections (4) and (5).

23. In section 128, after subsection (1) insert—

“(1A) The judge must remand the person in custody or on bail.

(1B) If the person is remanded in custody, the appropriate judge may later grant bail.”.

24. In section 128(4), for the words from “send the case” to “extradited” substitute “within the period of 10 days starting with the day on which consent is given order the person’s extradition to the extradition territory”.

25. In section 128, after subsection (4) insert—

“(5) Subsection (4) has effect subject to section 128B.

(6) If subsection (4) is not complied with and the person applies to the judge to be discharged the judge must order his discharge.”.

26. After section 128 insert—

“Extradition to extradition territory following consent

128A.—(1) This section applies if the appropriate judge makes an order under section 128(4) for a person’s extradition to an extradition territory.

(2) The person must be extradited to the extradition territory as soon as practicable after the order is made.

(3) If subsection (2) is not complied with and the person applies to the judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay.

Extradition claim following consent

128B.—(1) This section applies if—

(a) a person consents under section 127 to be extradited to an extradition territory, and

(b) before the judge orders his extradition under section 128(4), the judge is informed that the conditions in subsection (2) are met.

(2) The conditions are that—

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- (a) the Governor has received another valid request for the person's extradition to an extradition territory;
 - (b) the other request has not been disposed of.
- (4) The judge must not make an order under section 128(4) until he has been informed what order has been made under section 126(2).
- (5) If the order under section 126(2) is for further proceedings on the request under consideration to be deferred until the other request has been disposed of, the judge must remand the person in custody or on bail.
- (6) If the person is remanded in custody, the appropriate judge may later grant bail.
- (8) If the order under section 126(2) is for further proceedings on the other request to be deferred until the request under consideration has been disposed of, the period specified in section 128(4) must be taken to be 10 days starting with the day on which the judge is informed of the order.””.