



# Extradition Act 1989

## 1989 CHAPTER 33

An Act to consolidate enactments relating to extradition under the Criminal Justice Act 1988, the Fugitive Offenders Act 1967 and the Extradition Acts 1870 to 1935, with amendments to give effect to recommendations of the Law Commission and the Scottish Law Commission. [27th July 1989]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### INTRODUCTORY

##### *General*

#### **1 Liability to extradition**

- (1) Where extradition procedures under Part III of this Act are available as between the United Kingdom and a foreign state, a person in the United Kingdom who—
  - (a) is accused in that state of the commission of an extradition crime; or
  - (b) is alleged to be unlawfully at large after conviction of an extradition crime by a court in that state,may be arrested and returned to that state in accordance with those procedures.
- (2) Subject to the provisions of this Act, a person in the United Kingdom who is accused of an extradition crime—
  - (a) in a Commonwealth country designated for the purposes of this subsection under section 5(1) below; or
  - (b) in a colony,

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

- (3) Where an Order in Council under section 2 of the Extradition Act 1870 is in force in relation to a foreign state, Schedule 1 to this Act (the provisions of which derive from that Act and certain associated enactments) shall have effect in relation to that state, but subject to the limitations, restrictions, conditions, exceptions and qualifications, if any, contained in the Order.

### *Extradition crimes*

## **2 Meaning of “extradition crime”**

- (1) In this Act, except in Schedule 1, “extradition crime” means—
- (a) conduct in the territory of a foreign state, a designated Commonwealth country or a colony which, if it occurred in the United Kingdom, would constitute an offence punishable with imprisonment for a term of 12 months, or any greater punishment, and which, however described in the law of the foreign state, Commonwealth country or colony, is so punishable under that law;
  - (b) an extra-territorial offence against the law of a foreign state, designated Commonwealth country or colony which is punishable under that law with imprisonment for a term of 12 months, or any greater punishment, and which satisfies—
    - (i) the condition specified in subsection (2) below; or
    - (ii) all the conditions specified in subsection (3) below.
- (2) The condition mentioned in subsection (1)(b)(i) above is that in corresponding circumstances equivalent conduct would constitute an extra-territorial offence against the law of the United Kingdom punishable with imprisonment for a term of 12 months, or any greater punishment.
- (3) The conditions mentioned in subsection (1)(b)(ii) above are—
- (a) that the foreign state, Commonwealth country or colony bases its jurisdiction on the nationality of the offender;
  - (b) that the conduct constituting the offence occurred outside the United Kingdom; and
  - (c) that, if it occurred in the United Kingdom, it would constitute an offence under the law of the United Kingdom punishable with imprisonment for a term of 12 months, or any greater punishment.
- (4) For the purposes of subsections (1) to (3) above—
- (a) the law of a foreign state, designated Commonwealth country or colony includes the law of any part of it and the law of the United Kingdom includes the law of any part of the United Kingdom;
  - (b) conduct in a colony or dependency of a foreign state or of a designated Commonwealth country, or a vessel, aircraft or hovercraft of a foreign state or of such a country, shall be treated as if it were conduct in the territory of that state or country; and
  - (c) conduct in a vessel, aircraft or hovercraft of a colony of the United Kingdom shall be treated as if it were conduct in that colony.

### *Return to foreign states*

#### **3 Arrangements for availability of Part III procedure**

- (1) In this Act “extradition arrangements” means arrangements made with a foreign state under which extradition procedures under Part III of this Act will be available as between the United Kingdom and that state.
- (2) For this purpose “foreign state” means any state other than—
  - (i) the United Kingdom;
  - (ii) a country mentioned in Schedule 3 to the British Nationality Act 1981 (countries whose citizens are Commonwealth citizens);
  - (iii) a colony; or
  - (iv) the Republic of Ireland,but a state which is a party to the European Convention on Extradition done at Paris on 13th December 1957 may be treated as a foreign state.
- (3) Extradition arrangements may be—
  - (a) arrangements of a general nature made with one or more states and relating to the operation of extradition procedures under Part III of this Act (in this Act referred to as “general extradition arrangements”); or
  - (b) arrangements relating to the operation of those procedures in particular cases (in this Act referred to as “special extradition arrangements”) made with a state with which there are no general extradition arrangements.

#### **4 Orders in Council as to extradition**

- (1) Where general extradition arrangements have been made, Her Majesty may, by Order in Council reciting or embodying their terms, direct that this Act, so far as it relates to extradition procedures under Part III of this Act, shall apply as between the United Kingdom and the foreign state, or any foreign state, with which they have been made, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the Order.
- (2) An Order in Council under this section shall not be made unless the general extradition arrangements to which it relates—
  - (a) provide for their determination after the expiration of a notice given by a party to them and not exceeding one year or for their denunciation by means of such a notice; and
  - (b) are in conformity with the provisions of this Act, and in particular with the restrictions on return contained in Part II of this Act.
- (3) An Order in Council under this section shall be conclusive evidence that the arrangements therein referred to comply with this Act and that this Act, so far as it relates to extradition procedures under Part III of this Act, applies in the case of the foreign state, or any foreign state, mentioned in the Order.
- (4) An Order in Council under this section shall be laid before Parliament after being made.
- (5) An Order in Council under this section which does not provide that a person may only be returned to the foreign state requesting his return if the court of committal is satisfied that the evidence would be sufficient to warrant his trial if the extradition

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crime had taken place within the jurisdiction of the court shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Return to Commonwealth countries and colonies*

**5 Procedure for designation etc**

- (1) Her Majesty may by Order in Council designate for the purposes of section 1(2) above any country for the time being mentioned in Schedule 3 to the British Nationality Act 1981 (countries whose citizens are Commonwealth citizens); and any country so designated is in this Act referred to as a “designated Commonwealth country”.
- (2) This Act has effect in relation to all colonies.
- (3) Her Majesty may by Order in Council direct that this Act shall have effect in relation to the return of persons to, or in relation to persons returned from, any designated Commonwealth country or any colony subject to such exceptions, adaptations or modifications as may be specified in the Order.
- (4) Any Order under this section may contain such transitional or other incidental and supplementary provisions as may appear to Her Majesty to be necessary or expedient.
- (5) For the purposes of any Order in Council under subsection (1) above, any territory for the external relations of which a Commonwealth country is responsible may be treated as part of that country or, if the Government of that country so requests, as a separate country.
- (6) Any Order in Council under this section, other than an Order to which subsection (7) below applies, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) No recommendation shall be made to Her Majesty in Council to make an Order containing any such direction as is authorised by subsection (3) above unless a draft of the Order has been laid before Parliament and approved by resolution of each House of Parliament.

**PART II**

RESTRICTIONS ON RETURN

**6 General restrictions on return**

- (1) A person shall not be returned under Part III of this Act, or committed or kept in custody for the purposes of return, if it appears to an appropriate authority—
  - (a) that the offence of which that person is accused or was convicted is an offence of a political character;
  - (b) that it is an offence under military law which is not also an offence under the general criminal law;
  - (c) that the request for his return (though purporting to be made on account of an extradition crime) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or

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- (d) that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.
- (2) A person who is alleged to be unlawfully at large after conviction of an extradition crime shall not be returned to a foreign state, or committed or kept in custody for the purposes of return to a foreign state, if it appears to an appropriate authority—
  - (a) that the conviction was obtained in his absence; and
  - (b) that it would not be in the interests of justice to return him on the ground of that conviction.
- (3) A person accused of an offence shall not be returned, or committed or kept in custody for the purposes of return, if it appears to an appropriate authority that if charged with that offence in the United Kingdom he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction.
- (4) A person shall not be returned, or committed or kept in custody for the purposes of such return, unless provision is made by the relevant law, or by an arrangement made with the relevant foreign state, Commonwealth country or colony, for securing that he will not, unless he has first had an opportunity to leave it, be dealt with there for or in respect of any offence committed before his return to it other than—
  - (a) the offence in respect of which his return is ordered;
  - (b) an offence, other than an offence excluded by subsection (5) below, which is disclosed by the facts in respect of which his return was ordered; or
  - (c) subject to subsection (6) below, any other offence being an extradition crime in respect of which the Secretary of State may consent to his being dealt with.
- (5) The offences excluded from paragraph (b) of subsection (4) above are offences in relation to which an order for the return of the person concerned could not lawfully be made.
- (6) The Secretary of State may not give consent under paragraph (c) of that subsection in respect of an offence in relation to which it appears to him that an order for the return of the person concerned could not lawfully be made, or would not in fact be made.
- (7) Any such arrangement as is mentioned in subsection (4) above which is made with a designated Commonwealth country or a colony may be an arrangement made for the particular case or an arrangement of a more general nature; and for the purposes of that subsection a certificate issued by or under the authority of the Secretary of State confirming the existence of an arrangement with a Commonwealth country or a colony and stating its terms shall be conclusive evidence of the matters contained in the certificate.
- (8) In relation to a Commonwealth country or a colony the reference in subsection (1) above to an offence of a political character does not include an offence against the life or person of the Head of the Commonwealth or attempting or conspiring to commit, or assisting, counselling or procuring the commission of or being accessory before or after the fact to such an offence, or of impeding the apprehension or prosecution of persons guilty of such an offence.
- (9) In this Act “appropriate authority” means—
  - (a) the Secretary of State;
  - (b) the court of committal;

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- (c) the High Court or High Court of Justiciary on an application for habeas corpus or for review of the order of committal.
- (10) In this section, in relation to Commonwealth countries and colonies, “race” includes tribe.

### PART III

#### PROCEDURE

##### *General*

#### 7 Extradition request and authority to proceed

- (1) Subject to the provisions of this Act relating to provisional warrants, a person shall not be dealt with under this Part of this Act except in pursuance of an order of the Secretary of State (in this Act referred to as an “authority to proceed”) issued in pursuance of a request (in this Act referred to as an “extradition request”) for the surrender of a person under this Act made—
- (a) by some person recognised by the Secretary of State as a diplomatic or consular representative of a foreign state; or
  - (b) by or on behalf of the Government of a designated Commonwealth country, or the Governor of a colony.
- (2) There shall be furnished with any such request—
- (a) particulars of the person whose return is requested;
  - (b) particulars of the offence of which he is accused or was convicted (including evidence sufficient to justify the issue of a warrant for his arrest under this Act);
  - (c) in the case of a person accused of an offence, a warrant for his arrest issued in the foreign state, Commonwealth country or colony; and
  - (d) in the case of a person unlawfully at large after conviction of an offence, a certificate of the conviction and sentence,
- and copies of them shall be served on the person whose return is requested before he is brought before the court of committal.
- (3) Rules under section 144 of the Magistrates' Courts Act 1980 may make provision as to the procedure for service under subsection (2) above in England and Wales and the High Court of Justiciary may, by Act of Adjournal, make rules as to such procedure in Scotland.
- (4) On receipt of any such request the Secretary of State may issue an authority to proceed unless it appears to him that an order for the return of the person concerned could not lawfully be made, or would not in fact be made, in accordance with the provisions of this Act.
- (5) An authority to proceed shall specify the offence or offences under the law of the United Kingdom which it appears to the Secretary of State would be constituted by equivalent conduct in the United Kingdom.
- (6) In this section “warrant”, in the case of any foreign state, includes any judicial document authorising the arrest of a person accused of a crime.

## **8 Arrest for purposes of committal**

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

- (a) on receipt of an authority to proceed—
  - (i) by the chief metropolitan stipendiary magistrate or a designated metropolitan magistrate;
  - (ii) by the sheriff of Lothian and Borders;
- (b) without such an authority—
  - (i) by a metropolitan magistrate;
  - (ii) by a justice of the peace in any part of the United Kingdom; and
  - (iii) in Scotland, by a sheriff,

upon information that the said person is or is believed to be in or on his way to the United Kingdom;

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

(2) In this Act—

“designated metropolitan magistrate” means a metropolitan stipendiary magistrate designated for the purposes of this Act by the Lord Chancellor; and

“metropolitan magistrate” means the chief metropolitan stipendiary magistrate or a designated metropolitan magistrate.

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

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

(5) A warrant of arrest issued under this section may, without being backed, be executed in any part of the United Kingdom and may be so executed by any person to whom it is directed or by any constable.

(6) Where a warrant is issued under this section for the arrest of a person accused of an offence of stealing or receiving stolen property in a designated Commonwealth country or a colony or any other offence committed in such a country or in a colony in respect of property, a justice of the peace in any part of the United Kingdom and in Scotland a sheriff shall have the like power to issue a warrant to search for the property as if the offence had been committed within his jurisdiction.

## **9 Proceedings for committal**

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

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consisting of a metropolitan magistrate or the sheriff of Lothian and Borders, as may be directed by the warrant.

- (2) For the purposes of proceedings under this section a court of committal in England and Wales shall have the like jurisdiction and powers, as nearly as may be, including power to remand in custody or on bail, as a magistrates' court acting as examining justices.
- (3) For the purposes of proceedings under this section a court of committal in Scotland shall have the like powers, including power to adjourn the case and meanwhile to remand the person arrested under the warrant either in custody or on bail, and the proceedings shall be conducted as nearly as may be in the like manner, as if the proceedings were summary proceedings in respect of an offence alleged to have been committed by that person; and the provisions of the Legal Aid (Scotland) Act 1986 relating to such proceedings or any appellate proceedings following thereon shall apply accordingly to that person.
- (4) Where—
  - (a) the extradition request is made by a foreign state; and
  - (b) an Order in Council such as is mentioned in subsection (8) below is in force in relation to that state,there is no need to furnish the court of committal with evidence sufficient to warrant the trial of the arrested person if the extradition crime had taken place within the jurisdiction of the court.
- (5) Where the person arrested is in custody by virtue of a provisional warrant and no authority to proceed has been received in respect of him, the court of committal may fix a period (of which the court shall give notice to the Secretary of State) after which he will be discharged from custody unless such an authority has been received.
- (6) In exercising the power conferred by subsection (5) above in a case where the extradition request is made under general extradition arrangements the court shall have regard to any period specified for the purpose in the Order in Council relating to the arrangements.
- (7) Where—
  - (a) the extradition request is made under general extradition arrangements but no period is so specified; or
  - (b) the application is made under special extradition arrangements,the court of committal may fix a reasonable period.
- (8) Where an authority to proceed has been issued in respect of the person arrested and the court of committal is satisfied, after hearing any representations made in support of the extradition request or on behalf of that person, that the offence to which the authority relates is an extradition crime, and is further satisfied—
  - (a) where that person is accused of the offence, unless an Order in Council giving effect to general extradition arrangements under which the extradition request was made otherwise provides, that the evidence would be sufficient to warrant his trial if the extradition crime had taken place within the jurisdiction of the court;
  - (b) where that person is alleged to be unlawfully at large after conviction of the offence, that he has been so convicted and appears to be so at large,the court, unless his committal is prohibited by any other provision of this Act, shall commit him to custody or on bail—



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

## **10 Statement of case by court**

- (1) If the court of committal refuses to make an order in relation to a person under section 9 above in respect of the offence or, as the case may be, any of the offences to which the authority to proceed relates, the foreign state, Commonwealth country or colony seeking the surrender of that person to it may question the proceeding on the ground that it is wrong in law by applying to the court to state a case for the opinion of the High Court or, in Scotland, the High Court of Justiciary on the question of law involved.
- (2) If the state, country or colony seeking return immediately informs the court of committal that it intends to make such an application, the court shall make an order providing for the detention of the person to whom the authority to proceed relates, or directing that he shall not be released except on bail.
- (3) Rules of Court may specify—
  - (a) a period within which such an application must be made unless the court grants a longer period; and
  - (b) a period within which the court of committal must comply with such an application.
- (4) Where the court of committal fails to comply with an application under subsection (1) above within the period specified by Rules of Court, the High Court or, in Scotland, the High Court of Justiciary may, on the application of the state, country or colony that applied for the case to be stated, make an order requiring the court to state a case.
- (5) The High Court or High Court of Justiciary shall have power—
  - (a) to remit the case to the court of committal to decide it according to the opinion of the High Court or High Court of Justiciary on the question of law; or
  - (b) to dismiss the appeal.
- (6) Where the court dismisses an appeal relating to an offence, it shall by order declare that that offence is not an offence in respect of which the Secretary of State has power to make an order for return in respect of the person whose return was requested.
- (7) An order made by a metropolitan magistrate under subsection (2) above shall cease to have effect if—

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- (a) the court dismisses the appeal in respect of the offence or all the offences to which it relates; and
  - (b) the foreign state, Commonwealth country or colony does not immediately—
    - (i) apply for leave to appeal to the House of Lords; or
    - (ii) inform the court that it intends to apply for leave.
- (8) An order made by the sheriff of Lothian and Borders under subsection (2) above shall cease to have effect if the court dismisses the appeal in respect of the offence or all the offences to which it relates.
- (9) In relation to a decision of a court on an appeal under this section, section 1 of the Administration of Justice Act 1960 (right of appeal to House of Lords) shall have effect as if so much of subsection (2) as restricts the grant of leave to appeal were omitted.
- (10) The House of Lords may exercise any powers of the High Court under subsection (5) above and subsection (6) above shall apply to them as it applies to that Court.
- (11) Subject to subsections (7) and (8) above, an order under subsection (2) above shall have effect so long as the case is pending.
- (12) For the purposes of this section a case is pending (unless proceedings are discontinued) until (disregarding any power of a court to grant leave to take any step out of time) there is no step that the state, country or colony can take.
- (13) In the application of this section to Scotland subsections (9) and (10) above shall be omitted and in relation to an appeal under this section in Scotland the court may make an order providing for the detention of the person to whom it relates or it may grant bail; and section 446(2) of the Criminal Procedure (Scotland) Act 1975 shall apply for the purpose of such an appeal as it applies for the purpose of an appeal such as is mentioned in section 444 of that Act.

## **11 Application for habeas corpus etc**

- (1) Where a person is committed under section 9 above, the court shall inform him in ordinary language of his right to make an application for habeas corpus, and shall forthwith give notice of the committal to the Secretary of State.
- (2) A person committed shall not be returned—
- (a) in any case, until the expiration of the period of 15 days beginning with the day on which the order for his committal is made;
  - (b) if an application for habeas corpus is made in his case, so long as proceedings on that application are pending.
- (3) Without prejudice to any jurisdiction of the High Court apart from this section, the court shall order the applicant's discharge if it appears to the court in relation to the offence, or each of the offences, in respect of which the applicant's return is sought, that—
- (a) by reason of the trivial nature of the offence; or
  - (b) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or
  - (c) because the accusation against him is not made in good faith in the interests of justice,
- it would, having regard to all the circumstances, be unjust or oppressive to return him.

- (4) On any such application the court may receive additional evidence relevant to the exercise of its jurisdiction under section 6 above or subsection (3) above.
- (5) Proceedings on an application for habeas corpus shall be treated for the purposes of this section as pending (unless they are discontinued) until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal.
- (6) In the application of this section to Scotland references to an application for habeas corpus shall be construed as references to an application for review of the order of committal and references to the High Court shall be construed as references to the High Court of Justiciary.

## **12 Order for return**

- (1) Where a person is committed under section 9 above and is not discharged by order of the High Court or the High Court of Justiciary, the Secretary of State may by warrant order him to be returned unless his return is prohibited, or prohibited for the time being, by this Act, or the Secretary of State decides under this section to make no such order in his case.
- (2) Without prejudice to his general discretion as to the making of an order for the return of a person to a foreign state, Commonwealth country or colony—
  - (a) the Secretary of State shall not make an order in the case of any person if it appears to the Secretary of State in relation to the offence, or each of the offences, in respect of which his return is sought, that—
    - (i) by reason of its trivial nature; or
    - (ii) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or
    - (iii) because the accusation against him is not made in good faith in the interests of justice,  
it would, having regard to all the circumstances, be unjust or oppressive to return him; and
  - (b) the Secretary of State may decide to make no order for the return of a person accused or convicted of an offence not punishable with death in Great Britain if that person could be or has been sentenced to death for that offence in the country by which the request for his return is made.
- (3) An order for return shall not be made in the case of a person who is serving a sentence of imprisonment or detention, or is charged with an offence, in the United Kingdom—
  - (a) in the case of a person serving such a sentence, until the sentence has been served;
  - (b) in the case of a person charged with an offence, until the charge is disposed of or withdrawn or unless an order is made for it to lie on the file and, if it results in his serving a term of imprisonment or detention, until the sentence has been served.
- (4) In the application of this section to Scotland, the reference in subsection (3) above to an order being made for the charge to lie on the file shall be construed as a reference to the diet being deserted pro loco et tempore.
- (5) The Secretary of State may decide to make no order under this section for the return of a person committed in consequence of an extradition request if another extradition request or a requisition under Schedule 1 to this Act has been made in respect of him

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and it appears to the Secretary of State, having regard to all the circumstances of the case and in particular—

- (a) the relative seriousness of the offences in question;
- (b) the date on which each such request was made; and
- (c) the nationality or citizenship of the person concerned and his ordinary residence,

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

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

### **13 Return to foreign states – supplementary**

- (1) The Secretary of State shall give the person to whom an order under section 12(1) above for return to a foreign state would relate notice in writing that he is contemplating making such an order.
- (2) The person to whom such an order would relate shall have a right to make representations, at any time before the expiration of the period of 15 days commencing with the date on which the notice is given, as to why he should not be returned to the foreign state, and unless he waives that right, no such order shall be made in relation to him before the end of that period.
- (3) A notice under subsection (1) above shall explain in ordinary language the right conferred by subsection (2) above.
- (4) It shall be the duty of the Secretary of State to consider any representations made in the exercise of that right.
- (5) Unless the person to whom it relates waives the right conferred on him by subsection (6) below, he shall not be returned to the foreign state until the expiration of the period of 7 days commencing with the date on which the warrant is issued or such longer period as—
  - (a) in England and Wales, rules under section 84 of the Supreme Court Act 1981 may provide; or
  - (b) in Scotland, the High Court of Justiciary may provide by Act of Adjournal.
- (6) At any time within that period he may apply for leave to seek judicial review of the Secretary of State's decision to make the order.
- (7) If he applies for judicial review, he may not be returned so long as the proceedings for judicial review are pending.
- (8) Proceedings for judicial review shall be treated for the purposes of this section as pending (unless they are discontinued) until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal.
- (9) A warrant under section 12 above—
  - (a) shall state in ordinary language that the Secretary of State has considered any representations made in the exercise of the right conferred by subsection (2) above; and
  - (b) shall explain in ordinary language the rights conferred by this section on a person whose return to a foreign state has been ordered under section 12 above,

and a copy shall be given to the person to whom it relates as soon as the order for his return is made.

#### **14 Simplified procedure**

- (1) A person may give notice that he waives the rights conferred on him by section 11 above.
- (2) A notice under this section shall be given in England and Wales in the manner prescribed by rules under section 144 of the Magistrates' Courts Act 1980, and without prejudice to the generality of subsection (1) of that section, the power to make such rules shall include power to make provision for a magistrate to order the committal for return of a person with his consent at any time after his arrest.
- (3) A notice under this section shall be given in Scotland in the manner prescribed by the High Court of Justiciary by Act of Adjournal and the sheriff may order the committal for return of a person with his consent at any time after his arrest.
- (4) Where an order is made by virtue of this section, this Act shall cease to apply to the person in respect of whom it is made, except that, if he is not surrendered within one month after the order is made, the High Court or, in Scotland, the High Court of Justiciary, upon application by or on behalf of that person, may, unless reasonable cause is shown for the delay, order him to be discharged.

#### *Special extradition arrangements*

#### **15 Special extradition arrangements**

- (1) Where special extradition arrangements have been made in respect of a person, extradition procedures shall be available in the case of that person, as between the United Kingdom and the foreign state with which the arrangements have been made, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the arrangements.
- (2) If the Secretary of State issues a certificate of special extradition arrangements, it shall be conclusive evidence of all matters stated in it.
- (3) In subsection (2) above “certificate of special extradition arrangements” means a certificate—
  - (a) that special extradition arrangements have been made in respect of a person as between the United Kingdom and a foreign state specified in the certificate; and
  - (b) that extradition procedures are available in the case of that person as between the United Kingdom and the foreign state to the extent specified in the certificate.

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### *Effect of delay*

#### **16 Discharge in case of delay**

- (1) If a person committed under section 9 above is still in the United Kingdom after the expiration of the relevant period, he may apply to the High Court or the High Court of Justiciary for his discharge.
- (2) Unless he has instituted proceedings for judicial review of the Secretary of State's decision to order his return, the relevant period is—
  - (a) the period of two months beginning with the first day on which, having regard to section 11(2) above, he could have been returned;
  - (b) where a warrant for his return has been issued under section 12 above, the period of one month beginning with the day on which that warrant was issued.
- (3) If he has instituted such proceedings, the relevant period is the period expiring one month after they end.
- (4) Proceedings for judicial review end for the purposes of this section—
  - (a) if they are discontinued, on the day of discontinuance; and
  - (b) if they are determined, on the day on which (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal.
- (5) If upon an application under this section the court is satisfied that reasonable notice of the proposed application has been given to the Secretary of State, the court may, unless sufficient cause is shown to the contrary, by order direct the applicant to be discharged and, if a warrant for his return has been issued under section 12 above, quash that warrant.

#### **17 Custody**

- (1) Any person remanded or committed to custody under this Part of this Act shall be committed to the like institution as a person charged with an offence before the court of committal.
- (2) If any person who is in custody by virtue of a warrant under this Act escapes out of custody, he may be retaken in any part of the United Kingdom in like manner as a person escaping from custody under a warrant for his arrest issued in that part in respect of an offence committed in that part.
- (3) Where a person, being in custody in any part of the United Kingdom whether under this Part of this Act or otherwise, is required to be removed in custody under this Act to another part of the United Kingdom and is so removed by sea or by air, he shall be deemed to continue in legal custody until he reaches the place to which he is required to be removed.
- (4) A warrant for the return of any person shall be sufficient authority for all persons to whom it is directed and all constables to receive that person, keep him in custody and convey him into the jurisdiction to which he is to be returned.

## PART IV

### TREATMENT OF PERSONS RETURNED

#### **18 Restrictions upon proceedings for other offences in case of persons returned by foreign states**

- (1) Where any person is returned to the United Kingdom by a foreign state in pursuance of extradition arrangements, he shall not, unless he has first been restored or had an opportunity of leaving the United Kingdom, be triable or tried for any offence committed prior to the surrender in any part of the United Kingdom, other than—
  - (a) an offence in respect of which he was returned; or
  - (b) any offence disclosed by the particulars furnished to the foreign state on which his return is grounded; or
  - (c) any other offence in respect of which the foreign state may consent to his being tried.
- (2) Where any person returned to the United Kingdom in pursuance of extradition arrangements has been convicted before his return of an offence for which his return was not granted, any punishment for that offence shall by operation of this section be remitted; but his conviction for it shall be treated as a conviction for all other purposes.

#### **19 Restrictions upon proceedings for other offences in case of persons returned by designated Commonwealth countries or colonies**

- (1) This section applies to any person accused or convicted of an offence under the law of or of any part of the United Kingdom who is returned to the United Kingdom—
  - (a) from any designated Commonwealth country, under any law of that country corresponding with this Act;
  - (b) from any colony, under this Act as extended to that colony or under any corresponding law of that colony.
- (2) A person to whom this section applies shall not, during the period described in subsection (3) below, be dealt with in the United Kingdom for or in respect of any offence committed before he was returned to the United Kingdom other than—
  - (i) the offence in respect of which he was returned;
  - (ii) any lesser offence disclosed by the particulars furnished to the Commonwealth country or colony on which his return is grounded; or
  - (iii) any other offence in respect of which the Government of the Commonwealth country or Governor of the colony from which he was returned may consent to his being dealt with.
- (3) The period referred to in subsection (2) above in relation to a person to whom this section applies is the period beginning with the day of his arrival in the United Kingdom on his return as mentioned in subsection (1) above and ending 45 days after the first subsequent day on which he has the opportunity to leave the United Kingdom.
- (4) Where a person to whom this section applies has been convicted before his return to the United Kingdom of an offence for which his return was not granted, any punishment for that offence shall by operation of this section be remitted; but his conviction for it shall be treated as a conviction for all other purposes.

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- (5) In this section “dealt with” means tried or returned or surrendered to any country or colony or detained with a view to trial or with a view to such return or surrender.

## **20 Restoration of persons not tried or acquitted**

- (1) This section applies to any person accused of an offence under the law of the United Kingdom who is returned to the United Kingdom in pursuance of extradition arrangements or as mentioned in section 19(1) above.
- (2) If in the case of a person to whom this section applies either—
- (a) proceedings against him for the offence for which he was returned are not begun within the period of six months beginning with the day of his arrival in the United Kingdom on being returned; or
  - (b) on his trial for that offence, he is acquitted or discharged under any of the following provisions—
    - (i) section 7(1) of the Powers of Criminal Courts Act 1973;
    - (ii) section 182 or 383 of the Criminal Procedure (Scotland) Act 1975;
    - (iii) section 5(1) of the Probation Act (Northern Ireland) 1950,
 the Secretary of State may, if he thinks fit, on the request of that person, arrange for him to be sent back free of charge and with as little delay as possible to the jurisdiction of the foreign state, Commonwealth country or colony from which he was returned.

## **PART V**

### SPECIAL CASES

#### *Repatriation cases*

## **21 Persons serving sentences outside country of conviction**

- (1) This section applies where—
- (a) a request is made—
    - (i) by some person recognised as a diplomatic or consular representative of a foreign state in the case of which an Order in Council under section 2 of the Extradition Act 1870 applies or as between which and the United Kingdom extradition procedures under Part III of this Act are available; or
    - (ii) by or on behalf of the Government of a designated Commonwealth country or the Governor of a colony,
 for the arrest and return of a person in the United Kingdom who is alleged to be unlawfully at large from a prison in which he was serving a sentence in pursuance of international arrangements for the repatriation of prisoners sentenced in one country (“the country of conviction”) to serve their sentences in another (“the country of imprisonment”); and
  - (b) there are furnished with the request—
    - (i) particulars of the person whose return is requested;



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- (ii) particulars of the offence of which he was convicted (including evidence sufficient to justify the issue of a warrant for his arrest under the relevant legislation);
  - (iii) a certificate of the conviction and sentence; and
  - (iv) a certificate of the international arrangements for repatriation under which he was held.
- (2) Where this section applies, the relevant legislation shall have effect—
- (a) if the request is from the country of conviction, as if the person to whom the request relates were alleged to be unlawfully at large from a prison in that country; and
  - (b) if it is from the country of imprisonment, as if he were alleged to have been convicted of a corresponding offence under the law of that country committed there,
- and the question whether the person to whom the request relates is to be returned shall be determined, subject to subsection (3) below, in accordance with that legislation.
- (3) A person shall not be returned under subsection (2)(b) above unless—
- (a) the offence was committed in the country of conviction; or
  - (b) the offence was not committed there but was committed in circumstances in which he might be returned on a request made by the country of conviction.
- (4) In this section “the relevant legislation” means the provisions of this Act that are relevant—
- (a) if the case falls within paragraph (a) of subsection (2) above, to extradition to the country of conviction; and
  - (b) if it falls within paragraph (b), to extradition to the country of imprisonment.

#### *International Convention cases*

## **22 Extension of purposes of extradition for offences under Acts giving effect to international Conventions**

- (1) Except as provided by subsection (6) below, this section has effect where—
- (a) general extradition arrangements have not been made with a state which is a party to a Convention to which this section applies; and
  - (b) no Order in Council under section 2 of the Extradition Act 1870 is in force in relation to that state.
- (2) The Conventions to which this section applies are—
- (a) the Convention on Offences and certain other Acts committed on board Aircraft, which was signed at Tokyo on 14th September 1963 (“the Tokyo Convention”);
  - (b) the Convention for the Suppression of Unlawful Seizure of Aircraft, which was signed at the Hague on 16th December 1970 (“the Hague Convention”);
  - (c) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, which was signed at Montreal on 23rd September 1971 (“the Montreal Convention”);
  - (d) the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons adopted by the United Nations General Assembly in 1973 (“the Internationally Protected Persons Convention”);

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- (e) the International Convention against the Taking of Hostages opened for signature at New York on 18th December 1979 (“the Hostages Convention”);
  - (f) the Convention on the Physical Protection of Nuclear Material opened for signature at Vienna and New York on 3rd March 1980 (“the Nuclear Material Convention”);
  - (g) the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the United Nations General Assembly on 10th December 1984 (“the Torture Convention”).
- (3) Where this section has effect, an Order in Council applying this Act may be made under section 4 above as if a Convention to which this section applies that is specified in the Order constituted general extradition arrangements between the United Kingdom and the foreign state, or any foreign state, party to the Convention; but where this Act is so applied, it shall have effect only in respect—
- (a) of the relevant offences;
  - (b) of an attempt to commit a relevant offence;
  - (c) of counselling, procuring, commanding, aiding or abetting a relevant offence; and
  - (d) of being accessory before or after the fact to a relevant offence.
- (4) The relevant offences are—
- (a) in relation to the Tokyo Convention, any offence committed on board an aircraft in flight;
  - (b) in relation to the Hague Convention, any offence under or by virtue of section 1 or 6(1) or (2)(a) of the Aviation Security Act 1982;
  - (c) in relation to the Montreal Convention, any offence under or by virtue of section 2, 3 or 6(2)(b) or (c) of that Act;
  - (d) in relation to the Internationally Protected Persons Convention—
    - (i) an offence mentioned in paragraph (a) of subsection (1) of section 1 of the Internationally Protected Persons Act 1978 which is committed against a protected person within the meaning of that section;
    - (ii) an offence mentioned in paragraph (b) of that subsection which is committed in connection with such an attack as is so mentioned; and
    - (iii) an offence under section 1(3) of that Act;
  - (e) in relation to the Hostages Convention, an offence under the Taking of Hostages Act 1982;
  - (f) in relation to the Nuclear Material Convention—
    - (i) an offence mentioned in paragraph (a), (b), (c) or (d) of subsection (1) of section 1 of the Nuclear Material (Offences) Act 1983 which is committed by doing an act in relation to or by means of nuclear material; and
    - (ii) an offence under section 2 of that Act; and
  - (g) in relation to the Torture Convention, torture.
- (5) An Order in Council such as is mentioned in subsection (3) above may not provide that a court dealing with a person arrested for an offence shall not be under a duty to determine whether the evidence would be sufficient to warrant his trial if the offence had taken place within the jurisdiction of the court.
- (6) For the purposes of general extradition procedures under Part III of this Act, in their application (whether or not by virtue of such an Order in Council) as between the

United Kingdom and any other state, any act or omission, wherever it takes place, which constitutes—

- (a) an offence mentioned in this section; and
- (b) an offence against the law of that state,

shall be deemed to be an offence committed within the territory of that state.

- (7) Subsections (4) and (5) of section 92 of the Civil Aviation Act 1982 shall apply for the purposes of this section as they apply for the purposes of that section.
- (8) Section 98 of that Act shall have effect as if the reference to sections 92 to 95 included a reference to this section.

## **23 Genocide etc**

- (1) For the purposes of this Act, no offence which, if committed in the United Kingdom, would be punishable as an offence of genocide or as an attempt, conspiracy or incitement to commit such an offence shall be regarded as an offence of a political character, and no proceedings in respect of such an offence shall be regarded as a criminal matter of a political character.
- (2) It shall not be an objection to any proceedings against a person under this Act in respect of an offence which, if committed in the United Kingdom, would be punishable as an offence of genocide or as an attempt, conspiracy or incitement to commit such an offence that under the law in force at the time when and in the place where he is alleged to have committed the act of which he is accused or of which he was convicted he could not have been punished for it.

## **24 Suppression of terrorism**

- (1) For the purposes mentioned in subsection (2) below—
  - (a) no offence to which section 1 of the Suppression of Terrorism Act 1978 applies shall be regarded as an offence of a political character; and
  - (b) no proceedings in respect of an offence to which that section applies shall be regarded as a criminal matter of a political character or as criminal proceedings of a political character.
- (2) Those purposes are the purposes—
  - (a) of a request for the return of a person in accordance with extradition procedures under Part III of this Act made by a country to which this subsection applies; and
  - (b) of a requisition under Schedule 1 to this Act which is made by such a country.
- (3) Subsection (2) above applies—
  - (a) to a country for the time being designated in an order made by the Secretary of State as a party to the European Convention on the Suppression of Terrorism signed at Strasbourg on 27th January 1977; and
  - (b) to a country in relation to which the Secretary of State has made an order under section 5 of the Suppression of Terrorism Act 1978 applying that subsection.
- (4) In relation to a requisition under Schedule 1 to this Act which is made by a country to which subsection (2) above applies that Schedule shall have effect as if at the end of paragraph 1(2)(b) there were added “or

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- (c) he proves to the satisfaction of the metropolitan magistrate or the court before whom he is brought on habeas corpus, or to the Secretary of State—
  - (i) that the requisition for his surrender has in fact been made with a view to try or punish him on account of his race, religion, nationality or political opinions; or
  - (ii) that he might, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.”.

## **25 Hostage-taking**

- (1) A person shall not be returned under this Act to a designated Commonwealth country which is party to the Convention referred to in subsection (3) below, or committed or kept in custody for the purposes of such return, if it appears to the appropriate authority—
  - (a) that he might, if returned, be prejudiced at his trial by reason of the impossibility of effecting communications between him and the appropriate authorities of the state entitled to exercise rights of protection in relation to him; and
  - (b) that the act or omission constituting the offence of which he has been accused or convicted also constituted an offence under section 1 of the Taking of Hostages Act 1982 or an attempt to commit such an offence.
- (2) Where the Secretary of State certifies that a country is a party to the Convention, the certificate shall, in any proceedings under this Act, be conclusive evidence of that fact.
- (3) The Convention mentioned in subsections (1) and (2) above is the International Convention against the Taking of Hostages opened for signature at New York on 18th December 1979.

## **PART VI**

### MISCELLANEOUS AND SUPPLEMENTARY

#### *Evidence*

## **26 Authentication of foreign documents**

- (1) In extradition proceedings in relation to a person whose return has been requested by a foreign state foreign documents may be authenticated by the oath of a witness, but shall in any case be deemed duly authenticated—
  - (a) if they purport to be signed by a judge, magistrate or officer of the foreign state where they were issued; and
  - (b) if they purport to be certified by being sealed with the official seal of the Minister of Justice, or some other Minister of State, of the foreign state.
- (2) Judicial notice shall be taken of such certification as is mentioned in subsection (1)(b) above, and documents authenticated by such certification shall be received in evidence without further proof.

## **27 Evidence – Commonwealth countries and colonies**

- (1) In any proceedings under this Act in relation to a person whose return has been requested by a designated Commonwealth country or a colony, including proceedings on an application for habeas corpus in respect of a person in custody under this Act—
- (a) a document, duly authenticated, which purports to set out evidence given on oath in a designated Commonwealth country or a colony shall be admissible as evidence of the matters stated in it;
  - (b) a document, duly authenticated, which purports to have been received in evidence, or to be a copy of a document so received, in any proceeding in any designated Commonwealth country or any colony shall be admissible in evidence;
  - (c) a document, duly authenticated, which certifies that a person was convicted on a date specified in the document of an offence against the law of, or of a part of, any such country or any colony shall be admissible as evidence of the fact and date of the conviction.
- (2) A document shall be deemed to be duly authenticated for the purposes of this section—
- (a) in the case of a document purporting to set out evidence given as mentioned in subsection (1)(a) above, if the document purports to be certified by a judge or magistrate or officer in or of the country or colony in question to be the original document containing or recording that evidence or a true copy of such a document;
  - (b) in the case of a document which purports to have been received in evidence as mentioned in subsection (1)(b) above or to be a copy of a document so received, if the document purports to be certified as mentioned in paragraph (a) above to have been, or to be a true copy of a document which has been, so received;
  - (c) in the case of a document which certifies that a person was convicted as mentioned in subsection (1)(c) above, if the document purports to be certified as mentioned in paragraph (a) above,
- and in any such case the document is authenticated either by the oath of a witness or by the official seal of a Minister of the designated Commonwealth country or of the Governor or a Minister, secretary or other officer administering a department of the government of the colony, as the case may be.
- (3) Nothing in this section shall prejudice the admission in evidence of any document which is admissible in evidence apart from this section.
- (4) In the application of this section to Scotland, for the words “admissible as evidence”, in both places where they occur, there shall be substituted the words “sufficient evidence”.

### *Warrants and orders*

## **28 Form of warrants and orders**

- (1) Any warrant or order to be issued or made by the Secretary of State under this Act shall be given under the hand of the Secretary of State, a Minister of State or an Under-Secretary of State.
- (2) The Secretary of State may by regulations made by statutory instrument prescribe the form of any document required for the purposes of this Act in its application to

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return to foreign states (except a notice under section 14 above) and the form of any warrant or order to be issued or made under this Act in its application to return to Commonwealth countries and colonies.

*Channel Islands and Isle of Man*

**29 Application to Channel Islands and Isle of Man**

- (1) Subject to the provisions of this section, Parts I to V of this Act shall extend to the Channel Islands and the Isle of Man, and shall have effect as if each of them were part of the United Kingdom.
- (2) Her Majesty may by Order in Council direct that any provision contained in those Parts shall, in its application to any of the said Islands, have effect subject to such exceptions, adaptations or modifications as may be specified in the Order.
- (3) An Order in Council under this section relating to any provision of this Act as it has effect in relation to Commonwealth countries or colonies may contain such transitional or other incidental and supplementary provisions as may appear to Her Majesty to be necessary or expedient.
- (4) Paragraph 18 of Schedule 1 to this Act has effect as to the application of that Schedule to the Channel Islands and the Isle of Man.

*Extradition between colonies and foreign states*

**30 General extradition arrangements**

- (1) Upon the making of an Order in Council under section 4 above—
  - (a) the provisions of this Act relating to general extradition arrangements; and
  - (b) section 21 above,
 shall, unless the Order otherwise provides, extend to every colony, as regards the extradition arrangements to which the Order refers, but subject—
  - (a) to the modifications set out in subsections (2) to (5) below;
  - (b) to any further modifications as to procedure prescribed by the law of the colony; and
  - (c) to the limitations, restrictions, exceptions and qualifications, if any, contained in the Order.
- (2) A reference to the colony shall be substituted for any reference to the United Kingdom.
- (3) An extradition request may be made to the Governor and the Governor may exercise the powers of the Secretary of State.
- (4) An extradition request may be made by a consular representative recognised by the Governor.
- (5) Any reference to a magistrate, judge or court shall be construed as a reference to such judicial authority as the law of the colony may provide.

### **31 Special extradition arrangements**

- (1) Her Majesty may by Order in Council direct that this section shall extend to any colony specified in the Order in the case of foreign states with whom there are no general extradition arrangements, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the Order.
- (2) Where arrangements have been made in respect of a person under which extradition procedures under Part III of this Act or section 21 above will be available as between a colony to which this section applies and a foreign state, such extradition procedures shall be available in the case of that person, as between the colony and the state with whom the arrangements have been made, subject—
  - (a) to the modifications of this Act set out in section 30(2) to (5) above;
  - (b) to any further modifications as to procedure prescribed by the law of the colony; and
  - (c) to the limitations, restrictions, exceptions and qualifications, if any, contained in the arrangements.
- (3) If the Governor or the Secretary of State issues a certificate—
  - (a) that such arrangements have been made; and
  - (b) that such extradition procedures are available in the case of the person named in the certificate as between the colony and the foreign state to the extent specified in the certificate,it shall be conclusive evidence of all matters stated in it.

*Orders in Council relating to colonies etc.*

### **32 Application of provisions of Act by Order in Council**

- (1) Her Majesty may by Order in Council make provision for extending all or any of the provisions of this Act relating to return to Commonwealth countries (other than this section) to any colony, with the substitution of a reference to that colony for any reference to the United Kingdom, and with such other exceptions, adaptations or modifications as may be specified in the Order.
- (2) Without prejudice to the generality of subsection (1) above, an Order in Council under this section may—
  - (a) so far as it extends to any colony provisions of this Act relating to the return of persons to and the treatment of persons returned from designated Commonwealth countries, apply those provisions in relation to the Republic of Ireland as they apply in relation to a designated Commonwealth country;
  - (b) so far as it extends to any colony provisions of this Act relating to the return of persons to and the treatment of persons returned from colonies, apply those provisions in relation to the United Kingdom as they apply in relation to a colony.
- (3) Any Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **33 Alternative arrangements for colonies**

- (1) Without prejudice to the powers exercisable by virtue of section 32 above, Her Majesty may by Order in Council make, for any colony, such special provision as appears to Her to be appropriate as between that colony and any other country being either a designated Commonwealth country or a colony—
  - (a) for authorising and regulating the return to that other country of persons accused or convicted in it of offences;
  - (b) for regulating the treatment in the colony for which the Order makes provision of persons returned to it from that other country pursuant to this Act or any Order in Council under this Act or any corresponding law of that other country.
- (2) The legislature of any colony shall have power to make provision, not inconsistent with any Order in Council under this section or section 32 above which extends to that colony, for any purpose for which provision could be made by such an Order in Council.
- (3) Any Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **34 Colonies— supplementary**

- (1) Her Majesty may by Order in Council direct that any provision to which this section applies shall have effect in any colony.
- (2) This section applies—
  - (a) to any provision of this Act that corresponds to a provision of the Extradition Act 1870 with amendments made by the Criminal Justice Act 1988; and
  - (b) to any provision of this Act that corresponds to a provision of the Fugitive Offenders Act 1967 with amendments and repeals made by the Criminal Justice Act 1988.
- (3) The repeal by this Act of the Fugitive Offenders Act 1967 does not affect an Order in Council made under section 16 or 17 of that Act or the power to revoke or amend such an Order.

### *General*

### **35 Interpretation**

- (1) In this Act—
  - “appropriate authority” has the meaning assigned to it by section 6(9) above;
  - “authority to proceed” has the meaning assigned to it by section 7(1) above;
  - “court of committal” has the meaning assigned to it by section 9(1) above;
  - “designated Commonwealth country” has the meaning assigned to it by section 5(1) above,
  - “designated metropolitan magistrate” has the meaning assigned to it by section 8(2) above;
  - “extradition crime”, subject to paragraph 20 of Schedule 1 to this Act, is to be construed in accordance with section 2 above;



“extradition arrangements”, “general extradition arrangements” and “special extradition arrangements” have the meanings assigned to them by section 3 above;

“extradition request” has the meaning assigned to it by section 7(1) above;

“metropolitan magistrate” has the meaning assigned to it by section 8(2) above; and

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

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

### *Supplementary Evidence*

## **36 Amendments**

- (1) In paragraph 4 of Schedule 3 to the Parliamentary Commissioner Act 1967 (matters not subject to investigation by Commissioner) for the words from “or” to the end there shall be substituted the words “, the Fugitive Offenders Act 1967 or the Extradition Act 1989”.
- (2) The following subsection shall be substituted for subsection (1) of section 3 of the Genocide Act 1969 (application to Channel Islands, Isle of Man and colonies)—
- “(1) Section 12 of the Backing of Warrants (Republic of Ireland) Act 1965 shall extend to the provisions of this Act amending that Act.”.
- (3) In section 2(2) of the Bail Act 1976 in the definition of “proceedings against a fugitive offender” for the words from “section”, in the first place where it occurs, to “1967” there shall be substituted the words “the Extradition Act 1989”.
- (4) In paragraph (a) of subsection (1) of section 5 of the Suppression of Terrorism Act 1978 (power to apply provisions of Act to countries that are not parties to the European Convention on the Suppression of Terrorism) for the words “Fugitive Offenders Act 1967” there shall be substituted the words “Extradition Act 1989”.
- (5) In paragraph (b) of that subsection after “1870” there shall be inserted the words “or in the Extradition Act 1989”.
- (6) The following paragraph shall be substituted for paragraph (c) of that subsection—
- “(c) a colony.”.
- (7) In paragraph (i) of that subsection for the words “of this Act which would, apart from this section, apply only in relation to convention countries” there shall be substituted the words “to which this paragraph applies”.
- (8) The following subsection shall be inserted after that subsection—
- “(1A) Subsection (1)(i) above applies—
- (a) to the provisions of this Act which would, apart from this section, apply only in relation to convention countries; and
- (b) to section 24(1) and (2) of the Extradition Act 1989.”.
- (9) The following subsection shall be added at the end of section 6 of the Nuclear Material (Offences) Act 1983—

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“(5) In this section “the Convention” means the Convention on the Physical Protection of Nuclear Material opened for signature at Vienna and New York on 3rd March 1980.”.

### **37 Repeals etc**

- (1) The enactments mentioned in Schedule 2 to this Act (which this Act replaces) are repealed to the extent specified in the third column of that Schedule.
- (2) The Extradition Act 1895 is repealed as of no practical utility.
- (3) The repeal by this Act of the Extradition Act 1870 does not affect an Order in Council made under section 2 of that Act or the power to revoke or alter such an Order.
- (4) Notwithstanding the repeal any forms that might have been used by virtue of section 20 of the Act may continue to be used and shall be deemed to be valid and sufficient in law.
- (5) Section 2A of the Backing of Warrants (Republic of Ireland) Act 1965 shall continue to have effect notwithstanding the repeal of section 1(9) of the Criminal Justice Act 1988 (which introduced Schedule 1 to the Act, Part II of which inserted section 2A in the Act of 1965) and the repeal of Schedule 1.
- (6) The repeal of an enactment relating to a Convention to which section 22 above applies does not affect an Order in Council made under any provision whose effect is reproduced in that section or in section 29 above or any power to revoke, amend or re-enact such an Order.

### **38 Short title, commencement and extent**

- (1) This Act may be cited as the Extradition Act 1989.
- (2) The provisions of this Act other than any provision to which subsection (3) below applies shall come into force at the end of the period of two months beginning with the day on which it is passed.
- (3) The provisions of this Act to which this subsection applies are sections 7(3), 10(3) and 14(2) and (3) above, this section and paragraph 9(2) of Schedule 1.
- (4) Section 136(1) of the Criminal Justice Act 1988 (which provided that torture should be deemed to be included in the list of extradition crimes contained in Schedule 1 to the Extradition Act 1870) and paragraph 4 of Schedule 1 to that Act (which provided that any offence under the Company Securities (Insider Dealing) Act 1985 and offences under section 24 of the Drug Trafficking Offences Act 1986 should be deemed to be so included) shall come into force immediately before this Act comes into force.
- (5) This Act extends to Northern Ireland.

## SCHEDULES

### SCHEDULE 1

Section 1.

#### PROVISIONS DERIVING FROM EXTRADITION ACT 1870 AND ASSOCIATED ENACTMENTS

##### *Restrictions on surrender*

- 1 (1) The following restrictions shall be observed with respect to the surrender of fugitive criminals.
- (2) A fugitive criminal shall not be surrendered—
- (a) if the offence in respect of which his surrender is demanded is one of a political character, or
  - (b) if he proves to the satisfaction of the metropolitan magistrate or the court before whom he is brought on habeas corpus, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.
- (3) A fugitive criminal shall not be surrendered to a foreign state unless provision is made by the law of that state, or by arrangement, that the fugitive criminal shall not, until he has been restored or had an opportunity of returning to Her Majesty's dominions, be detained or tried in that foreign state for any offence committed prior to his surrender other than the extradition crime proved by the facts on which the surrender is grounded.
- (4) A fugitive criminal who has been accused of some offence within United Kingdom jurisdiction not being the offence for which his surrender is asked, or is undergoing sentence under any conviction in the United Kingdom, shall not be surrendered until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise, or unless an order is made for the charge in respect of the offence to lie on the file.
- (5) A fugitive criminal shall not be surrendered until the expiration of fifteen days from the date of his being committed to prison to await his surrender.

##### *Effect of Order*

- 2 An Order in Council under section 2 of the Extradition Act 1870 shall be conclusive evidence that the arrangement referred to in it complies with this Schedule and that this Schedule applies in the case of the foreign state mentioned in the Order.

##### *Liability of criminal to surrender*

- 3 Where this Schedule has effect in the case of any foreign state, every fugitive criminal of that state who is in or suspected of being in any part of Her Majesty's dominions, or that part which is specified in the Order in Council relating to that state (as the case may be), shall be liable to be apprehended and surrendered in manner provided by this Schedule, whether the crime in respect of which the

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surrender is sought was committed before or after the date of the Order, and whether there is or is not any concurrent jurisdiction in any court of Her Majesty's dominions over that crime.

*Order of Secretary of State for issue of warrant in  
United Kingdom if crime is not of political character*

- 4 (1) A requisition for the surrender of a fugitive criminal of any foreign state, who is in or suspected of being in the United Kingdom, shall be made to the Secretary of State by some person recognised by the Secretary of State as a diplomatic or consular representative of that foreign state.
- (2) The Secretary of State may by order signify to a metropolitan magistrate that such a requisition has been made, and require him to issue his warrant for the apprehension of the fugitive criminal.
- (3) If the Secretary of State is of opinion that the offence is one of a political character, he may, if he thinks fit, refuse to send any such order as is mentioned in subparagraph (2) above, and may also at any time order a fugitive criminal accused or convicted of such offence to be discharged from custody.

*Issue of warrant by metropolitan magistrate, justice etc.*

- 5 (1) A warrant for the apprehension of a fugitive criminal, whether accused or convicted of crime, who is in or suspected of being in the United Kingdom, may be issued—
- (a) by a metropolitan magistrate on receipt of the order of the Secretary of State, and on such evidence as would in his opinion justify the issue of the warrant if the crime had been committed or the criminal convicted in England or Wales; and
- (b) by a metropolitan magistrate or any justice of the peace in any part of the United Kingdom, on such information or complaint and such evidence or after such proceedings as would in the opinion of the person issuing the warrant justify the issue of a warrant if the crime had been committed or the criminal convicted in that part of the United Kingdom in which he exercises jurisdiction.
- (2) Any person issuing a warrant under this paragraph without an order of the Secretary of State shall forthwith send a report of the fact of such issue, together with the evidence and information or complaint, or certified copies thereof, to the Secretary of State, who may if he thinks fit order the warrant to be cancelled, and the person who has been apprehended on the warrant to be discharged.
- (3) A fugitive criminal, when apprehended on a warrant issued without the order of the Secretary of State, shall be brought before some person having power to issue a warrant under this paragraph, who shall by warrant order him to be brought and the prisoner shall accordingly be brought before a metropolitan magistrate.
- (4) A fugitive criminal apprehended on a warrant issued without the order of the Secretary of State shall be discharged by the metropolitan magistrate, unless the metropolitan magistrate, within such reasonable time as, with reference to the circumstances of the case, he may fix, receives from the Secretary of State an order signifying that a requisition has been made for the surrender of such criminal.

*Hearing of case and evidence of political character of crime*

- 6 (1) When a fugitive criminal is brought before the metropolitan magistrate, the metropolitan magistrate shall hear the case in the same manner, and have the same jurisdiction and powers, as near as may be, as if the prisoner were brought before him charged with an indictable offence committed in England or Wales.
- (2) The metropolitan magistrate shall receive any evidence which may be tendered to show that the crime of which the prisoner is accused or alleged to have been convicted is an offence of a political character or is not an extradition crime.

*Committal or discharge of prisoner*

- 7 (1) In the case of a fugitive criminal accused of an extradition crime, if the foreign warrant authorising the arrest of such criminal is duly authenticated, and such evidence is produced as (subject to the provisions of this Schedule) would, according to the law of England and Wales, justify the committal for trial of the prisoner if the crime of which he is accused had been committed in England or Wales, the metropolitan magistrate shall commit him to prison, but otherwise shall order him to be discharged.
- (2) In the case of a fugitive criminal alleged to have been convicted of an extradition crime, if such evidence is produced as (subject to the provisions of this Schedule) would, according to the law of England and Wales, prove that the prisoner was convicted of such crime, the metropolitan magistrate shall commit him to prison, but otherwise shall order him to be discharged.
- (3) If he commits such criminal to prison, he shall commit him there to await the warrant of the Secretary of State for his surrender, and shall forthwith send to the Secretary of State a certificate of the committal, and such report upon the case as he may think fit.

*Surrender of fugitive to foreign state by warrant of Secretary of State*

- 8 (1) If the metropolitan magistrate commits a fugitive criminal to prison, he shall inform such criminal that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of habeas corpus.
- (2) Upon the expiration of the said fifteen days, or, if a writ of habeas corpus is issued, after the decision of the court upon the return to the writ, as the case may be, or after such further period as may be allowed in either case by the Secretary of State, the Secretary of State may by warrant order the fugitive criminal (if not delivered on the decision of the court) to be surrendered to such person as may in his opinion be duly authorised to receive the fugitive criminal by the foreign state from which the requisition for the surrender proceeded, and such fugitive criminal shall be surrendered accordingly.
- (3) It shall be lawful for any person to whom such warrant is directed and for the person so authorised as aforesaid to receive, hold in custody, and convey within the jurisdiction of such foreign state the criminal mentioned in the warrant; and if the criminal escapes out of any custody to which he may be delivered on or in pursuance of such warrant, it shall be lawful to retake him in the same manner as any person accused of any crime against the laws of that part of Her Majesty's dominions to which he escapes may be retaken upon an escape.

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*Simplified procedure*

- 9 (1) A person may give notice that he waives the rights conferred on him by paragraph 8 above.
- (2) A notice under this paragraph shall be given in England and Wales in the manner prescribed by rules under section 144 of the Magistrates' Courts Act 1980 and, without prejudice to the generality of subsection (1) of that section, the power to make such rules shall include power to make provision for a magistrate to order the committal for return of a person with his consent at any time after his arrest.
- (3) A notice under this paragraph shall be given in Scotland in the manner prescribed by the High Court of Justiciary by Act of Adjournal and the sheriff may order the committal for return of a person with his consent at any time after his arrest.
- (4) Where an order is made under this paragraph, this Schedule shall cease to apply to the person in respect of whom it is made, except that if, within one month after the order is made, he is not surrendered to the foreign state to which he is to be returned, the High Court, upon application by or on behalf of that person, may, unless reasonable cause is shown for the delay, order him to be discharged.

*Discharge of persons apprehended if not conveyed out of United Kingdom within 2 months*

- 10 If the fugitive criminal who has been committed to prison is not surrendered and conveyed out of the United Kingdom within two months after such committal, or, if a writ of habeas corpus is issued, after the decision of the court upon the return to the writ, it shall be lawful for any judge of the High Court, upon application made to him by or on behalf of the criminal, and upon proof that reasonable notice of the intention to make such application has been given to the Secretary of State, to order the criminal to be discharged out of custody, unless sufficient cause is shown to the contrary.

*Execution of warrant of metropolitan magistrate*

- 11 The warrant of the metropolitan magistrate issued in pursuance of this Schedule may be executed in any part of the United Kingdom in the same manner as if it had been originally issued or subsequently endorsed by a justice of the peace having jurisdiction in the place where the same is executed.

*Depositions etc to be evidence*

- 12 Depositions and statements on oath taken in a foreign state, and copies of such original depositions or statements and foreign certificates of or judicial documents stating the fact of conviction, may, if duly authenticated, be received in evidence in proceedings under this Schedule.

*Crimes committed at sea*

- 13 (1) Where the crime in respect of which the surrender of a fugitive criminal is sought was committed on board any vessel or hovercraft on the high seas which comes into any port of the United Kingdom, the following provisions shall have effect—
- (a) this Schedule shall be construed as if references to any stipendiary magistrate in England and Wales, to any sheriff in Scotland or to any resident magistrate

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- in Northern Ireland, were substituted for the references to the metropolitan magistrate except the reference in paragraph 11 above;
- (b) the criminal may be committed to any prison to which the person committing him has power to commit persons accused of the like crime;
  - (c) if the fugitive criminal is apprehended on a warrant issued without the order of the Secretary of State, he shall be brought before the stipendiary magistrate, sheriff or resident magistrate who issued the warrant, or who has jurisdiction in the port where the vessel lies, or in the place nearest to that port.
- (2) The jurisdiction conferred by sub-paragraph (1) above on a stipendiary magistrate, sheriff or resident magistrate, shall be deemed to be in addition to, and not in derogation or exclusion of, the jurisdiction of the metropolitan magistrate.

#### *Aircraft*

- 14 (1) For the purposes of the application of this Schedule to crimes committed on board an aircraft in flight, any aircraft registered in a country which is for the time being certified to be a country specified in an Order in Council made by virtue of section 105 of the Civil Aviation Act 1982 to be a Convention country as defined in section 105(1) of that Act shall at any time while that aircraft is in flight be deemed to be within the jurisdiction of that country, whether or not it is for the time being also within the jurisdiction of any other country.
- (2) Paragraph 13 above shall have effect where a person's surrender is sought in respect of a crime committed on board an aircraft in flight which lands in the United Kingdom, but as if for references to the port where the vessel lies there were substituted references to the place at which the person whose surrender is sought is disembarked.
- (3) Subsections (4) and (5) of section 92 of the Civil Aviation Act 1982 shall apply for the purposes of this paragraph as they apply for the purposes of that section.
- (4) For the purposes of this Schedule any act, wherever committed, which—
- (a) is an offence under any of the provisions of Part I of the Aviation Security Act 1982 (other than sections 4 and 7) or an attempt to commit such an offence, or would be such an offence or attempt but for section 1(2), 2(4), or 3(5) or (6) of that Act; and
  - (b) is an offence against the law of any state in relation to which this Schedule has effect,
- shall be deemed to be an offence committed within the jurisdiction of that state.

#### *Deemed extension of jurisdiction of foreign states*

- 15 For the purposes of this Schedule any act, wherever committed, which is any of the following offences—
- (a) an offence mentioned in paragraph (a) of subsection (1) of section 1 of the Internationally Protected Persons Act 1978 which is committed against a protected person within the meaning of that section;
  - (b) an offence mentioned in paragraph (b) of that subsection which is committed in connection with such an attack as is so mentioned;
  - (c) an attempt to commit an offence mentioned in the preceding paragraphs;

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- (d) an offence under section 1(3) of the Internationally Protected Persons Act 1978;
- (e) an offence under the Taking of Hostages Act 1982 or an attempt to commit such an offence;
- (f) an offence mentioned in paragraphs (a) to (d) of subsection (1) of section 1 of the Nuclear Material (Offences) Act 1983 which is committed by doing an act in relation to or by means of nuclear material, as defined in that Act;
- (g) an offence under section 2 of that Act;
- (h) an attempt to commit an offence mentioned in paragraph (f) or (g) above; or
- (i) torture,

and an offence against the law of any state in relation to which this Schedule has effect shall be deemed to be an offence committed within the jurisdiction of that state.

*Fugitive criminals in colonies*

16 This Schedule, when applied by Order in Council, shall, unless it is otherwise provided by such Order, extend to every colony in the same manner as if throughout this Schedule a reference to the colony were substituted for the United Kingdom or England and Wales, as the case may require, but with the following modifications, namely—

- (a) the requisition for the surrender of a fugitive criminal who is in or suspected of being in a colony may be made to the governor of that colony by any person recognised by that governor as a consular representative, or (if the fugitive criminal has escaped from a colony or dependency of the foreign state on behalf of which the requisition is made) as the governor of such colony or dependency;
- (b) no warrant of the Secretary of State shall be required, and all powers vested in or acts authorised or required to be done under this Schedule by the metropolitan magistrate and the Secretary of State, or either of them, in relation to the surrender of a fugitive criminal, may be done by the governor of the colony alone;
- (c) a judge of any court exercising in the colony the like powers as the High Court exercises in England and Wales may exercise the power of discharging a criminal when not conveyed within two months out of such British possession.

*Criminal surrendered by foreign state not triable for previous crime*

17 Where in pursuance of any arrangement with a foreign state, any person accused or convicted of an extradition crime is surrendered by that foreign state, such person shall not until he has been restored or had an opportunity of returning to such foreign state, be triable or tried for any offence committed prior to the surrender in any part of Her Majesty's dominions other than such of the said crimes as may be proved by the facts on which the surrender is grounded.

*Application of Schedule in Channel Islands and Isle of Man*

18 This Schedule (except so far as relates to the execution of warrants in the Channel Islands) shall extend to the Channel Islands and Isle of Man in the same manner



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as if they were part of the United Kingdom; and the royal courts of the Channel Islands are hereby respectively authorised and required to register this Schedule.

*Dependencies of foreign states*

- 19 For the purposes of this Schedule, every colony, dependency, and constituent part of a foreign state, and every vessel of that state, shall (except where expressly mentioned as distinct in this Schedule) be deemed to be within the jurisdiction of and to be part of such foreign state.

*Interpretation*

- 20 In this Schedule, unless the context otherwise requires—
- “colony” includes colonies under one legislature;
  - “conviction” and “convicted” do not include or refer to a conviction which under foreign law is a conviction for contumacy, but “accused person” includes a person so convicted for contumacy;
  - “extradition crime”, in relation to any foreign state, is to be construed by reference to the Order in Council under section 2 of the Extradition Act 1870 applying to that state as it had effect immediately before the coming into force of this Act and to any amendments thereafter made to that Order;
  - “fugitive criminal” means any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign state who is in or is suspected of being in some part of Her Majesty’s dominions;
  - “fugitive criminal of a foreign state” means a fugitive criminal accused or convicted of an extradition crime committed within the jurisdiction of that state;
  - “justice of the peace” includes in Scotland a sheriff;
  - “legislature” means any person or persons who can exercise legislative authority in a colony, and where there are local legislatures as well as a central legislature, means the central legislature only;
  - “warrant”, in the case of any foreign state, includes any judicial document authorising the arrest of a person accused of crime.

SCHEDULE 2

Section 37.

REPEALS

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33 & 34 Vict. c. 52.	Extradition Act 1870.	The whole Act.
36 & 37 Vict. c. 60.	Extradition Act 1873.	In section 1, the words from the beginning to “and”, in the fourth place where it occurs and the word “alone”. Sections 3 and 4. Sections 6 to 8. The Schedule.

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36 & 37 Vict. c. 88.	Slave Trade Act 1873.	Section 27.
58 & 59 Vict. c.33.	Extradition Act 1895.	The whole Act.
6 Edw.7 c. 15.	Extradition Act 1906.	The whole Act.
22 & 23 Geo.5 c. 39.	Extradition Act 1932.	The whole Act.
25 & 26 Geo.5 c. 25.	Counterfeit Currency (Convention) Act 1935.	Section 6(4).
4 & 5 Eliz.2 c. 69.	Sexual Offences Act 1956.	In Schedule 3, the entry relating to the Extradition Act 1873.
9 & 10 Eliz.2 c. 60.	Suicide Act 1961.	In Schedule 1, in Part II, the entry relating to the Extradition Act 1870.
1967 c. 58.	Criminal Law Act 1967.	Section 4(6). Section 11(2)(a)(i).
1967 c. 68.	Fugitive Offenders Act 1967.	The whole Act.
1968 c. 60.	Theft Act 1968.	In Part II of Schedule 2, the entry relating to the Extradition Act 1873.
1969 c. 12.	Genocide Act 1969.	In section 2, subsection (1), and in subsection (2), the words “the Acts mentioned in subsection (1) of this section, the Extradition Act 1873 and”.
1969 c. 54.	Children and Young Persons Act 1969.	Section 60.
1971 c. 38.	Misuse of Drugs Act 1971.	Section 33.
1971 c. 48.	Criminal Damage Act 1971.	Section 11(4).
1973 c. 62.	Powers of Criminal Courts Act 1973.	In Schedule 5, paragraph 15.
1978 c. 17.	Internationally Protected Persons Act 1978.	Section 3.  Section 4(1).
1978 c. 26.	Suppression of Terrorism Act 1978.	Section 1(3)(a) and (b).  Section 2(1). Section 3.
1978 c. 31.	Theft Act 1978.	Section 5(3).
1978 c. 37.	Protection of Children Act 1978.	Section 1(6).

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1981 c. 61.	British Nationality Act 1981.	In Schedule 7, the entry relating to the Fugitive Offenders Act 1967.
1982 c. 16.	Civil Aviation Act 1982.	Section 93.
1982 c. 28.	Taking of Hostages Act 1982.	Section 3(1) and (4). Section 4. Section 5(1).
1982 c. 36.	Aviation Security Act 1982.	Section 9. Section 39(1).
1983 c. 18.	Nuclear Material (Offences) Act 1983.	Section 5. Section 7(1).
1985 c. 38.	Prohibition of Female Circumcision Act 1985.	Section 3(1).
1988 c. 33.	Criminal Justice Act 1988.	Sections 1 to 21. Sections 136 and 137. Section 138(2) and (3). Schedule 1. In Schedule 15, paragraphs 34, 54, 55, 57, 81, 83 to 88 and 95 and 96.
1989 c. 4.	Prevention of Terrorism (Temporary Provisions) Act 1989.	In Schedule 8, paragraph 1.

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