

1986 No. 2020

FUGITIVE CRIMINAL

The United States of America (Extradition) (Amendment) Order
1986

Made - - - - - 25th November 1986
Laid before Parliament 26th November 1986
Coming into operation on a date to be notified in the
London, Edinburgh and Belfast Gazettes

At the Court at Buckingham Palace, the 25th day of November 1986

Present,

The Queen's Most Excellent Majesty in Council

Whereas a Treaty with Protocol of Signature (a) ("the Treaty") was concluded on 8th June 1972 between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America for the reciprocal extradition of offenders, the terms of which are set out in Schedule 1 to the United States of America (Extradition) Order 1976 (b):

And whereas a Supplementary Treaty (c) ("the Supplementary Treaty") between the said Governments was signed on 25th June 1985 with the intent to make the Treaty more effective:

And whereas the Supplementary Treaty was amended by an Exchange of Notes (d) between the said Governments on 19th and 20th August 1986:

And whereas the terms of the Supplementary Treaty as so amended are set out in Schedule 1 to this Order:

Now, therefore, Her Majesty, in exercise of the powers conferred on Her by sections 2, 17 and 21 of the Extradition Act 1870 (e), or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the United States of America (Extradition) (Amendment) Order 1986. It shall come into operation on the date, to be notified in the London, Edinburgh and Belfast Gazettes, on which the Supplementary Treaty, as amended by the said Exchange of Notes, enters into force.

2. The Extradition Acts 1870 to 1895, as amended or extended by any subsequent enactment, shall apply in the case of the United States of America in accordance with the Treaty, as amended by the Supplementary Treaty, as amended by the said Exchange of Notes.

(a) Cmnd. 6723.
(d) Cmnd. 9915.

(b) S.I. 1976/2144.
(e) 1870 c.52.

(c) Cmnd. 9565.

3. The operation of this Order is limited to the United Kingdom of Great Britain and Northern Ireland, the Channel Islands, the Isle of Man, and the other territories specified in Schedule 2 to this Order.

G. I. de Doney,
Clerk of the Privy Council.

SCHEDULE 1
SUPPLEMENTARY TREATY
CONCERNING THE EXTRADITION TREATY BETWEEN THE
GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND AND THE GOVERNMENT OF THE
UNITED STATES OF AMERICA, SIGNED AT LONDON
ON 8 JUNE 1972, AS AMENDED
BY AN EXCHANGE OF NOTES ON 19 AND 20 AUGUST 1986

The Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland;

Desiring to make more effective the Extradition Treaty between the Contracting Parties, signed at London on 8 June 1972 (hereinafter referred to as "the Extradition Treaty");

Have resolved to conclude a Supplementary Treaty and have agreed as follows:

ARTICLE 1

For the purposes of the Extradition Treaty, none of the following shall be regarded as an offense of a political character:

- (a) an offense for which both Contracting Parties have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit his case to their competent authorities for decision as to prosecution;
- (b) murder, voluntary manslaughter, and assault causing grievous bodily harm;
- (c) kidnapping, abduction, or serious unlawful detention, including taking a hostage;
- (d) an offense involving the use of a bomb, grenade, rocket, firearm, letter or parcel bomb, or any incendiary device if this use endangers any person; and
- (e) an attempt to commit any of the foregoing offenses or participation as an accomplice of a person who commits or attempts to commit such an offense.

ARTICLE 2

Nothing in this Supplementary Treaty shall be interpreted as imposing the obligation to extradite if the judicial authority of the requested Party determines that the evidence of criminality presented is not sufficient to sustain the charge under the provisions of the treaty. The evidence of criminality must be such as, according to the law of the requested Party, would justify committal for trial if the offense had been committed in the territory of the requested Party.

In determining whether an individual is extraditable from the United States, the judicial authority of the United States shall permit the individual sought to present evidence on the questions of whether:

- (1) there is probable cause;
- (2) a defense to extradition specified in the Extradition Treaty or this Supplementary Treaty, and within the jurisdiction of the courts, exists; and
- (3) the act upon which the request for extradition is based would constitute an offense punishable under the laws of the United States.

Probable cause means whether there is sufficient evidence to warrant a man of reasonable caution in the belief that:

- (1) the person arrested or summoned to appear is the person sought;
- (2) in the case of a person accused of having committed a crime, an offense has been committed by the accused; and
- (3) in the case of a person alleged to have been convicted of an offense, a certificate of conviction or other evidence of conviction or criminality exists.

ARTICLE 3

(a) Notwithstanding any other provision of this Supplementary Treaty, extradition shall not occur if the person sought establishes to the satisfaction of the competent judicial authority by a preponderance of the evidence that the request for extradition has in fact been made with a view to try or punish him on account of his race, religion, nationality, or political opinions, or that he would, 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.

(b) In the United States, the competent judicial authority shall only consider the defense to extradition set forth in paragraph (a) for offenses listed in Article 1 of this Supplementary Treaty. A finding under paragraph (a) shall be immediately appealable by either party to the United States district court, or court of appeals, as appropriate. The appeal shall receive expedited consideration at every stage. The time for filing a notice of appeal shall be 30 days from the date of the filing of the decision. In all other respects, the applicable provisions of the Federal Rules of Appellate Procedure or Civil Procedure, as appropriate, shall govern the appeals process.

ARTICLE 4

Article VIII, paragraph (2) of the Extradition Treaty is amended to read as follows:

“(2) A person arrested upon such an application shall be set at liberty upon the expiration of sixty days from the date of his arrest if a request for his extradition shall not have been received. This provision shall not prevent the institution of further proceedings for the extradition of the person sought if a request for extradition is subsequently received.”

ARTICLE 5

This Supplementary Treaty shall apply to any offense committed before or after this Supplementary Treaty enters into force, provided that this Supplementary Treaty shall not apply to an offense committed before this Supplementary Treaty enters into force which was not an offense under the laws of both Contracting Parties at the time of its commission.

ARTICLE 6

This Supplementary Treaty shall form an integral part of the Extradition Treaty and shall apply:

- (a) in relation to the United Kingdom: to Great Britain and Northern Ireland, the Channel Islands, the Isle of Man and the territories for whose international relations the United Kingdom is responsible which are listed in the Annex to this Supplementary Treaty;

(b) to the United States of America; and references to the territory of a Contracting Party shall be construed accordingly.

ARTICLE 7

This Supplementary Treaty shall be subject to ratification and the instruments of ratification shall be exchanged at London as soon as possible. It shall enter into force upon the exchange of instruments of ratification. It shall be subject to termination in the same manner as the Extradition Treaty.

ANNEX

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

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order applies the Extradition Acts 1870 to 1895 in the case of the United States of America in accordance with the Extradition Treaty between the United Kingdom and the United States of America, signed at London on 8th June 1972, as amended by the Supplementary Treaty signed at Washington on 25th June 1985, as amended by an Exchange of Notes on 19th and 20th August 1986.

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