

1986 No. 2146

PREVENTION AND SUPPRESSION OF TERRORISM

The Suppression of Terrorism Act 1978 (Application of Provisions) (United States of America) Order 1986*Laid before Parliament in draft**Made* - - - - - *8th December 1986**Coming into Operation* *on the date, to be notified in the London, Edinburgh and Belfast Gazettes, on which the Supplementary Treaty comes into force.*

Whereas a Treaty with Protocol of Signature (“the Treaty”) was signed 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(a):

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

And whereas in an exchange of Notes dated 19th and 20th August(c) the said Governments indicated acceptance of certain amendments to the Supplementary Treaty, the provisions of the Supplementary Treaty as so amended being set out in Schedule 1 to this Order:

And whereas a draft of this Order has been approved by resolution of each House of Parliament.

Now, therefore, in exercise of the powers conferred upon me by section 5(1)(i) of the Suppression of Terrorism Act 1978(d), I hereby make the following Order:—

1. This Order may be cited as the Suppression of Terrorism Act 1978 (Application of Provisions) (United States of America) Order 1986.

2. This Order shall come into operation on the date, to be notified in the London, Edinburgh and Belfast Gazettes, on which the Supplementary Treaty comes into force.

(a) S.I. 1976/2144.
(c) Cmnd. 9915.

(b) Cmnd. 9565.
(d) 1978 c. 26.

3. The provisions of the Suppression of Terrorism Act 1978 specified in Schedule 2 to this Order (being provisions which, apart from section 5 thereof, would apply only in relation to convention countries) shall to the extent there mentioned apply in relation to the United States of America as they apply in relation to a convention country.

Home Office.
8th December 1986.

Douglas Hurd,
One of Her Majesty's Principal
Secretaries of State.

SCHEDULE 1

TREATY PROVISIONS

SUPPLEMENTARY TREATY CONCERNING THE EXTRADITION TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND SIGNED AT LONDON ON 8 JUNE 1972

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 Island 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; and Turks and Caicos Islands.

SCHEDULE 2

Article 3

APPLICABLE PROVISIONS OF SUPPRESSION OF TERRORISM ACT 1978

1. Subsections (1), (2) and (3)(a) and (d) of section 1 (cases in which certain offences are not to be regarded as of a political character) in so far as they relate to those offences listed in Schedule 1 to the Act of 1978 which are specified in paragraph 5 below.
2. Section 2(1) (which imposes restrictions on the return of a criminal in certain cases).
3. Section 7 (extension to Channel Islands, Isle of Man and other countries).
4. Section 8 (provisions as to interpretation and orders).
5. The following paragraphs of Schedule 1 (list of offences):—
 1. (murder).
 2. (manslaughter or culpable homicide).
 4. (kidnapping, abduction or plagiium).
 5. (false imprisonment).
 7. (wilful fire-raising).

8. (a) and (b) (malicious wounding and causing grievous bodily harm under the Offences against the Person Act 1861(a)).
 - 10, 11. (offences of abduction under the Offences against the Person Act 1861).
 - 11A. (taking of hostages)(b).
 12. (a), (b) and (c) (explosives offences under the Offences against the Person Act 1861).
 13. (offences under sections 2 and 3 of the Explosives Substances Act 1883(c)).
 - 14, 15. (firearms offences).
 - 16, 17. (offences against property intending to endanger life or being reckless as to danger to life).
 - 18, 19. (offences in relation to aircraft).
 20. (attempts to commit any of the above).
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EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order, which in accordance with Article 2 comes into operation on the date, to be notified in the London, Edinburgh and Belfast Gazettes, on which the Supplementary Treaty comes into force, applies certain provisions of the Suppression of Terrorism Act 1978 to the extradition of offenders to the United States of America in pursuance of the Supplementary Treaty between the Government of the United Kingdom and the United States of America, signed on 25th June 1985 and amended as recorded in an exchange of Notes between the said Governments of 19th and 20th August 1986. The terms of the Supplementary Treaty as so amended are set out in Schedule 1.

By virtue of paragraph 1 of Schedule 2, the offences listed in paragraph 5 are not to be regarded as offences of a political character (extradition for which is precluded by section 3 of the Extradition Act 1870 (c. 52)) in relation to a request for the extradition of a person to the United States of America made after the Order comes into operation, or for the purposes of a request from the United States for assistance in obtaining evidence for use in their criminal proceedings.

Paragraph 2 of Schedule 2 applies section 2(1) of the 1978 Act, which precludes surrender if the person sought proves that the requisition for his surrender was made with a view to try or punish him on account of his race, religion, nationality or political opinions or that he might, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of any of those matters.

Paragraphs 3 and 4 provide for the extension of the Order to the Channel Islands, the Isle of Man and other countries and for supplementary matters.

(a) 1861 c. 100.

(b) Inserted by the Taking of Hostages Act 1982 (c. 28), section 3(2).

(c) 1883 c. 3.

SI 1986/2146
ISBN 0-11-068146-0



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