

## SCHEDULE

### PROVISIONS OF EXTRADITION ACT 1989 AS EXTENDED TO THE BRITISH ANTARCTIC TERRITORY

#### PART III PROCEDURE

##### General

#### **Extradition request and authority to proceed.**

7.—(1) Subject to the provisions of this Act relating to provisional warrants, a person shall not be dealt with under this Part of this Act except in pursuance of an order of the Commissioner (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 by or on behalf of the Government of the United Kingdom or the Government of a designated Commonwealth country or the Governor of a colony or the Government of the Republic of Ireland.

(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 United Kingdom, the Commonwealth country, the colony or the Republic of Ireland; 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 made under section 42 of the Summary Courts (Criminal Proceedings) Ordinance 1990<sup>(1)</sup> may make provision as to the procedure for service under subsection (2) above.

(4) On the receipt of any such request the Commissioner 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 Territory which it appears to the Commissioner would be constituted by equivalent conduct in the Territory.

#### **Arrest for purposes of committal.**

8.—(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, by the Senior Magistrate or a designated magistrate;
- (b) without such an authority, by the Senior Magistrate or any magistrate upon information that the said person is or is believed to be in or on his way to the Territory;

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

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(1) Ordinance No. 6 of 1990.

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(2) In this Act “designated magistrate” means a magistrate designated for the purposes of this Act by order made by the Commissioner.

(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 the Territory 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 Commissioner, and transmit to him the information and evidence, or certified copies of the information and evidence, upon which it was issued; and the Commissioner 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 be executed in any part of the Territory and may be so executed by any person to whom it is directed or by any constable or by any public officer.

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

#### **Proceedings for committal.**

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

(2) For the purposes of proceedings under this section a court of committal shall have the like jurisdiction and powers, as nearly as may be, including power to remand in custody or on bail, as a Summary Court sitting in committal proceedings (as defined in section 2(2) of the Summary Courts (Criminal Proceedings) Ordinance 1990(2).)

(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 Commissioner) after which he will be discharged from custody unless such an authority has been received.

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

- (a) where that person is accused of the offence, that the evidence would be sufficient to warrant his trial if the extradition crime had taken place within the Territory;
- (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 Commissioner’s decision as to his return; and
- (ii) if the Commissioner 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 Territory which would be constituted by his conduct.

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(2) Ordinance No. 6 of 1990.

(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.

#### **Statement of case by court.**

**10.**—(1) If the court of committal refuses to make an order in relation to a person under section 9 above in respect of the offence or, as the case may be, any of the offences to which the authority to proceed relates, the Government seeking his return (whether it be the Government of the United Kingdom or of a designated Commonwealth country or the Governor of a colony or the Government of the Republic of Ireland) 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 Supreme Court on the question of law involved.

(2) If the Government 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 (or, if no period has been so specified, within a reasonable period), the Supreme Court may, on the application of the Government that applied for the case to be stated, make an order requiring the court to state a case.

(5) The Supreme Court shall have the power—

- (a) to remit the case to the court of committal to decide it according to the opinion of the Supreme Court on the question of law; or
- (b) to dismiss the appeal.

(6) Where the Supreme 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 Commissioner has power to make an order for return in respect of the person whose return was requested.

(7) An order made by the court of committal under subsection (2) above shall cease to have effect if—

- (a) the Supreme Court dismisses the appeal in respect of the offence or all the offences to which it relates; and
- (b) the Government seeking return does not immediately—
  - (i) apply for leave to appeal to the Court of Appeal; or
  - (ii) inform the Supreme Court that it intends to apply for leave.

(9) An appeal against a decision of the Supreme Court given under this section may be made to the Court of Appeal by the person whose return is sought or by the Government seeking return but may be so made only—

- (a) by leave of the Supreme Court; or

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(b) when the Supreme Court has refused leave under paragraph (a), by special leave of the Court of Appeal.

(10) Without prejudice to section 4(2) of the British Antarctic Territory Court of Appeal Order in Council 1965(3), the Court of Appeal may, on an appeal from a decision of the Supreme Court given under this section, exercise any powers of the Supreme Court under subsection (5) above, and subsection (6) above shall apply to it as it applies to the Supreme Court.

(11) Subject to subsection (7) above, an order under subsection (2) above shall have effect so long as the case is pending.

(12) For the 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 and the power of Her Majesty to grant special leave to appeal to Her Majesty in Council) there is no step that the Government seeking return can take.

### **Application for habeas corpus, etc.**

**11.**—(1) Where a person is committed under section 9 above, the court shall inform him in ordinary language of his right to make an application for habeas corpus, and shall forthwith give notice of the committal to the Commissioner.

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

### **Order for return.**

**12.**—(1) Where a person is committed under section 9 above and is not discharged by order of the Supreme Court or by order made on appeal from that court, the Commissioner may by warrant order him to be returned unless his return is prohibited, or prohibited for the time being, by this Act, or the Commissioner 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—

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(3) S.I.1965/590.

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- (a) the Commissioner shall not make an order in the case of any person if it appears to the Commissioner 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 Commissioner may decide to make no order for the return of a person accused or convicted of an offence not punishable with death in the Territory if that person could be or has been sentenced to death for that offence in the country by which the request for his return is made.
- (3) An order for return shall not be made in the case of a person who is serving a sentence of imprisonment or detention, or is charged with an offence, in the Territory—
- (a) in the case of a person serving such a sentence, until the sentence has been served;
  - (b) in the case of a person charged with an offence, until the charge is disposed of or withdrawn or unless an order is made for it to lie on the file and, if it results in his serving a term of imprisonment or detention, until the sentence has been served.
- (5) The Commissioner may decide to make no order under this section for the return of a person committed in consequence of an extradition request if another extradition request (as defined in section 35(1) below) has been made in respect of him and it appears to the Commissioner, 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.
- (6) Notice of the issue of a warrant under this section for the return of a person shall forthwith be given to the person to be returned.

### **Simplified procedure.**

14.—(1) A person may give notice that he waives the rights conferred on him by section 11 above.

(2) A notice under this section shall be given in the manner prescribed by rules under section 42 of the Summary Courts (Criminal Proceedings) Ordinance 1990(4) or, subject to any such rules, as directed under section 41 of that Ordinance, and a magistrate may order the committal for return of a person with his consent at any time after his arrest.

(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 Supreme Court, upon application by or on behalf of that person, may, unless reasonable cause is shown for the delay, order him to be discharged.

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(4) Ordinance No. 6 of 1990.