

Status: Point in time view as at 26/09/1991.

Changes to legislation: There are currently no known outstanding effects for the Extradition Act 1989 (repealed), SCHEDULE 1. (See end of Document for details)

SCHEDULES

SCHEDULE 1

Section 1.

PROVISIONS DERIVING FROM EXTRADITION ACT 1870 AND ASSOCIATED ENACTMENTS

Modifications etc. (not altering text)

- C1** Sch. 1 (paras. 1-20) applied by S.I. 1991/1699, art. 2.
Sch. 1 (paras. 1-20) applied by S.I. 1991/1701, art. 2.
Sch. 1 (paras. 1-20) applied by S.I. 1991/1702, arts. 2 and 3.

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.

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Effect of Order

- 2 An Order in Council under section 2 of the ^{M1}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.

Marginal Citations

M1 1870 c. 52.

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 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

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- (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.

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- (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.

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 ^{M2}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.

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Marginal Citations

M2 1980 c. 43.

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 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.

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- (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 ^{M3}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 ^{M4}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 ^{M5}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.

Marginal Citations

M3 1982 c. 16.

M4 1982 c. 16.

M5 1982 c. 36.

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 ^{M6}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 ^{M7}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 ^{M8}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; ^{F1} . . .]
- (i) torture,
- ^{F2}(j) a drug trafficking offence within the meaning of the ^{M9}Drug Trafficking Offences Act 1986; . . . ^{F3}
- (k) an offence to which section 1 of the ^{M10}Criminal Justice (Scotland) Act 1987 relates; ^{F4}or
- (l) a drug trafficking offence within the meaning of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990; ^{F5}or
- (l) an offence under section 1, 9, 10, 11, 12 or 13 of the Aviation and Maritime Security Act 1990 or an attempt to commit such an offence.]

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.

Textual Amendments

- F1** Word repealed (1.7.1991) by [Criminal Justice \(International Co-operation\) Act 1990 \(c. 5, SIF 39:1\)](#), s. 31(3), [Sch. 5](#); S.I. 1991/1072, art. 2(b), [Sch. Pt.II](#).
- F2** [Sch. 1 para. 15\(j\)\(k\)](#) inserted (1.7.1991) after para. 15(i) by [Criminal Justice \(International Co-operation\) Act 1990 \(c. 5, SIF 39:1\)](#), s. 22(2); S.I. 1991/1072, art. 2(b), [Sch. Pt.II](#).
- F3** Word “or” immediately following paragraph (j) repealed by [Aviation and Maritime Security Act 1990 \(c. 31, SIF 39:2\)](#), s. 53(2), [Sch. 4](#)
- F4** [Sch. 1 para. 15\(l\)](#) (beginning “(l) a drug trafficking offence”) and the word “or” immediately preceding it inserted (1.7.1991) by S.I. 1990/2588 (N.I. 17), art. 38(1), [Sch. 2 para. 6](#); S.R. 1991/220, [art. 2](#)
- F5** [Sch. 1 para. 15\(l\)](#) (beginning “(l) an offence under”) and the word “or” immediately preceding it inserted by [Aviation and Maritime Security Act 1990 \(c. 31, SIF 39:2\)](#), s. 53(1), [Sch. 3 para. 10](#)

Marginal Citations

- M6** 1978 c. 17.
- M7** 1982 c. 28.
- M8** 1983 c. 18.
- M9** 1986 c.32 (39:1).
- M10** 1987 c.41 (39:1).

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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 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.

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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 ^{M11}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.

Marginal Citations

M11 1870 c. 52.

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