

SCHEDULE 2

PROVISIONS OF EXTRADITION ACT 1989 AS EXTENDED TO THE LISTED TERRITORIES

PART III PROCEDURE

General

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 Governor (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 to the Governor by or on behalf of the Government of the United Kingdom, or the Government of a designated Commonwealth country or the Governor of a British overseas territory or the Government of Ireland.

(2) There shall be furnished with any extradition 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 that country or British overseas territory; 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.

(4) On receipt of any such request the Governor 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 relevant listed territory which it appears to the Governor would be constituted by equivalent conduct in that territory.

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

- (a) on receipt of an authority to proceed;
- (b) without such an authority upon information that the said person is or is believed to be in or on his way to the relevant listed territory;

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

(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 magistrate by whom it is issued shall forthwith give notice to the Governor and transmit to him the information and evidence, or

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certified copies of the information and evidence, upon which it was issued; and the Governor 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, 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 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 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 jurisdiction.

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.

(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 magistrates' court in proceedings for committal in relation to an offence triable on indictment in the relevant listed territory.

(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 Governor) 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 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 Governor’s decision as to his return; and
- (ii) if the Governor 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 relevant listed territory 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.—(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 country or British overseas territory seeking his return 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 a superior court of the relevant listed territory on the question of law involved.

(2) If the country or British overseas territory 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 superior court may, on the application of the country or British overseas territory that applied for the case to be stated, make an order requiring the court to state a case.

(5) The superior court shall have power—

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

(6) Where the superior court dismisses an appeal relating to an offence, it shall by order declare that the offence is not an offence in respect of which the Governor has power to make an order for return in respect of the person whose return was requested.

(7) An order made under subsection (2) above shall cease to have effect if—

- (a) the superior court dismisses the appeal in respect of the offence or all the offences to which it relates; and
- (b) the country or British overseas territory seeking return does not immediately—
 - (i) apply for leave to appeal against that dismissal; or
 - (ii) inform the superior court that it intends to apply for leave.

(9) An appeal against the decision of a superior court given under this section may be made to the court of the territory to which an appeal from the superior court in criminal matters lies by the person whose return is sought or by the country or British overseas territory seeking his return but may be so made only—

- (a) by leave of the superior court; or
- (b) where that court has refused leave under paragraph (a) above, by special leave of the court to which an appeal in that case would lie.

(10) Without prejudice to any other powers exercisable apart from this provision, a court may, on an appeal from a decision of a superior court under subsection (9) above, exercise any powers of the superior court under subsection (5) above, and subsection (6) above shall apply to it as it applies to the superior court in question.

(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 purpose 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 country or British overseas territory seeking the return can take.

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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 Governor.

(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, apart from this section, of the court of the relevant listed territory to which the application for habeas corpus is made, 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.

12.—(1) Where a person is committed under section 9 above and is not discharged by order of a superior court of the relevant listed territory, the Governor may by warrant order him to be returned unless his return is prohibited, or prohibited for the time being, by this Act, or the Governor 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 country or British overseas territory—

- (a) the Governor shall not make an order in the case of any person if it appears to the Governor 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 Governor may decide to make no order for the return of a person accused or convicted of an offence not punishable with death in the relevant listed 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 relevant listed territory—

- (a) in the case of a person serving such a sentence, until the sentence has been served;

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(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 Governor 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 of this Act) has been made in respect of him and it appears to the Governor, 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 shall forthwith be given to the person to be returned.

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 for proceedings before a magistrate in the relevant listed territory and 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.

(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, a superior court of the relevant listed territory, upon application by or on behalf of that person, may, unless reasonable cause is shown for the delay, order him to be discharged.

Effect of delay

16.—(1) If a person committed under section 9 above is still in the relevant listed territory after the expiration of the relevant period, he may apply to a superior court of the territory for his discharge.

(2) Unless he has instituted proceedings for judicial review of the Governor'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 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.

(5) If upon an application under this section the court is satisfied that reasonable notice of the proposed application has been given to the Governor, 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.

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17.—(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 like manner as a person escaping from custody under a warrant for his arrest issued in respect of an offence committed in the relevant listed territory.

(3) Where a person, being in custody in any part of a listed territory whether under this Part of this Act or otherwise, is required to be removed in custody under this Act to another part of that territory 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.