
STATUTORY INSTRUMENTS

2016 No. 990

The Extradition Act 2003 (Overseas Territories) Order 2016

Citation, commencement and extent

1.—(1) This Order may be cited as the Extradition Act 2003 (Overseas Territories) Order 2016 (“the Order”) and, subject to article 9, comes into force on 10th November 2016.

(2) This Order extends to each British overseas territory listed in Schedule 1.

Interpretation

2.—(1) In this Order, “Territory” means a British overseas territory listed in Schedule 1.

(2) Subject to paragraphs (4) and (5), for the purposes of this Order the following are within the meaning of the expression “extradition territory”—

(a) a territory listed in Schedule 2; and

(b) any other territory designated by order made by the Secretary of State under section 1(1) or 69(1) of the UK Act after this Order comes into force.

(3) A territory referred to in paragraph (2) ceases to be an extradition territory for the purposes of this Order if it ceases to be designated by order made by the Secretary of State under section 1(1) or 69(1) of the UK Act.

(4) In relation to extradition from or to a particular Territory, the expression “extradition territory” does not include that Territory.

(5) In relation to extradition from or to the Sovereign Base Areas, the expression “extradition territory” does not include Cyprus.

(6) In this Order—

“the Act”, unless the context otherwise requires, means the provisions of the UK Act as set out in Schedule 3, including the modifications and additional provisions set out in that Schedule;

“asylum claim” means a claim made by a person to the responsible authority in the Territory that to remove a person from or require him to leave the Territory would breach the obligations of the Territory under the Refugee Convention or would otherwise be incompatible with the principle of non-refoulement;

“constable”, in relation to a Territory, means a person having the powers of a police officer under the law of that Territory;

“discontinued” includes the entry of a nolle prosequi;

“early release provisions” means such provisions as are in force in a Territory enabling a person serving a sentence of imprisonment or other form of detention to be released from detention before the end of his sentence but subject to recall;

“Governor”, in relation to a Territory and except where the context otherwise requires, means the person holding or acting in the office of Governor of that Territory, or if there is no such office, the officer for the time being administering that Territory;

“Guernsey” means the Bailiwick of Guernsey;

“Human Rights Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950(1) as it has effect for the time being in relation to the Territory concerned, except in respect of the application of the Order to—

- (a) Pitcairn, where it means Part 2 of the Pitcairn Constitution set out in Schedule 2 to the Pitcairn Constitution Order 2010(2);
- (b) the British Antarctic Territory or the British Indian Ocean Territory, where it means the right to life and the right not to be subjected to torture or to inhuman or degrading treatment or punishment;

“Jersey” means the Bailiwick of Jersey;

“Judicial Committee” means the Judicial Committee of the Privy Council;

“magistrate”, in relation to a Territory, means a person having the powers of a magistrate under the law of that Territory or—

- (c) in the Sovereign Base Areas, the Resident Judge’s Court of those Areas;
- (d) in the British Antarctic Territory and the British Indian Ocean Territory, the senior magistrate;

“Pitcairn” means Pitcairn, Henderson, Ducie and Oeno Islands;

“provisional warrant” means a warrant issued under section 73(3) of the Act as set out in Schedule 3;

“the UK Act” means the Extradition Act 2003, as it has effect in the United Kingdom;

“Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951(3) and the Protocol to that Convention(4);

“Sovereign Base Areas” means the Sovereign Base Areas of Akrotiri and Dhekelia (that is to say the areas mentioned in section 2(1) of the Cyprus Act 1960(5));

“Supreme Court” means—

- (e) in relation to Anguilla, Montserrat and the Virgin Islands, the High Court of the Eastern Caribbean Supreme Court;
- (f) in relation to the Cayman Islands, the Grand Court of the Cayman Islands;
- (g) in relation to Bermuda, the British Antarctic Territory, the British Indian Ocean Territory, the Falkland Islands, Pitcairn, St Helena, Ascension and Tristan da Cunha, South Georgia and the South Sandwich Islands and the Turks and Caicos Islands, the Supreme Court of the respective Territory;
- (h) in relation to the Sovereign Base Areas, the Senior Judges’ Court of those Areas.

Extension of provisions of Extradition Act 2003 to Territories

3.—(1) The Act (as defined in article 2(6)) extends to each Territory.

(2) In relation to a case where a request for extradition is made in respect of more than one offence, the modified provisions set out in Schedule 3 have effect in each Territory subject to the further modifications specified in Schedule 4.

(1) UK Treaty Series No. 71 (1953); Cmd 8969.

(2) SI 2010/244.

(3) UK Treaty Series No. 39 (1954); Cmd 9171.

(4) UK Treaty Series No. 15 (1969); Cmd 3906.

(5) 1960 c. 52.

Exercise of powers by Governor

4. In the exercise of any power conferred on the Governor by this Order, the Governor is to act in his discretion.

The British Antarctic Territory, Pitcairn and South Georgia and the South Sandwich Islands (“small Territories”)

5.—(1) This article applies to extradition to or from any of the following Territories—

- (a) the British Antarctic Territory;
- (b) South Georgia and the South Sandwich Islands;
- (c) Pitcairn (in this article, each a “small Territory”).

(2) If it appears to the Governor that there are procedural arrangements in place between a small Territory and another territory, the Governor may issue a certificate, which contains—

- (a) the information referred to in paragraph (3); and
- (b) the assurance referred to in paragraph (4).

(3) The information is that the Act applies in that small Territory,—

- (a) as if specified references in it to “the Territory” are a reference to the Territory, the territory named in the certificate, or to both as appropriate; and
- (b) subject to any other specified modifications as appear to the Governor to be appropriate.

(4) The assurance is one that the procedural arrangements include an undertaking from the other territory that it will treat the extradited person, or persons, in the same way that the small Territory would be required to do under the law of that small Territory or arrangements between it and the extradition territory in relation to which the extradition request is concerned.

(5) In this article, “procedural arrangements” mean arrangements that allow for specified aspects of the extradition process (including the extradition hearing and the return of an extradited person to face trial or serve a sentence of imprisonment), whether generally or in relation to the extradition of a particular person, to take place in another territory on behalf of a small Territory.

Sovereign Base Areas

6.—(1) In their application to the Sovereign Base Areas, sections 70(2)(c) and 93(6A)(b) of the Act as set out in Schedule 3 have effect as if for the words “granted leave to enter or remain” there were substituted the words “permitted to enter or remain”.

(2) In their application to the Sovereign Base Areas, sections 77(1), 84(1) and 86(1) of the Act as set out in Schedule 3 have effect so that the Resident Judge’s Court has the same powers as in the exercise of its criminal jurisdiction.

(3) In their application to the Sovereign Base Areas, sections 76A(2), 88(2), 97(2), 102(2) and 118C(2) of the Act as set out in Schedule 3 have effect as if—

- (a) for the words “the charge is withdrawn” there were substituted the words “the defendant is discharged”;
- (b) for the words “proceedings in respect of the charge are discontinued” there were substituted the words “the charge is quashed”;
- (c) for the words “an order is made for the charge to lie on the file” there were substituted the words “the Attorney General and Legal Adviser enters a nolle prosequi”.

(4) In its application to the Sovereign Base Areas, section 214 of the Act as set out in Schedule 3 has effect as if it included reference to an appeal by the prosecution in addition to an appeal against conviction.

Modifications relating to summary trials on information

7. Where a provision in Schedule 3 contains the phrase “summary trial of an information”, that provision has effect—

- (a) in its application to the British Antarctic Territory, as if for that phrase there were substituted the phrase “the trial of an information”;
- (b) in its application to the British Indian Ocean Territory, as if for that phrase there were substituted the phrase “the summary trial of a charge”; and
- (c) in its application to the Cayman Islands, as if for that phrase there were substituted the phrase “the summary trial of a complaint”.

Revocations

8. Subject to article 9(3), the instruments specified in Schedule 5 are revoked in so far as they extend to any of the Territories.

Transitional provision and savings

9.—(1) Paragraph (2) applies with respect to—

- (a) requests for extradition which are sent, or received, by a Governor before 10th November 2016;
- (b) extraditions made to or from a Territory before 10th November 2016.

(2) In respect of the request for extradition to which this paragraph applies—

- (a) the instruments revoked in article 8 continue to apply in so far as they extend to the particular Territory; and
- (b) the provisions of the Act do not apply and such a request shall be dealt with in accordance with the law that was in force in the Territory at the time the request was sent or received.

(3) The revocation made by article 8 of an instrument listed in Part 2 of Schedule 5 shall not apply in Bermuda until such time as any provision, which is made for (or by) Bermuda and which has the effect of replacing that instrument, comes into force.

(4) The powers conferred by or under the Act shall be in addition to, and not in derogation of, the powers exercisable by virtue of the prerogative of the Crown.

Richard Tilbrook
Clerk of the Privy Council