
STATUTORY INSTRUMENTS

1992 No. 1300

EXTRADITION

The Extradition (British Antarctic Territory) (Commonwealth Countries, Colonies and Republic of Ireland) Order 1992

<i>Made</i>	- - - -	<i>4th June 1992</i>
<i>Laid before Parliament</i>		<i>12th June 1992</i>
<i>Coming into force</i>	- -	<i>6th July 1992</i>

At the Court at Buckingham Palace, the 4th day of June 1992

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by the British Settlements Acts 1887 and 1945(1) and by section 32(1) and (2) and section 34(3) of the Extradition Act 1989(2), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Title and commencement

1.—(1) This Order may be cited as the Extradition (British Antarctic Territory) (Commonwealth Countries, Colonies and Republic of Ireland) Order 1992.

(2) This Order shall come into force on 6th July 1992.

Extension to British Antarctic Territory of provisions of Extradition Act 1989 relating to return to Commonwealth countries, etc.

2. Sections 1(2), 2, 5, 6 (other than subsection (2)), 7 (other than subsection (6)), 8, 9 (other than subsections (3), (4) and (7)), 10 (other than subsections (8) and (13)), 11 (other than subsection (6)), 12 (other than subsection (4)), 14 (other than subsection (3)), 16, 17, 19, 20, 21, 23, 25, 27, 28, and 35 of the Extradition Act 1989, modified and adapted as in the Schedule hereto, shall extend to the British Antarctic Territory.

(1) 1887 c. 54 and 1945 c. 7 (9 and 10 Geo. 6).

(2) 1989 c. 33.

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Revocation

3. The Fugitive Offenders (Extension) Order 1967⁽³⁾ is hereby revoked in so far as it forms part of the law of the British Antarctic Territory.

G. I. de Deney
Clerk of the Privy Council

(3) S.I.1967/1303 (1967 II, p.3772).

SCHEDULE

Article 2

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

PART I

INTRODUCTORY

General

Liability to Extradition.

1.—(2) Subject to the provisions of this Act, a person in the Territory who is accused of an extradition crime—

- (a) in the United Kingdom; or
- (b) in a designated Commonwealth country; or
- (c) in a colony; or
- (d) in the Republic of Ireland,

or who is alleged to be unlawfully at large after conviction of such an offence in the United Kingdom or in any such Commonwealth country or in a colony or in the Republic of Ireland, may be arrested and returned to the United Kingdom or to that Commonwealth country or to that colony or to the Republic of Ireland in accordance with extradition procedures under Part III of this Act.

Extradition crimes

Meaning of “extradition crime”.

2.—(1) In this Act, “extradition crime” means—

- (a) conduct in the United Kingdom or in the territory of a designated Commonwealth country or in a colony or in the Republic of Ireland which, if it occurred in the Territory, would constitute an offence punishable with imprisonment for a term of 12 months, or any greater punishment, and which, however described in the law of the United Kingdom, the designated Commonwealth country, the colony or the Republic of Ireland, is so punishable under that law;
- (b) an extra-territorial offence against the law of the United Kingdom, a designated Commonwealth country, a colony or the Republic of Ireland which is punishable under that law with imprisonment for a term of 12 months, or any greater punishment, and which satisfies—
 - (i) the condition specified in subsection (2) below; or
 - (ii) all the conditions specified in subsection (3) below.

(2) The condition mentioned in subsection (1)(b)(i) above is that in corresponding circumstances equivalent conduct would constitute an extra-territorial offence against the law of the Territory punishable with imprisonment for a term of 12 months, or any greater punishment.

(3) The conditions mentioned in subsection (1)(b)(ii) above are—

- (a) that the United Kingdom, the designated Commonwealth country, the colony or the Republic of Ireland bases its jurisdiction on the nationality of the offender;
- (b) that the conduct constituting the offence occurred outside the Territory; and

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- (c) that, if it occurred in the Territory, it would constitute an offence under the law of the Territory punishable with imprisonment for a term of 12 months, or any greater punishment.
- (4) For the purposes of subsections (1) to (3) above—
 - (a) the law of the United Kingdom, a designated Commonwealth country, a colony or the Republic of Ireland includes the law of any part of it;
 - (b) conduct in a colony or dependency of a designated Commonwealth country, or a vessel, aircraft or hovercraft of such a country, shall be treated as if it were conduct in the territory of that country; and
 - (c) conduct in a vessel, aircraft or hovercraft of the United Kingdom, or of a colony of the United Kingdom, or of the Republic of Ireland, shall be treated as if it were conduct in the United Kingdom or in that colony or in the Republic of Ireland.

Return to Commonwealth countries, colonies and Republic of Ireland

Procedure for designation, etc.

5.—(1) In this Act as it has effect under the law of the Territory, “designated Commonwealth country” means any country that is for the time being a designated Commonwealth country under this Act as it has effect under the law of the United Kingdom.

(2) This Act has effect in relation to all colonies.

(3) Subject to any provision made by the Commissioner under subsection (4) below, any Order of Her Majesty in Council made under section 5(3) of this Act as it has effect under the law of the United Kingdom, and any provision made by an order of Her Majesty in Council in reliance on section 5(4) of this Act as it so has effect, shall have effect also under the law of the Territory.

(4) The Commissioner may, by order made with the approval of the Secretary of State, direct that any Order of Her Majesty in Council made under section 5(3) of the Act as it has effect under the law of the United Kingdom, or any provision made by an Order of Her Majesty in Council in reliance on section 5(4) of the Act as it so has effect, shall not have effect under the law of the Territory or shall have such effect subject to such exceptions, adaptations or modifications as may be specified in the Commissioner’s order.

(5) Any order made by the Commissioner under this section shall be published in the Official Gazette of the Territory.

PART II

RESTRICTIONS ON RETURN

General restrictions on return.

6.—(1) A person shall not be returned under Part III of this Act, or committed or kept in custody for the purposes of return, if it appears to an appropriate authority—

- (a) that the offence of which that person is accused or was convicted is an offence of a political character;
- (b) that it is an offence under military law which is not also an offence under the general criminal law;
- (c) that the request for his return (though purporting to be made on account of an extradition crime) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or

(d) that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

(3) A person accused of an offence shall not be returned, or committed or kept in custody for the purposes of return, if it appears to an appropriate authority that if charged with that offence in the Territory he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction.

(4) A person shall not be returned to a designated Commonwealth country or to a colony or to the Republic of Ireland, or committed or kept in custody for the purposes of such return, unless provision is made by the relevant law, or by an arrangement made with the relevant Commonwealth country or colony or the Republic of Ireland, for securing that he will not, unless he has first had an opportunity to leave it, be dealt with there for or in respect of any offence committed before his return to it other than—

- (a) the offence in respect of which his return is ordered;
- (b) an offence, other than an offence excluded by subsection (5) below, which is disclosed by the facts in respect of which his return was ordered; or
- (c) subject to subsection (6) below, any offence being an extradition crime in respect of which the Commissioner may consent to his being dealt with.

(5) The offences excluded from paragraph (b) of subsection (4) above are offences in relation to which an order for the return of the person concerned could not lawfully be made.

(6) The Commissioner may not give consent under paragraph (c) of that subsection in respect of an offence in relation to which 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.

(7) Any such arrangement as is mentioned in subsection (4) above which is made with a designated Commonwealth country or a colony or the Republic of Ireland may be an arrangement made for the particular case or an arrangement of a more general nature; and for the purposes of that subsection a certificate issued by or under the authority of the Commissioner confirming the existence of an arrangement with a Commonwealth country or a colony or the Republic of Ireland and stating its terms shall be conclusive evidence of the matters contained in the certificate.

(8) In relation to the United Kingdom or a Commonwealth country or a colony the reference in subsection (1) above to an offence of a political character does not include an offence against the life or person of the Head of the Commonwealth or attempting or conspiring to commit, or assisting, counselling or procuring the commission of or being accessory before or after the fact to such an offence, or of impeding the apprehension or prosecution of persons guilty of such an offence.

(9) In this Act “appropriate authority” means—

- (a) the Commissioner;
- (b) the court of committal;
- (c) the Supreme Court on an application for habeas corpus or for a review of the order of committal.

(10) In this section, in relation to Commonwealth countries and colonies, “race” includes tribe.

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⁽⁴⁾ 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”.

(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) Ordinance No. 6 of 1990.

(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(5).)

(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.

(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,

(5) Ordinance No. 6 of 1990.

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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
- (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(6), the Court of Appeal may, on an appeal from a decision of the Supreme Court

(6) S.I. 1965/590.

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—

- (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

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- (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(7) 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.

Effect of delay

Discharge in case of delay.

- 16.—(1) If a person committed under section 9 above is still in the Territory after the expiration of the relevant period, he may apply to the Supreme Court for his discharge.
- (2) Unless he has instituted proceedings for judicial review of the Commissioner’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;

(7) Ordinance No. 6 of 1990.

- (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 Commissioner, 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.

Custody.

17.—(1) Any person remanded or committed to custody under this Part of this Act may for that purpose be dealt with in like manner 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 in respect of an offence.

(3) Where a person, being in custody in any part of the Territory whether under this Part of this Act or otherwise, is required to be removed in custody under this Act to another part of the Territory and is so removed by sea or by air or, without prejudice to any provision in that behalf of the Falkland Islands Courts (Overseas Jurisdiction) Order 1989⁽⁸⁾, where such a person is so required to be removed to the Falkland Islands, he shall be deemed to continue in legal custody until he reaches the place to which he is required to be moved.

(4) A warrant for the return of any person shall be sufficient authority for all persons to whom it is directed and all constables or public officers to receive that person, keep him in custody and convey him into the jurisdiction to which he is to be returned.

PART IV

TREATMENT OF PERSONS RETURNED

Restrictions upon proceedings for other offences in case of persons returned by United Kingdom, designated Commonwealth countries, colonies or Republic of Ireland.

19.—(1) This section applies to any person accused or convicted of an offence under the law of the Territory who is returned to the Territory (or for trial by a court of the Territory)—

- (a) from the United Kingdom, under this Act as it has effect under the law of the United Kingdom; or
- (b) from any designated Commonwealth country or the Republic of Ireland, under any law of that country corresponding with this Act; or

⁽⁸⁾ S.I. 1989/2399.

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(c) from any colony, under this Act as extended to that colony or under any corresponding law of that colony.

(2) A person to whom this section applies shall not, during the period described in subsection (3) below, be dealt with in the Territory (or by a court of the Territory) for or in respect of any offence committed before he was returned to the Territory (or was returned for trial by a court of the Territory) other than—

- (i) the offence in respect of which he was returned;
- (ii) any lesser offence disclosed by the particulars furnished to the United Kingdom, the designated Commonwealth country, the colony or the Republic of Ireland on which his return is grounded; or
- (iii) any other offence in respect of which the Government of the country from which he was returned (whether it be the Government of the United Kingdom or of a Commonwealth country or the Governor of a colony or the Government of the Republic of Ireland) may consent to his being dealt with.

(3) The period referred to in subsection (2) above in relation to a person to whom this section applies is the period beginning with the day of his arrival in the Territory (or in the place where he is to be tried by a court of the Territory) on his return as mentioned in subsection (1) above and ending 45 days after the first subsequent day on which he has the opportunity to leave the Territory (or that place).

(4) Where a person to whom this section applies has been convicted before his return to the Territory (or for trial by a court of the Territory) of an offence for which his return was not granted, any punishment for that offence shall by operation of this section be remitted; but this conviction for it shall be treated as a conviction for all other purposes.

(5) In this section “dealt with” means tried or returned or surrendered to any country or colony or detained with a view to trial or with a view to such return or surrender.

Restoration of persons not tried or acquitted.

20.—(1) This section applies to any person accused of an offence under the law of the Territory who is returned to the Territory (or for trial by a court of the Territory) as mentioned in section 19(1) above.

(2) If in the case of a person to whom this section applies either—

- (a) proceedings against him for the offence for which he was returned are not begun within the period of six months beginning with the day of his arrival in the Territory (or in the place where he is to be tried by a court of the Territory) on being returned; or
- (b) on his trial for that offence, he is acquitted or is, under any law for the time being in force in the Territory, ordered to be discharged absolutely or subject to the condition that he commits no offence during such period as may be specified in the order,

the Commissioner may, if he thinks fit, on the request of that person, arrange for him to be sent back free of charge and with as little delay as possible to the jurisdiction of the country from which he was returned.

PART V

SPECIAL CASES

Repatriation cases

Persons serving sentences outside country of conviction.

21.—(1) This section applies where—

- (a) a request is made by or on behalf of 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 for the arrest and return of a person in the Territory who is alleged to be unlawfully at large from a prison in which he was serving a sentence in pursuance of international arrangements for the repatriation of prisoners sentenced in one country (“the country of conviction”) to serve their sentences in another (“the country of imprisonment”); and
- (b) there are furnished with the request—
 - (i) particulars of the person whose return is requested;
 - (ii) particulars of the offence of which he was convicted (including evidence sufficient to justify the issue of a warrant for his arrest under the relevant legislation);
 - (iii) a certificate of the conviction and sentence; and
 - (iv) a certificate of the international arrangements for repatriation under which he was held.

(2) Where this section applies, the relevant legislation shall have effect—

- (a) if the request is from the country of conviction, as if the person to whom the request relates were alleged to be unlawfully at large from a prison in that country; and
- (b) if it is from the country of imprisonment, as if he were alleged to have been convicted of a corresponding offence under the law of that country committed there,

and the question whether the person to whom the request relates is to be returned shall be determined, subject to subsection (3) below, in accordance with that legislation.

(3) A person shall not be returned under subsection (2)(b) above unless—

- (a) the offence was committed in the country of conviction; or
- (b) the offence was not committed there but was committed in circumstances in which he might be returned on a request made by the country of conviction.

(4) In this section “the relevant legislation” means the provisions of this Act that are relevant—

- (a) if the case falls within paragraph (a) of subsection (2) above, to extradition to the country of conviction; and
- (b) if it falls within paragraph (b), to extradition to the country of imprisonment.

International Convention cases

Genocide, etc.

23.—(1) For the purposes of this Act, no offence which, if committed in the Territory, would be punishable as an offence of genocide under the Genocide Act 1969⁽⁹⁾ (as in force in the Territory by virtue of section 5(1)(b) of the Administration of Justice Ordinance 1990⁽¹⁰⁾) or as an attempt,

⁽⁹⁾ 1969 c. 12.

⁽¹⁰⁾ Ordinance No. 5 of 1990.

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conspiracy or incitement to commit such an offence shall be regarded as an offence of a political character, and no proceedings in respect of such an offence shall be regarded as a criminal matter of a political character.

(2) It shall not be an objection to any proceedings against a person under this Act in respect of an offence which, if committed in the Territory, would be punishable as an offence of genocide or as an attempt, conspiracy or incitement to commit such an offence that under the law in force at the time when and the place where he is alleged to have committed the act of which he is accused or of which he was convicted he could not have been punished for it.

Hostage-taking.

25.—(1) A person shall not be returned under this Act to a designated Commonwealth country which is party to the Convention referred to in subsection (3) below, or committed or kept in custody for the purposes of such return, if it appears to the appropriate authority—

- (a) that he might, if returned, be prejudiced at his trial by reason of the impossibility of effecting communications between him and the appropriate authorities of the State entitled to exercise rights of protection in relation to him; and
- (b) that the act or omission constituting the offence of which he has been accused or convicted also constituted an offence under section 1 of the Taking of Hostages Act 1982⁽¹¹⁾ (as it has effect under the law of the Territory by virtue of the Taking of Hostages Act 1982 (Overseas Territories) Order 1982⁽¹²⁾) or an attempt to commit such an offence.

(2) Where the Commissioner certifies that a country is a party to the Convention, the certificate shall, in any proceedings under this Act, be conclusive evidence of that fact.

(3) The Convention mentioned in subsections (1) and (2) above is the International Convention against the Taking of Hostages opened for signature at New York on 18 December 1979.

PART VI

MISCELLANEOUS AND SUPPLEMENTARY

Evidence

Evidence —United Kingdom, Commonwealth countries, colonies and Republic of Ireland.

27.—(1) In any proceedings under this Act in relation to a person whose return has been requested by the United Kingdom, a designated Commonwealth country, a colony or the Republic of Ireland, including proceedings on an application for habeas corpus in respect of a person in custody under this Act—

- (a) a document, duly authenticated, which purports to set out evidence given on oath in the United Kingdom, a designated Commonwealth country, a colony or the Republic of Ireland shall be admissible as evidence of the matters stated in it;
- (b) a document, duly authenticated, which purports to have been received in evidence, or to be a copy of a document so received, in any proceeding in the United Kingdom, any designated Commonwealth country, any colony or the Republic of Ireland shall be admissible in evidence;
- (c) a document, duly authenticated, which certifies that a person was convicted on a date specified in the document of an offence against the law of, or of a part of, the United

⁽¹¹⁾ 1982 c. 28.

⁽¹²⁾ S.I. 1982/1540.

Kingdom, any designated Commonwealth country, any colony or the Republic of Ireland shall be admissible as evidence of the fact and date of the conviction.

- (2) A document shall be deemed to be duly authenticated for the purposes of this section—
- (a) in the case of a document purporting to set out evidence given as mentioned in subsection (1)(a) above, if the document purports to be certified by a judge or magistrate or officer in or of the United Kingdom or the Commonwealth country or colony in question or the Republic of Ireland to be the original document containing or recording that evidence or a true copy of such a document;
 - (b) in the case of a document which purports to have been received in evidence as mentioned in subsection (1)(b) above or to be a copy of a document so received, if the document purports to be certified as mentioned in paragraph (a) above to have been, or to be a true copy of a document which has been, so received;
 - (c) in the case of a document which certifies that a person was convicted as mentioned in subsection (1)(c) above, if the document purports to be certified as mentioned in paragraph (a) above,
- and in any such case the document is authenticated either by the oath of a witness or by the official seal of a Minister of the United Kingdom or the designated Commonwealth country or the Republic of Ireland or of the Governor or a Minister, secretary or other officer administering a department of government of the colony, as the case may be.
- (3) Nothing in this section shall prejudice the admission in evidence of any document which is admissible in evidence apart from this section.

Warrants and orders

Form of warrants and orders.

28.—(1) Any warrant or order to be issued or made by the Commissioner under this Act shall be given under the hand of the Commissioner or the Administrator or any person for the time being lawfully performing the functions of the office of Commissioner or Administrator.

(2) The Commissioner may by order, which shall be published in the Official Gazette of the Territory, prescribe the form of any warrant or order to be issued or made under this Act in its application to return to the United Kingdom, to Commonwealth countries, to colonies and to the Republic of Ireland.

General

Interpretation.

35.—(1) In this Act—

“the Administrator” means the person holding the office of Administrator of the Territory and includes any person for the time being lawfully discharging the functions of that office;

“appropriate authority” has the meaning assigned to it by section 6(9) above;

“authority to proceed” has the meaning assigned to it by section 7(1) above;

“colony” means a colony other than the Territory;

“the Commissioner” means the person holding the office of Commissioner for the Territory and, to the extent that any person is for the time being lawfully authorised to discharge any of the functions of that office, includes that person;

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“the Court of Appeal” means the British Antarctic Territory Court of Appeal established by the British Antarctic Territory Court of Appeal Order 1965(13);

“court of committal” has the meaning assigned to it by section 9(1) above;

“designated Commonwealth country” has the meaning assigned to it by section 5(1) above;

“extradition crime” is to be construed in accordance with section 2 above;

“extradition request” has the meaning assigned to it by section 7(1) above but in section 12(5) above includes a request or requisition made by some person recognised by the Commissioner as the consular representative of a foreign State (or as the governor of a colony or dependency of a foreign State) for the surrender of a person to that foreign State (or to that colony or dependency) under the law in that behalf for the time being in force in the Territory;

“magistrate” means a person appointed to be a magistrate under Part IV of the Administration of Justice Ordinance 1990(14);

“provisional warrant” has the meaning assigned to it by section 8(1) above;

“public officer” has the meaning assigned to it by section 7(1) of the Interpretation and General Provisions Ordinance 1990(15) and, in any case where any member of a police force established under the law of another country, or of a colony other than the Territory has, by arrangement with the Commissioner, been empowered under the law to act as a constable under the law of the Territory for the purposes of, or in connection with, extradition from the Territory, includes that member of that police force; and a certificate by the Commissioner that that member was at the relevant time so empowered shall, in any proceedings concerning anything done or omitted by him, be conclusive of that fact;

“the Senior Magistrate” means the person holding the office of Senior Magistrate under Part III of the Administration of Justice Ordinance 1990 and includes any person for the time being lawfully discharging the functions of that office; and the functions conferred on the Senior Magistrate by this Act may be performed by him either within or outside the Territory;

“Summary Court” means a Summary Court established by Part IV of the Administration of Justice Ordinance 1990;

“the Supreme Court” means the Supreme Court of the Territory established by Part II of the Administration of Justice Ordinance 1990 and, to the extent indicated in subsection (3) below, includes the Supreme Court of the Falkland Islands;

“the Supreme Court of the Falkland Islands” means the court established by section 77 of the Constitution of the Falkland Islands set out in Schedule 1 to the Falkland Islands Constitution Order 1985(16);

“the Territory” means the British Antarctic Territory; and

“the United Kingdom” includes the Channel Islands and the Isle of Man.

(2) For the purposes of this Act a person convicted in his absence shall be treated as a person accused of the offence of which he is convicted.

(a) (3) (a) Without prejudice to the generality of sections 3 and 4 of the Falkland Islands Courts (Overseas Jurisdiction) Order 1989(17), the jurisdiction and powers conferred on the Supreme Court of the Falkland Islands by those sections include the jurisdiction to hear and determine any matter that under this Act may be heard and determined by the Supreme Court of the Territory and all powers that under this Act are vested in the Supreme Court of the Territory, and references in this Act to the Supreme Court (including references to

(13) S.I. 1965/590.

(14) Ordinance No. 5 of 1990.

(15) Ordinance No. 4 of 1990.

(16) S.I. 1985/444.

(17) S.I. 1989/2399.

the stating of a case to the Supreme Court and references to appeals from decisions of that court) shall be construed accordingly.

- (b) Where it appears to the Judge of the Supreme Court of that Territory that any proceedings that have been instituted under this Act before that court could more appropriately be pursued, by virtue of paragraph (a) above, before the Supreme Court of the Falkland Islands, he may, after consultation with the Chief Justice of the Falkland Islands, so order and may give any necessary directions for that purpose.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends to the British Antarctic Territory, with certain exceptions, adaptations and modifications, the provisions of the Extradition Act 1989 relating to extradition between the United Kingdom and Commonwealth countries. It also applies those provisions as appropriate so as to regulate extradition between the Territory and the Republic of Ireland and between the Territory and the United Kingdom itself.