

SCHEDULE 1

PROVISIONS OF THE CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ACT 1990 AS EXTENDED TO ANGUILLA

PART I

CRIMINAL PROCEEDINGS AND INVESTIGATIONS

Mutual service of process

Service of overseas process in Anguilla.

1.—(1) This section has effect where the Governor receives from the government of, or other authority in, a country or territory outside Anguilla—

- (a) a summons or other process requiring a person to appear as defendant or attend as a witness in criminal proceedings in that country or territory; or
- (b) a document issued by a court exercising criminal jurisdiction in that country or territory and recording a decision of the court made in the exercise of that jurisdiction,

together with a request for it to be served on a person in Anguilla.

(2) The Governor may cause the process or document to be served by post or, if the request is for personal service, direct the Commissioner of police to cause it to be personally served on him.

(3) Service by virtue of this section of any such process as is mentioned in subsection (1)(a) above shall not impose any obligation under the law of Anguilla to comply with it.

(4) Any such process served by virtue of this section shall be accompanied by a notice—

- (a) stating the effect of subsection (3) above;
- (b) indicating that the person on whom it is served may wish to seek advice as to the possible consequences of his failing to comply with the process under the law of the country or territory where it was issued; and
- (c) indicating that under that law he may not, as a witness, be accorded the same rights and privileges as would be accorded to him in criminal proceedings in Anguilla.

(5) Where the Commissioner of police is directed under this section to cause any process or document to be served he shall after it has been served forthwith inform the Governor when and how it was served and (if possible) furnish him with a receipt signed by the person on whom it was served; and if the Commissioner has been unable to cause the process or document to be served he shall forthwith inform the Governor of that fact and of the reason.

Service of Anguilla process overseas.

2.—(1) Process of the following descriptions, that is to say—

- (a) a summons requiring a person charged with an offence to appear before a court in Anguilla; and
- (b) a summons or order requiring a person to attend before a court in Anguilla for the purpose of giving evidence in criminal proceedings,

may be issued or made notwithstanding that the person in question is outside Anguilla and may be served outside Anguilla in accordance with arrangements made by the Governor.

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(3) Service of any process outside Anguilla by virtue of this section shall not impose any obligation under the law of Anguilla to comply with it and accordingly failure to do so shall not constitute contempt of any court or be a ground for issuing a warrant to secure the attendance of the person in question.

(4) Subsection (3) above is without prejudice to the service of any process (with the usual consequences for non-compliance) on the person in question if subsequently effected in Anguilla.

Mutual provision of evidence

Overseas evidence for use in Anguilla.

3.—(1) Where on an application made in accordance with subsection (2) below it appears to a Magistrate or a judge—

- (a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed; and
- (b) that proceedings in respect of the offence have been instituted or that the offence is being investigated,

he may issue a letter (“a letter of request”) requesting assistance in obtaining outside Anguilla such evidence as is specified in the letter for use in the proceedings or investigation.

(2) An application under subsection (1) above may be made by a prosecuting authority or, if proceedings have been instituted, by the person charged in those proceedings.

(3) A prosecuting authority which is for the time being designated for the purposes of this section by an order made by the Governor may itself issue a letter of request if—

- (a) it is satisfied as to the matters mentioned in subsection (1)(a) above; and
- (b) the offence in question is being investigated or the authority has instituted proceedings in respect of it.

(4) Subject to subsection (5) below, a letter of request shall be sent to the Governor for transmission either—

- (a) to a court or tribunal specified in the letter and exercising jurisdiction in the place where the evidence is to be obtained; or
- (b) to any authority recognised by the government of the country or territory in question as the appropriate authority for receiving requests for assistance of the kind to which this section applies.

(5) In cases of urgency a letter of request may be sent direct to such a court or tribunal as is mentioned in subsection (4)(a) above.

(6) In this section “evidence” includes documents and other articles.

(7) Evidence obtained by virtue of a letter of request shall not without the consent of such an authority as is mentioned in subsection (4)(b) above be used for any purpose other than that specified in the letter; and when any document or other article obtained pursuant to a letter of request is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it shall be returned to such an authority unless that authority indicates that the document or article need not be returned.

Anguilla evidence for use overseas.

4.—(1) This section has effect where the Governor receives—

- (a) from a court or tribunal exercising criminal jurisdiction in a country or territory outside Anguilla or a prosecuting authority in such a country or territory; or

(b) from any other authority in such a country or territory which appears to him to have the function of making requests of the kind to which this section applies, a request for assistance in obtaining evidence in Anguilla in connection with criminal proceedings that have been instituted, or a criminal investigation that is being carried on, in that country or territory.

(2) If the Governor is satisfied—

(a) that an offence under the law of the country or territory in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed; and

(b) that proceedings in respect of that offence have been instituted in that country or territory or that an investigation into that offence is being carried on there,

he may, if he thinks fit, by a notice in writing nominate a court in Anguilla to receive such of the evidence to which the request relates as may appear to the court to be appropriate for the purpose of giving effect to the request.

(3) Where it appears to the Governor that the request relates to a fiscal offence in respect of which proceedings have not yet been instituted he shall not exercise his powers under subsection (2) above unless—

(a) the request is from a country or territory which is a member of the Commonwealth or is made pursuant to a treaty to which the United Kingdom is a party and such treaty has been made applicable to Anguilla; or

(b) he is satisfied that the conduct constituting the offence would constitute an offence of the same or a similar nature if it had occurred in Anguilla.

(4) For the purpose of satisfying himself as to the matters mentioned in subsection (2)(a) and (b) above the Governor shall regard as conclusive a certificate issued by such authority in the country or territory in question as appears to him to be appropriate.

(5) In this section “evidence” includes documents and other articles.

(6) Schedule A to this Act shall have effect with respect to the proceedings before a nominated court in pursuance of a notice under subsection (2) above.

Transfer of Anguilla prisoner to give evidence or assist investigation overseas.

5.—(1) The Governor may, if he thinks fit, issue a warrant providing for any person (“a prisoner”) serving a sentence in a prison or other institution to which the Prison Ordinance⁽¹⁾ applies to be transferred to a country or territory outside Anguilla for the purpose—

(a) of giving evidence in criminal proceedings there; or

(b) of being identified in, or otherwise by his presence assisting, such proceedings or the investigation of an offence.

(2) No warrant shall be issued under this section in respect of any prisoner unless he has consented to being transferred as mentioned in subsection (1) above and that consent may be given either—

(a) by the prisoner himself; or

(b) in circumstances in which it appears to the Governor inappropriate, by reason of the prisoner’s physical or mental condition or his youth, for him to act for himself, by a person appearing to the Governor to be an appropriate person to act on his behalf;

but a consent once given shall not be capable of being withdrawn after the issue of the warrant.

(3) The effect of a warrant under this section shall be to authorise—

(1) The Revised Laws of Saint Christopher, Nevis and Anguilla 1961, Cap. 205.

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- (a) the taking of the prisoner to a place in Anguilla and his delivery at a place of departure from Anguilla into the custody of a person representing the appropriate authority of the country or territory to which the prisoner is to be transferred; and
 - (b) the bringing of the prisoner back to Anguilla and his transfer in custody to the place where he is liable to be detained under the sentence to which he is subject.
- (4) Where a warrant has been issued in respect of a prisoner under this section he shall be deemed to be in legal custody at any time when, being in Anguilla or on board an Anguillian ship or Anguillian aircraft he is being taken under the warrant to or from any place or being kept in custody under the warrant.
- (5) A person authorised by or for the purposes of the warrant to take the prisoner to or from any place or to keep him in custody shall have all the powers, authority, protection and privileges of a constable in Anguilla.
- (6) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by a constable and taken to any place to which he may be taken under the warrant issued under this section.
- (7) In subsection (4) above—
- “Anguillian aircraft” means an aircraft registered in Anguilla under the provisions of the Air Navigation (Overseas Territories) Order 1989(2);
 - “Anguillian ship” means a ship registered in Anguilla under any law for the time being in force.
- (8) In subsection (6) above “constable” includes any person who has, under any enactment including subsection (5) above, the powers of a constable in Anguilla.
- (9) This section applies to a person in custody awaiting trial or sentence and a person committed to prison for default in paying a fine as it applies to a prisoner and the reference in subsection (3) (b) above to a sentence shall be construed accordingly.

Transfer of overseas prisoner to give evidence or assist investigation in Anguilla.

- 6.—(1) This section has effect where—
- (a) a witness summons or writ of subpoena has been issued in criminal proceedings in Anguilla in respect of a person (“a prisoner”) who is detained in custody in a country or territory outside Anguilla by virtue of a sentence or order of a court or tribunal exercising criminal jurisdiction in that country or territory; or
 - (b) it appears to the Governor that it is desirable for a prisoner to be identified in, or otherwise by his presence to assist, such proceedings or the investigation in Anguilla of an offence.
- (2) If the Governor is satisfied that the appropriate authority in the country or territory where the prisoner is detained will make arrangements for him to come to Anguilla to give evidence pursuant to the witness order, witness summons or citation or, as the case may be, for the purpose mentioned in subsection (1)(b) above, he may issue a warrant under this section.
- (3) No warrant shall be issued under this section in respect of any prisoner unless he has consented to being brought to Anguilla to give evidence as aforesaid or, as the case may be, for the purpose mentioned in subsection (1)(b) above but a consent once given shall not be capable of being withdrawn after the issue of the warrant.
- (4) The effect of the warrant shall be to authorise—
- (a) the bringing of the prisoner to Anguilla;
 - (b) the taking of the prisoner to, and his detention in custody at, such place or places in Anguilla as are specified in the warrant; and

(2) S.I.1989/2395.

(c) the returning of the prisoner to the country or territory from which he has come.

(5) Subsections (4) to (8) of section 5 above shall have effect in relation to a warrant issued under this section as they have effect in relation to a warrant issued under that section.

(6) A person shall not be subject to the Immigration and Passport Ordinance 1980(3) in respect of his entry into or presence in Anguilla in pursuance of a warrant under this section but if the warrant ceases to have effect while he is still in Anguilla he shall be treated for the purposes of that Ordinance as if he has then illegally entered Anguilla.

(7) This section applies to a person detained in custody in a country outside Anguilla in consequence of having been transferred there—

(a) from Anguilla under the Repatriation of Prisoners Act 1984(4) as applied to Anguilla by the Repatriation of Prisoners (Overseas Territories) Order 1986(5), or

(b) under any similar provision or arrangement from any other country or territory,

as it applies to a person detained as mentioned in subsection (1) above.

Search etc. for material relevant to overseas investigation.

8.—(1) If, on an application made by a Magistrate, it appears to a constable—

(a) that there are reasonable grounds for believing that an offence under the law of a country or territory outside Anguilla has been committed; and

(b) that the conduct constituting that offence would constitute an offence punishable by imprisonment if it had occurred in Anguilla,

the Magistrate shall have the like power to grant warrant authorising entry, search and seizure by any constable as he would have at common law in respect of any offence punishable at common law in Anguilla.

(2) No application for a warrant shall be made by virtue of subsection (1) above except in pursuance of a direction given by the Governor in response to a request received—

(a) from a court or tribunal exercising criminal jurisdiction in the overseas country or territory in question or a prosecuting authority in that country or territory; or

(b) from any other authority in that country or territory which appears to him to have the function of making requests for the purpose of this section,

and any evidence seized by the constable by virtue of this section shall be furnished by him to the Governor for transmission to that court, tribunal or authority.

(3) If in order to comply with the request it is necessary for any such evidence to be accompanied by any certificate, affidavit or other verifying document the constable shall also furnish for transmission such document of that nature as may be specified in the direction given by the Governor.

(4) Where the evidence consists of a document the original or a copy shall be transmitted, and where it consists of any other article the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.

(5) The Governor may by order direct that any powers to enter, search or seize granted by virtue of subsection (1) above which may be exercised by a constable shall also be exercisable by a person of any other description specified in the order.

(3) Anguilla Ordinance No. 14 of 1980.

(4) 1984 c. 47.

(5) S.I. 1986/2226.

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Enforcement of overseas forfeiture orders.

9.—(1) The Governor may, by an order in the Gazette, provide for the enforcement in Anguilla of any order which—

- (a) is made by a court in a country or territory outside Anguilla designated for the purposes of this section by the said order of the Governor; and
- (b) is for the forfeiture and destruction, or the forfeiture and other disposal, of anything in respect of which an offence to which this section applies has been committed or which was used in connection with the commission of such an offence.

(2) Without prejudice to the generality of subsection (1) above an Order by the Governor under this section may provide for the registration by a court in Anguilla of any order of a court in a country or territory outside Anguilla as a condition of its enforcement and prescribe requirements to be satisfied before an order can be registered.

(3) An Order of the Governor under this section may include such supplementary and incidental provisions as appear to him to be necessary or expedient and may apply for the purposes of the order (with such modifications as appear to him to be appropriate) any provisions relating to confiscation or forfeiture orders under any other enactment.

(4) An Order of the Governor under this section may make different provision for different cases.

(6) This section applies to any offence which corresponds to or is similar to an offence under the Drugs (Prevention of Misuse) Ordinance 1988(6) or a drug trafficking offence defined in section 2(1) of the Drugs Trafficking Offences Ordinance 1988(7).

Supplementary

10.—(1) Provision may be made by rules of court for any purpose for which it appears to the authority having power to make the rules that it is necessary or expedient that provision should be made in connection with any of the provisions of this Part of this Act.

(2) Rules made for the purposes of Schedule A to this Act may, in particular, make provision with respect to the persons entitled to appear or take part in the proceedings to which that Schedule applies and for excluding the public from any such proceedings.

(3) An Order of the Governor under section 9 above may authorise the making of rules of court for any purpose specified in the order.

(5) This section is without prejudice to the generality of any existing power to make rules.

(6) Anguilla Ordinance No. 17 of 1988.

(7) Anguilla Ordinance No. 14 of 1988 amended by Anguilla Ordinance No. 13 of 1990.