
STATUTORY INSTRUMENTS

1997 No. 1768

EXTRADITION

The Extradition (Tokyo Convention) Order 1997

Made - - - - *22nd July 1997*
Laid before Parliament *1st August 1997*
Coming into force - - *1st September 1997*

At the Court at Buckingham Palace, the 22nd day of July 1997
Present,
The Queen's Most Excellent Majesty in Council

Whereas the Convention on Offences and Certain Other Acts Committed On Board Aircraft (referred to in this Order as “the Convention” and set out in Schedule 1 to this Order) signed at Tokyo on 14th September 1963 entered into force for the United Kingdom on 4th December 1969:

And whereas Article 16, paragraph 1 of the Convention provides as follows—
“Offences committed on aircraft registered in a Contracting State shall be treated, for the purpose of extradition, as if they had been committed not only in the place in which they have occurred but also in the territory of the State of registration of the aircraft.”:

And whereas section 2(1) of the Tokyo Convention Act 1967(1) provides that for the purposes of the application of the Extradition Act 1870(2) to crimes committed on board an aircraft in flight, any aircraft registered in a country in which the Convention is for the time being in force shall at any time while that aircraft is in flight be deemed to be within the jurisdiction of that country, whether or not it is for the time being also within the jurisdiction of any other country:

And whereas the States specified in Schedule 2 to this Order are foreign States in respect of which the Convention is for the time being in force and in relation to which Orders in Council under section 2 of the Extradition Act 1870 are in force:

And whereas the States mentioned in Part I of Schedule 3 to this Order are foreign States in respect of which the Convention is for the time being in force but with which no general extradition arrangements have been made:

And whereas section 22(3) of the Extradition Act 1989(3) provides that where general extradition arrangements have not been made with a State which is a party to the Convention, and no Order

(1) 1967 c. 52.
(2) 1870 c. 52; the Act was repealed by the Extradition Act 1989 with the savings set out in section 37 of that Act. For the purpose of those savings the Act has to be read with section 22(1) of the Criminal Justice (International Co-operation) Act 1990 (c. 5).
(3) 1989 c. 33.

in Council under section 2 of the Extradition Act 1870⁽⁴⁾ is in force in relation to that State, an Order in Council applying the Extradition Act 1989 may be made under section 4 of that Act as if the Convention constituted general extradition arrangements between the United Kingdom and the foreign State, or any foreign State, party to the Convention:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by sections 4(1), 22(3) and 37(3) of the Extradition Act 1989, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Extradition (Tokyo Convention) Order 1997, and shall come into force on 1st September 1997.

2.—(1) Schedule 2 to this Order specifies in the first column foreign States which are Parties to the Convention and with which extradition treaties (and relevant Orders in Council under section 2 of the Extradition Act 1870) are for the time being in force, in the second column the dates of those treaties, and in the third column those Orders in Council; and

(2) Schedule 1 to the Extradition Act 1989⁽⁵⁾ shall apply in the case of a State specified in the first column (being a foreign State which is a Party to the Convention) in accordance with the extradition treaty whose date is specified in the corresponding entry in the second column, as supplemented by paragraph 1 of Article 16 of the Convention; and the Order in Council which gives effect to that extradition treaty shall be construed accordingly.

3. The Extradition Act 1989, so far as it relates to extradition procedures under Part III of that Act, shall apply in the case of a State specified in Part I of Schedule 3 to this Order (being a State in respect of which the Convention is in force) subject to the limitations, restrictions, exceptions and qualifications contained in Part II of that Schedule.

4. The following Orders are hereby revoked—

The Extradition (Tokyo Convention) Order 1971⁽⁶⁾;

The Extradition (Tokyo Convention) (Amendment) Order 1982⁽⁷⁾;

The Extradition (Tokyo Convention) (Amendment) Order 1985⁽⁸⁾;

The Extradition (Tokyo Convention) (Amendment) Order 1986⁽⁹⁾.

5. This Order extends only to the United Kingdom, the Channel Islands and the Isle of Man, and to the territories specified in Schedule 4 to this Order.

N. H. Nicholls
Clerk of the Privy Council

(4) 1870 c. 52. Sections 17 and 22 of the Extradition Act 1870 are applied to section 2(1) of the Tokyo Convention Act 1967 (c. 52) by subsection (1) of that section.

(5) Paragraph 15 of Schedule 1 was amended by section 22 of the Criminal Justice (International Co-operation) Act 1990 (c. 5).

(6) S.I. 1971/2103.

(7) S.I. 1982/149.

(8) S.I. 1985/1993.

(9) S.I. 1986/2016.

SCHEDULE 1

The Convention

TOKYO CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT

The States Parties to this Convention,

Have agreed as follows:

CHAPTER I

SCOPE OF THE CONVENTION

Article 1

1. This Convention shall apply in respect of:
 - (a) offences against penal law;
 - (b) acts which, whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board.
2. Except as provided in Chapter III, this Convention shall apply in respect of offences committed or acts done by a person on board any aircraft registered in a Contracting State, while that aircraft is in flight or on the surface or the high seas or of any other area outside the territory of any State.
3. For the purposes of this Convention, an aircraft is considered to be in flight from the moment when the power is applied for the purpose of take-off until the moment when the landing run ends.
4. This Convention shall not apply to aircraft used in military, customs or police services.

Article 2

Without prejudice to the provisions of Article 4 and except when the safety of the aircraft or of persons or property on board so requires, no provision of this Convention shall be interpreted as authorizing or requiring any action in respect of offences against penal laws of a political nature or those based on racial or religious discrimination.

CHAPTER II

JURISDICTION

Article 3

1. The State of registration of the aircraft is competent to exercise jurisdiction over offences and acts committed on board.
2. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction as the State of registration over offences committed on board aircraft registered in such State.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

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Article 4

1. A Contracting State which is not the State of registration may not interfere with an aircraft in flight in order to exercise its criminal jurisdiction over an offence committed on board except in the following cases:

- (a) the offence has effect on the territory of such State;
- (b) the offence has been committed by or against a national or permanent resident of such State;
- (c) the offence is against the security of such State;
- (d) the offence consists of a breach of any rules or regulations relating to the flight or manoeuvre of aircraft in such State;
- (e) the exercise of jurisdiction is necessary to ensure the observance of any obligation of such State under a multilateral international agreement.

CHAPTER III

POWERS OF THE AIRCRAFT COMMANDER

Article 5

1. The provisions of this chapter shall not apply to offences and acts committed or about to be committed by a person on board an aircraft in flight in the airspace of the State of registration or over the high seas or any other area outside the territory of any State unless the last point of take-off or the next point of intended landing is situated in a State other than that of registration, or the aircraft subsequently flies in the airspace of a State other than that of registration with such persons still on board.

2. Notwithstanding the provisions of Article 1, paragraph 3, an aircraft shall, for the purposes of this chapter, be considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation. In the case of a forced landing, the provisions of this chapter shall continue to apply with respect to offences and acts committed on board until competent authorities of a State take over responsibility for the aircraft and for the persons and property on board.

Article 6

1. The aircraft commander may, when he has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an offence or act contemplated by Article 1, paragraph 1, impose upon such person reasonable measures including restraint which are necessary:

- (a) to protect the safety of the aircraft, or of persons or property therein; or
- (b) to maintain good order and discipline on board; or
- (c) to enable him to deliver such person to competent authorities or to disembark him in accordance with the provisions of this chapter.

2. The aircraft commander may require or authorize the assistance of other crew members and may request or authorize, but not require, the assistance of passengers to restrain any person whom he is entitled to restrain. Any crew member or passenger may also take reasonable preventative measures without such authorization when he has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft, or of persons or property therein.

Article 7

1. Measures of restraint imposed upon a person in accordance with Article 6 shall not be continued beyond any point at which the aircraft lands unless:

- (a) such point is in the territory of a non-Contracting State and its authorities refuse to permit disembarkation of that person or those measures have been imposed in accordance with Article 6, paragraph 1 (c) in order to enable his delivery to competent authorities;
- (b) the aircraft makes a forced landing and the aircraft commander is unable to deliver that person to competent authorities; or
- (c) that person agrees to onward carriage under restraint.

2. The aircraft commander shall, as soon as practicable, and if possible before landing in the territory of a State with a person on board who has been placed under restraint in accordance with the provisions of Article 6, notify the authorities of such State of the fact that a person on board is under restraint and of the reasons for that restraint.

Article 8

1. The aircraft commander may, in so far as it is necessary for the purpose of subparagraph (a) or (b) of paragraph 1 of Article 6, disembark in the territory of any State in which the aircraft lands any person who he has reasonable grounds to believe has committed, or is about to commit, on board the aircraft an act contemplated in Article 1, paragraph (b).

2. The aircraft commander shall report to the authorities of the State in which he disembarks any person pursuant to this article, the fact of, and the reasons for, such disembarkation.

Article 9

1. The aircraft commander may deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person who he has reasonable grounds to believe has committed on board the aircraft an act which, in his opinion, is a serious offence according to the penal law of the state of registration of the aircraft.

2. The aircraft commander shall as soon as practicable and if possible before landing in the territory of a Contracting State with a person on board whom the aircraft commander intends to deliver in accordance with the preceding paragraph, notify the authorities of such State of his intention to deliver such person and the reasons therefor.

3. The aircraft commander shall furnish the authorities to whom any suspected offender is delivered in accordance with the provisions of this article with evidence and information which, under the law of the State of registration of the aircraft, are lawfully in his possession.

Article 10

For actions taken in accordance with this Convention, neither the aircraft commander, any other member of the crew, any passenger, the owner or operator of the aircraft, nor the person on whose behalf the flight was performed shall be held responsible in any proceeding on account of the treatment undergone by the person against whom the actions were taken.

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CHAPTER IV UNLAWFUL SEIZURE OF AIRCRAFT

Article 11

1. When a person on board has unlawfully committed by force or threat thereof an act of interference, seizure, or other wrongful exercise of control of an aircraft in flight or when such an act is about to be committed, Contracting States shall take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control of the aircraft.

2. In the cases contemplated in the preceding paragraph, the Contracting State in which the aircraft lands shall permit its passengers and crew to continue their journey as soon as practicable, and shall return the aircraft and its cargo to the person lawfully entitled to possession.

CHAPTER V POWERS AND DUTIES OF STATES

Article 12

Any Contracting State shall allow the commander of an aircraft registered in another Contracting State to disembark any person pursuant to Article 8, paragraph 1.

Article 13

1. Any Contracting State shall take delivery of any person whom the aircraft commander delivers pursuant to Article 9, paragraph 1.

2. Upon being satisfied that the circumstances so warrant, any Contracting State shall take custody or other measures to ensure the presence of any person suspected of an act contemplated in Article 11, paragraph 1, and of any person of whom it has taken delivery. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is reasonably necessary to enable any criminal or extradition proceedings to be instituted.

3. Any person in custody pursuant to the previous paragraph shall be assisted in communicating immediately with the nearest appropriate representative of the State which he is a national.

4. Any Contracting State, to which a person is delivered pursuant to Article 9, paragraph 1, or in whose territory an aircraft lands following the commission of an act contemplated in Article 11, paragraph 1, shall immediately make a preliminary enquiry into the facts.

5. When a State, pursuant to this Article, has taken a person into custody, it shall immediately notify the state of registration of the aircraft and the State of nationality of the detained person and, if it considers it advisable, any other interested State of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary enquiry contemplated in paragraph 4 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 14

1. When any person has been disembarked in accordance with Article 8, paragraph 1, or delivered in accordance with Article 9, paragraph 1, or has disembarked after committing an act contemplated in Article 11, paragraph 1, and when such person cannot or does not desire to continue his journey and the state of landing refuses to admit him, that State may, if the person in question is not a national or permanent resident of that State, return him to the territory of the State in which he began his journey by air.

2. Neither disembarkation, nor delivery, nor the taking of custody or other measures contemplated in Article 13, paragraph 2, nor return of the person concerned, shall be considered as admission to the territory of the Contracting State concerned for the purpose of its law relating to entry or admission of persons and nothing in this Convention shall affect the law of a Contracting State relating to the expulsion of persons from its territory.

Article 15

1. Without prejudice to Article 14, any person who has been disembarked in accordance with Article 8, paragraph 1, or delivered in accordance with Article 9, paragraph 1, or has disembarked after committing an act contemplated in Article 11, paragraph 1, and who desires to continue his journey shall be at liberty as soon as practicable to proceed to any destination of his choice unless his presence is required by the law of the State of landing for the purpose of extradition or criminal proceedings.

2. Without prejudice to its law as to entry and admission to, and extradition and expulsion from its territory, a Contracting State in whose territory a person has been disembarked in accordance with Article 8, paragraph 1 or delivered in accordance with Article 9, paragraph 1 or has disembarked and is suspected of having committed an act contemplated in Article 11, paragraph 1, shall accord to such person treatment which is no less favourable for his protection and security than that accorded to nationals of such Contracting State in like circumstances.

CHAPTER VI OTHER PROVISIONS

Article 16

1. Offences committed on aircraft registered in a Contracting State shall be treated, for the purpose of extradition, as if they had been committed not only in the place in which they have occurred but also in the territory of the State of registration of the aircraft.

2. Without prejudice to the provisions of the preceding paragraph, nothing in this Convention shall be deemed to create an obligation to grant extradition.

Article 17

In taking any measures for investigation or arrest or otherwise exercising jurisdiction in connection with any offence committed on board an aircraft the Contracting States shall pay due regard to the safety and other interests of air navigation and shall so act as to avoid unnecessary delay of the aircraft, passengers, crew or cargo.

Article 18

If Contracting States establish joint air transport operating organizations or international operating agencies, which operate aircraft not registered in any one State, those States shall, according to the circumstances of the case, designate the State among them which, for the purposes of this Convention, shall be considered as the State of registration and shall give notice thereof to the International Civil Aviation Organization which shall communicate the notice to all States Parties to this Convention.

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CHAPTER VII FINAL CLAUSES

Article 19

Until the date on which this Convention comes into force in accordance with the provisions of Article 21, it shall remain open for signature on behalf of any State which at that date is a Member of the United Nations or of any of the Specialized Agencies.

Article 20

1. This Convention shall be subject to ratification by the signatory States in accordance with their constitutional procedures.
2. The instruments of ratification shall be deposited with the International Civil Aviation Organization.

Article 21

1. As soon as twelve of the signatory States have deposited their instruments of ratification of this Convention, it shall come into force between them on the ninetieth day after that date of the deposit of the twelfth instrument of ratification. It shall come into force for each state ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.
2. As soon as this Convention comes into force, it shall be registered with the Secretary-General of the United Nations or the International Civil Aviation Organization.

Article 22

1. This Convention shall, after it has come into force, be open to accession by any state Member of the United Nations or of any of the Specialized Agencies.
2. The accession of a State shall be effected by the deposit of an instrument of accession with the International Civil Aviation Organization and shall take effect on the ninetieth day after the date of such deposit.

Article 23

1. Any Contracting State may denounce this Convention by notification addressed to the International Civil Aviation Organization.
2. Denunciation shall take effect six months after the date of receipt by the International Civil Aviation Organization of the notification of denunciation.

Article 24

1. Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other Contracting

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States shall not be bound by the preceding paragraph with respect to any Contracting State having made such a reservation.

3. Any Contracting State having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the International Civil Aviation Organization.

Article 25

Except as provided in Article 24 no reservation may be made to this Convention.

Article 26

The International Civil Aviation Organization shall give notice to all State Members of the United Nations or of any of the Specialized Agencies:

- (a) of any signature of this Convention and the date thereof;
- (b) of the deposit of any instrument of ratification or accession and the date thereof;
- (c) of the date on which this Convention comes into force in accordance with Article 21, paragraph 1;
- (d) of the receipt of any notification of denunciation and the date thereof; and
- (e) of the receipt of any declaration or notification made under Article 24 and the date thereof.

In witness whereof the undersigned Plenipotentiaries, being duly authorized, have signed this Convention.

Done at Tokyo, on the fourteenth day of September, One Thousand Nine Hundred and Sixty-three, in three authentic texts drawn up in the English, French, and Spanish languages.

This Convention shall be deposited with the International Civil Aviation Organization with which, in accordance with Article 19, it shall remain open for signature and the said Organization shall send certified copies thereof to all States Members of the United Nations and of any Specialized Agency.

SCHEDULE 2

Article 2

FOREIGN STATES WHICH ARE PARTIES TO THE CONVENTION
AND IN RELATION TO WHICH ORDERS IN COUNCIL UNDER
SECTION 2 OF THE EXTRADITION ACT 1870 ARE IN FORCE

<i>State</i>	<i>Date of Extradition Treaty</i>	<i>Order in Council</i>
Argentina	22 May 1889	1894/76
Belgium	29 October 1901	1902/208
Bolivia	22 February 1892	1898/1065
Chile	26 January 1897	1898/597
Colombia	27 October 1888	28 November 1889
Cuba	3 October 1904	1905/558
Ecuador	20 September 1880	26 June 1886
El Salvador	23 June 1881	16 December 1882

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<i>State</i>	<i>Date of Extradition Treaty</i>	<i>Order in Council</i>
Guatemala	4 July 1885	26 November 1886
Haiti	7 December 1874	5 February 1876
Iraq	2 May 1932	1933/357
Mexico	7 September 1886	6 April 1889
Monaco	17 December 1891	9 May 1892
Nicaragua	19 April 1905	1906/382
Panama	25 August 1906	1907/648
Paraguay	12 September 1908	1911/662
Peru	26 January 1904	1907/383
Romania	21 March 1893	1894/119
Russian Federation	24 November 1886	7 March 1887
Thailand	4 March 1911	1911/1151
United States of America	8 June 1972	1976/2144
Uruguay	26 March 1884	5 March 1885
Yugoslavia	6 December 1900	1901/586

SCHEDULE 3

Article 3

PART I

FOREIGN STATES WHICH ARE PARTIES TO THE CONVENTION
AND WITH WHICH NO EXTRADITION TREATIES ARE IN FORCE

<i>State</i>
Afghanistan
Algeria
Bahrain
Belarus
Bhutan
Bosnia and Herzegovina
Burundi
Cape Verde
Central African Republic
Chad
China, People's Republic of

State

Comoro Islands
Congo
Congo (Democratic Republic)
Costa Rica
Côte d'Ivoire
Djibouti
Dominican Republic
Egypt
Equatorial Guinea
Estonia
Ethiopia
Gabon
Georgia
Guinea
Honduras
Indonesia
Iran
Japan
Jordan
Kazakhstan
Korea, Democratic People's Republic of
Korea, Republic of
Laos
Lebanon
Libya
Macedonia, Former Yugoslav Republic of
Madagascar
Marshall Islands
Mauritania
Mongolia
Morocco
Myanmar
Nepal
Niger

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<i>State</i>
Oman
Palau
Philippines
Qatar
Rwanda
Saudi Arabia
Sengal
Suriname
Syria
Tajikistan
Togo
Tunisia
Ukraine
United Arab Emirates
Upper Volta
Uzbekistan
Venezuela
Vietnam
Yemen

PART II

APPLICATION OF THE EXTRADITION ACT 1989 IN THE CASE OF A STATE MENTIONED IN PART I

1. The Extradition Act 1989(10) shall have effect in relation to a State specified in Part I of this Schedule only in respect of—

- (a) a relevant offence specified in section 22(4)(a) of that Act;
- (b) an attempt to commit such an offence;
- (c) counselling, procuring, commanding, aiding or abetting such an offence;
- (d) being an accessory before or after the fact to such an offence.

2. No proceedings shall be taken on an application for a provisional warrant to be issued under section 8(1)(b) of the 1989 Act, and no such warrant shall be issued, unless the application is made with the consent of the Secretary of State signified by an Order in the form set out in Part III of this Schedule or in a form to the like effect; but except as aforesaid the signification of consent shall not affect the provisions of the said section 8.

(10) 1989 c. 33.

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PART III

FORM OF CONSENT OF SECRETARY OF STATE TO APPLICATION FOR A PROVISIONAL WARRANT

Whereas AB, a person recognised by the Secretary of State as a diplomatic or consular representative of _____, has requested consent to application being made for the issue of a provisional warrant for the arrest of CD, late of _____, who [is accused] [has been convicted] of the commission of an offence or attempt to commit an offence or counselling, procuring, commanding, aiding or abetting an offence or of being accessory before or after the fact to an offence, within the jurisdiction of the said State, being an offence constituted by an act or omission which if committed on board a British-controlled aircraft would be an offence under section 1 of the Tokyo Convention Act 1967;

By this Order the Secretary of State signifies to you his consent to the said application being made.

Given under the hand of the undersigned, [one of Her Majesty's Principal Secretaries of State] [Minister of State at _____] [Under-Secretary of State at _____] this _____ day of _____.

SCHEDULE 4

Article 5

TERRITORIES TO WHICH THIS ORDER EXTENDS

Anguilla
Bermuda
British Antarctic Territory
British Indian Ocean Territory
British Virgin Islands
Cayman Islands
Falkland Islands and Dependencies
Gibraltar
Montserrat
Pitcairn, Henderson, Ducie and Oeno Islands
St. Helena and Dependencies
Sovereign Base Areas of Akrotiri and Dhekelia
Turks and Caicos Islands

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies the Extradition Act 1989 (c. 33) so as to make extraditable offences under section 1 of the Tokyo Convention Act 1967 (c. 52) (offences on board aircraft), attempts to commit such offences and participation in the commission of such offences. It applies to certain States,

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Parties to the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16th December 1970.