

## **COMMONWEALTH SCHEME FOR THE RENDITION OF FUGITIVE OFFENDERS**

### **AS AMENDED IN 1990**

1. (1) The general provisions set out in this Scheme will govern the return of a person from one part of the Commonwealth, in which he is found, to another part thereof, in which he is accused of an offence; and in particular his return will only be precluded by law, or be subject to refusal by the competent executive authority, in the circumstances mentioned in this Scheme.
- (2) For the purpose of this Scheme a person liable to return as mentioned in paragraph (1) is described as a fugitive offender and each of the following areas is described as constituting a separate part of the Commonwealth, that is to say
  - (a) each sovereign and independent country within the Commonwealth together with any dependent territories (which expression, for the purpose aforesaid, includes protectorates and protected States) which that country designates, and
  - (b) each country within the Commonwealth, which, though not sovereign and independent, is not a territory designated for the purposes of the preceding subparagraph.

### **RETURNABLE OFFENCES**

2. (1) A fugitive will only be returned for a returnable offence.
- (2) For the purpose of this Scheme a returnable offence is an offence however described which is punishable in the part of the Commonwealth where the fugitive is located and the part of the Commonwealth to which return is requested by imprisonment for two years or a greater penalty.
- (3) Offences described in paragraph (2) are returnable offences notwithstanding that any such offences are of a purely fiscal character, where such offences are returnable under the law of the requested part of the Commonwealth.

### **WARRANTS, OTHER THAN PROVISIONAL WARRANTS**

3. (1) A fugitive offender will only be returned if a warrant for his arrest has been issued in that part of the Commonwealth to which his return is requested and either
  - (a) that warrant is endorsed by a competent judicial authority in the part in which he is found (in which case, the endorsed warrant will be sufficient authority for his arrest), or
  - (b) A further warrant for his arrest is issued by the competent judicial authority in the part in which he is found, not being a provisional warrant issued as mentioned in clause 4.

- (2) The endorsement or issue of a warrant as mentioned in this clause may be made conditional on the competent executive authority having previously issued an order to proceed.

#### **PROVISIONAL WARRANTS**

- 4. (1) Where a fugitive offender is, or is suspected of being, in or on his way to any part of the Commonwealth but no warrant has been endorsed as mentioned in clause 3(1)(a) or issued as mentioned in clause 3(1)(b), the competent judicial authority in that part of the Commonwealth may issue a provisional warrant for his arrest on such information and under such circumstances as would, in the authority's opinion, justify the issue of a warrant if the returnable offence of which the fugitive is accused had been an offence committed within the authority's jurisdiction and for the purposes of this paragraph information contained in an international notice issued by the International Criminal Police Organisation (INTERPOL) in respect of a fugitive may be considered by the authority, either alone or with other information, in deciding whether a provisional warrant should be issued for the arrest of that fugitive.
- (2) A report of the issue of such a provisional warrant, together with the information in justification or a certified copy thereof, will be sent to the competent executive authority and, in a case in which that authority decides on the said information and any other information which may have become available that the fugitive should be discharged, that authority may so order.

#### **COMMITTAL PROCEEDINGS**

- 5. (1) A fugitive offender arrested under a warrant endorsed or issued as mentioned in clause 3(1), or under a provisional warrant issued as mentioned in clause 4, will be brought, as soon as practicable, before the competent judicial authority who will hear the case in the same manner and have the same jurisdiction and powers, as nearly as may be, including power to remand and admit to bail, as if the fugitive were charged with an offence committed within that authority's jurisdiction.
- (2) The competent judicial authority will receive any evidence which may be tendered to show that the return of the fugitive offender is precluded by law.
- (3) Where a provisional warrant has been issued as mentioned in clause 4, but within such reasonable time as with reference to the circumstances of the case the competent judicial authority may fix,
  - (a) a warrant has not been endorsed or issued as mentioned in clause 3(1), or
  - (b) where such endorsement or issued of a warrant has been made conditional on the issue of an order to proceed, as mentioned in clause 3(2), no such order has been issued, the competent judicial authority will order the fugitive to be discharged.
- (4) Where a warrant has been endorsed or issued as mentioned in clause 3(1) the competent judicial authority may commit the fugitive to prison to await his return if
  - (a) such evidence is produced as establishes a prima facie case that he committed the offence of which he is accused, and
  - (b) his return is not precluded by law but, otherwise, will order him to be discharged.

- (5) Where a fugitive offender is committed to prison to await his return as mentioned in the preceding paragraph, notice of the fact will forthwith be given to the competent executive authority in that part of the Commonwealth in which he is committed.

#### **CONSENT ORDER FOR RETURN**

6. (1) A fugitive offender may waive committal proceedings, and if satisfied that the fugitive offender has voluntarily and with an understanding of its significance requested such waiver, the competent judicial authority may make an order by consent for the committal of the fugitive offender to prison, or for his admission to bail, to await return.
- (2) The competent executive authority may thereafter order return at any time, notwithstanding the provisions of clause 7.
- (3) The provisions of clause 15 shall apply in relation to a fugitive offender returned under this Clause unless waived by him.

#### **RETURN OR DISCHARGE BY EXECUTIVE AUTHORITY**

7. After the expiry of 15 days from the date of the committal of a fugitive offender to prison to await his return, as mentioned in clause 5, or, if a writ of habeas corpus or other like process is issued with reference to him, from the date of the final decision thereon of the competent judicial authority (whichever date is the later), the competent executive authority will order his return unless it appears to that authority that, in accordance with the provisions set out in this Scheme, his return is precluded by law or should be refused, in which case that authority will order his discharge.

#### **DISCHARGE BY JUDICIAL AUTHORITY**

8. (1) Where after the expiry of the period mentioned in paragraph (2) a fugitive offender has not been returned, an application to the competent judicial authority may be made by or on behalf of the fugitive for his discharge and if
  - (a) reasonable notice of the application has been given to the competent executive authority, and
  - (b) sufficient cause for the delay is not shown, the competent judicial authority will order his discharge.
- (2) The period referred to in paragraph (1) will be prescribed by law and will be one expiring either
  - (a) not later than two months from the fugitive's committal to prison as mentioned in clause 5, or
  - (b) not later than one month from the date of the order for his return made as mentioned in clause 7.

#### **HABEAS CORPUS AND REVIEW**

9. (1) It will be provided that an application may be made by or on behalf of a fugitive offender for a writ of habeas corpus or other like process.
- (2) It will be provided that an application may be made by or on behalf of the government of the requesting part of the Commonwealth for review of the decision of the competent judicial authority in committal proceedings.

## CIRCUMSTANCES PRECLUDING RETURN

10. (1) (a) The return of a fugitive offender will be precluded by law if the competent judicial or executive authority is satisfied that the offence is of a political character.
- (b) Paragraph (a) shall not apply in relation to offences established under any multilateral international convention to which both the requesting and the requested parts of the Commonwealth are parties and which are declared thereby not to be regarded as political offences for the purposes of extradition.
- (c) Any part of the Commonwealth may adopt the provisions set out in Annex 1.
- (2) The return of a fugitive offender will be precluded by law if it appears to the competent judicial or executive authority
- (a) that the request for his surrender although purporting to be made for a returnable offence was in fact made for the purpose of prosecuting or punishing the person on account of his race, religion, nationality or political opinions, or
- (b) that he may 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) The return of a fugitive offender, or his return before the expiry of a specified period, will be precluded by law if the competent judicial or executive authority is satisfied that by reason of
- (a) the trivial nature of the case, or
- (b) the accusation against the fugitive not having been made in good faith or in the interests of justice, or
- (c) the passage of time since the commission of the offence, or
- (d) any other sufficient cause,
- it would, having regard to all the circumstances be unjust or oppressive or too severe a punishment to return the fugitive or, as the case may be, to return him before the expiry of a period specified by that authority.
- (4) The return of a fugitive offender will be precluded by law if the competent judicial or executive authority is satisfied that he has been convicted (and is neither unlawfully at large nor at large in breach of a condition of a licence to be at large), or has been acquitted, whether within or outside the Commonwealth, of the offence of which he is accused.
- (5) The competent authorities for the purposes of this and the next following clause will include
- (a) any judicial authority which hears or is competent to hear such an application as is mentioned in clause 9, and
- (b) the executive authority by whom any order for the fugitives return would fall to be made.
- (6) It will be sufficient compliance with any one of the paragraphs (1), (2), (3), (4) and (5) if a country decides that the competent authority for the purposes of that paragraph is exclusively the judicial authority or the executive authority.

- (7) If the competent executive authority -
- (a) is empowered by law to certify that the offence of which a fugitive offender is accused is an offence of a political character, and
  - (b) in the case of a particular fugitive offender, so certifies,
- the certificate will be conclusive in the matter and binding upon the competent judicial authority for the purposes mentioned in this clause.

#### **OFFENCES UNDER MILITARY LAW**

11. The return of a fugitive offender will either be precluded by law, or be subject to refusal by the competent authority if the competent authority is satisfied that the offence is an offence only under military law or a law relating to military obligations.

#### **DOUBLE-CRIMINALITY RULE**

12. The return of a fugitive offender will whether be precluded by law or be subject to refusal by the competent executive authority if the facts on which the request for his return is grounded do not constitute an offence under the law of the country or territory in which he is found.

#### **POSTPONEMENT OF RETURN OF FUGITIVE AND TEMPORARY TRANSFER OF PRISONERS TO STAND TRIAL**

13. (1) Subject to the following provisions of this clause, where a fugitive offender
- (a) has been charged with an offence triable by a court in that part of the Commonwealth in which he is found, or
  - (b) is serving a sentence imposed by a court in that part of the Commonwealth, then until such a time as he has been discharged (whether by acquittal, the expiration or remission of his sentence, or otherwise) his return will either be precluded by law or be subject to refusal by the competent executive authority as the law of the country or territory concerned may provide.
- (2) Subject to the provisions of this Scheme, a prisoner serving such a sentence who is also a fugitive offender may, at the discretion of the competent executive authority of that part of the Commonwealth in which the prisoner is held, be returned temporarily to another part of the Commonwealth in which he is accused of a returnable offence to enable proceedings to be brought against the prisoner in relation to that offence on such conditions as are agreed between the respective parts of the Commonwealth.

#### **PRIORITY WHERE TWO OR MORE REQUESTS MADE**

14. Where requests for the return of a fugitive offender or two or more parts of the Commonwealth fall to be dealt with at the same time, the competent executive authority will determine to which part he should be returned and, accordingly, may refuse the other requests; and in determining the matter that authority will consider all the circumstances of the case and in particular -
- (a) the relative seriousness of the offences,
  - (b) the relative dates on which the requests were made, and
  - (c) the citizenship or other national status of the fugitive and his ordinary residence.

## **SPECIALITY RULE**

15. (1) This clause relates to a fugitive offender who has been returned from one part of the Commonwealth to another part thereof, so long as he has not had a reasonable opportunity of leaving the second mentioned part.
- (2) In the case of a fugitive offender to whom this clause relates, his detention or trial in the part of the Commonwealth to which he has been returned for any offence committed prior to his return (other than the one for which he was returned or any lesser offence proved by the facts on which that return was grounded, or, with the consent of the requested country or territory, any returnable offence) will be precluded by law.
- (3) When considering a request for consent under paragraph (2) the executive authority of the requested part of the Commonwealth may call for such particulars as it may require in order that it may be satisfied that such request is otherwise consistent with the principles of this Scheme, and shall not unreasonably withhold consent; but where in the opinion of the requested part of the Commonwealth it appears that, on the facts known to the requesting part of the Commonwealth at the time of the original application for return of the fugitive offender, application should have been made in respect of such offences at that time, that fact may constitute a ground for refusal.
- (4) The requesting part of the Commonwealth shall not, without the consent of the requested part, return or surrender to another country or territory a fugitive offender returned to the requesting part and sought by such other country or territory in respect of any offence committed prior to his return; and in considering a request under this paragraph the requested part of the Commonwealth may call for the particulars referred to in paragraph (3) and shall not unreasonably withhold consent.
- (5) Nothing in this clause shall prevent a court in the requesting part of the Commonwealth from taking into account at the request of the fugitive any other offence, whether returnable or not under this Scheme, for the purpose of passing sentence on a fugitive convicted of an offence for which he has been returned under this Scheme, where the fugitive desires that such other offence shall be taken into account.

## **RETURN OF ESCAPED PRISONERS**

16. (1) In the case of a person who -
- (a) has been convicted of a returnable offence by a court in any part of the Commonwealth and is unlawfully at large before the expiry of his sentence for that offence, and
- (b) is found in some other part of the Commonwealth, the provisions set out in this Scheme, as applied for the purposes of this clause by paragraph (2), will govern his return to the part of the Commonwealth in which he was convicted.
- (2) For the purposes of this clause this Scheme shall be construed, subject to any necessary adaptations or modifications, as though the person unlawfully at large were accused of the offence of which he was convicted and, in particular
- (a) any reference to a fugitive offender shall be construed as including a reference to such a person as is mentioned in paragraph (1), and
- (b) the reference in clause 5(4) to such evidence as establishes a prima facie case that he committed the offence of which he is accused shall be construed as a reference to such evidence as establishes that he has been convicted.

- (3) The references in this clause to a person unlawfully at large shall be construed as including reference to a person at large in breach of a condition of a licence to be at large.

#### **ANCILLARY PROVISIONS**

17. Each Commonwealth country or territory will take, subject to its constitution, any legislative and other steps which may be necessary or expedient in the circumstances to facilitate and effectuate
- (a) the return of a fugitive offender who is in transit in its territory for that purpose,
  - (b) the delivery of property found in the possession of a fugitive offender at the time of his arrest which may be material evidence of the offence at which he is accused, and
  - (c) the proof of warrants, certificates of conviction, depositions and other documents.

#### **ALTERNATIVE ARRANGEMENTS AND MODIFICATIONS**

18. Nothing in this Scheme shall prevent
- (a) the making of arrangements between two or more parts of the Commonwealth for further or alternative provision for the return of offenders, or
  - (b) the application of the Scheme with modifications by an part of the Commonwealth in relation to any other part which has not brought clauses 1 to 17 fully into effect.

#### **SUPPLEMENTARY PROVISIONS**

19. (1) Any part of the Commonwealth may or may not adopt either or both of the supplementary provisions set out in Annex 1 but, where such a provision is adopted, any other part of the Commonwealth may in relation to the first part reserve its position as to whether it will give effect to clauses 1 to 17 or will give effect to them subject to such exceptions and modifications as appear to it to be necessary or expedient or give effect to any arrangement made under clause 18(a).
- (2) Two or more parts of the Commonwealth may make arrangements under which in matters of rendition between them clause 5(4) will be replaced either by Annex 3 or by other provisions agreed by the Governments of those parts.

**DISCRETION AS TO DEFINITION OF POLITICAL OFFENCES**

1. It may be provided by a law in any part of the Commonwealth that certain acts shall not be held to be offences of a political character including
  - (a) an offence against the life or person of a Head of State or a member of his immediate family or any related offence (i.e. aiding and abetting, or counselling or procuring the commission of, or being an accessory before or after the fact to, or attempting or conspiring to commit such an offence),
  - (b) an offence against the life or person of a Head of Government, or of a Minister of a Government, or any related offence as aforesaid,
  - (c) murder, or any related offence as aforesaid
  - (d) an act declared to constitute an offence under a multilateral international convention whose purpose is to prevent or repress a specific category of offences and which imposes on the parties thereto an obligation either to extradite or to prosecute the person sought.
2. Any part of the Commonwealth may restrict the application of any of the provisions made under paragraph 1 to a request from a part of the Commonwealth which has made similar provisions in its laws.

**SUPPLEMENTARY PROVISIONS**

**DISCRETION AS RESPECTS RETURN FOR OFFENCES  
PUNISHABLE BY DEATH**

1. (1) The return of a fugitive offender may be refused by the competent executive authority where it appears to that authority that, by reason that -
- (a) if he was returned he would be likely to suffer the death penalty for the offence for which his return is requested, and
  - (b) in the country or territory in which he is found or in any part thereof that offence is not punishable by death,
- it would, having regard to all the circumstances of the case and to any likelihood that if not returned he would be immune from punishment, be unjust or oppressive or too severe a punishment to return him.
- (2) In determining whether a fugitive would be likely to suffer the death penalty, the executive authority shall take into account any representations which the authorities of the requesting part of the Commonwealth may make with regard to the possibility that the death penalty, if imposed, will not be carried out.

**DISCRETION AS RESPECTS RETURN OF CITIZENS ETC.**

2. (1) The return of a fugitive offender who is a national or permanent resident of the part of the Commonwealth in which he is found -
- (a) may be precluded by law, or
  - (b) may be refused by the competent executive authority:
- provided that return will not be so refused if the fugitive is also national of that part of the Commonwealth to which his return is requested.
- (2) For the purposes of this paragraph a fugitive shall be treated as a national of a part of the Commonwealth if that part consists of, or includes -
- (a) a Commonwealth country of which he is a citizen, or
  - (b) a country or territory his connection with which determines his national status,
- in either case at the date of the request.

**ALTERNATIVE PROVISIONS AS TO COMMITTAL PROCEEDINGS**

1. Where a warrant has been endorsed or issued as mentioned In clause 3(1) the competent judicial authority may commit the fugitive to prison to await his return if -
  - (a) the contents of the record of the case received under this Annex whether or not admissible in evidence, under the law of the requested part, and any other evidence admissible under the law of the requested part, are sufficient to warrant a trial of the charges for which rendition has been requested; and
  - (b) the fugitive's return is not precluded by law, but otherwise will order the fugitive to be discharged.
  
2. The competent judicial authority will receive a record of the case prepared by an Investigating authority in the requesting part if it is accompanied by
  - (a) an affidavit of an officer of the investigating authority stating that the record of the case was prepared by or under the direction of that officer, and that the evidence has been preserved for use in court; and
  - (b) a certificate of the Attorney General of the requesting part that in his opinion the record of the case discloses the existence of evidence under the law of the requesting part sufficient to justify a prosecution.
  
3. The record of the case will contain -
  - (a) particulars of the description, identity, nationality and, to the extent available, whereabouts of the person sought;
  - (b) particulars of each offence or conduct in respect of which rendition is requested, specifying the date and place of commission, the legal definition of the offence and the relevant provisions in the law of the requesting part, including a certified copy of any such definition in the written law of that part;
  - (c) the original or a certified copy of any document of process issued in the requesting part against the person whom it seeks to have committed for rendition;
  - (d) a recital of the evidence acquired to support the request for rendition of the person sought; and
  - (e) a certified copy, reproduction or photograph of exhibits or documents evidence.

**NOTE OF LEGAL COSTS ARISING OUT OF EXTRADITION  
AND FUGITIVE OFFENDERS PROCEEDINGS**

Particulars of legislation, case-law or State-practice regarding the legal costs of extradition and fugitive offenders proceedings in certain Commonwealth countries.

**AUSTRALIA**

The Australian practice is to offer the services of the Director of Public Prosecutions to represent requesting countries in extradition proceedings, including any proceedings by way of appeal or review. In consequence, costs and disbursements incurred are borne by the Australian Government. Normally an officer of the Office of the Director of Public Prosecutions in the State or Territory in which the application is made appears for the requesting country. Alternatively, the Director of Public Prosecutions may brief counsel if that course appears desirable. This practice is largely based on reciprocity of treatment and is liable to be varied in the event of a particular country being unwilling to make similar arrangements for, or to meet the costs of, legal representations when Australia makes a request.

**BARBADOS**

Although legislative provisions regarding extradition make no mention of legal costs, State-practice in extradition proceedings is described as follows:

"The fugitive offender is brought to trial on a magistrate's warrant for which no fee is required. But expenses are required for briefing and obtaining the services of an Attorney-at-law in connection with the trial. Current practice requires the requesting State to meet these expenses. In an effort to ensure payment, the requesting State is required to give an undertaking at the time of requisition.

In the event that there are habeas corpus proceedings the requesting State may also be required to pay the necessary court fees in accordance with Order 54 Rule 2 of the Supreme Court Rules. But if there is any existing treaty arrangement providing for exemption of fees in these matters, this will be facilitated by Order 54, Rule 3.

There are no concrete cases arising out of the definition."

**LESOTHO**

Since the Act of 1967, Lesotho entertained one extradition request made by Swaziland in 1972. A problem arose after surrender and trial - the fugitive was found guilty in Swaziland but was given a suspended sentence and permitted to return to Lesotho - as to who should bear the costs of repatriation. The problem was solved through the good offices of the British High Commission and the bail money standing in the name of the fugitive in Lesotho.

Another question is whether any procedure exists to enforce the suspended sentence if the condition of release should be breached?

**NEW ZEALAND**

According to New Zealand the Extradition Act makes no mention of legal costs, therefore the question of costs would be disposed of in accordance with the terms of the relevant treaty. The only treaty concluded by New Zealand in this respect is with the USA. Concluded in 1970 the Treaty provides that expenses relating to transportation of the person sought shall be paid by the requesting Party and that appropriate legal officers of the county in which extradition proceedings take place shall,

by all legal means within their power, assist the officers of the requesting Party before the respective judges and magistrates.

## **TONGA**

As regards legal costs, Tonga expressed its inability to comment until bilateral treaties were concluded between Tonga and other countries. However, attention has been drawn to the procedure for arrest and committal in the Extradition Act being similar to criminal prosecutions in which the costs involved are borne by the Government of Tonga with exception of costs for the repatriation of the offender which is expected to be borne by the requesting State.

## **UNITED KINGDOM**

Provision has been made in extradition treaties or separate administrative arrangements, concluded by the United Kingdom with other Western European countries and the United States, for the requested Party to make all necessary arrangements for, and meet the cost of, the legal representation of the requesting Party in any proceedings arising out of a request for extradition.

Arrangements have been made between England and Wales and a number of Commonwealth countries (Australia, Barbados, Canada, Cyprus, Ghana, Gibraltar, Hong Kong, Kenya, Malta, Nauru, New Zealand and Swaziland) for the requested State to arrange and meet the costs of legal representation on behalf of the requesting State. Similar arrangements have not been necessary for Scotland where the requesting State is represented without charge by the Lord Advocate (the Chief Public Prosecutor) or on his behalf by his local prosecutors, the Procurators Fiscal.

Since 1969 non-statutory arrangements have existed with the Republic of Ireland whereby the Attorney-General of the Republic of Ireland represents United Kingdom interests in any extradition proceedings in the Republic and the Director of Public Prosecutions undertakes a reciprocal service in any habeas corpus proceedings in England and Wales under the Backing of Warrants (Republic or Ireland) Act, 1965. Similar reciprocal services in Scotland are offered and undertaken by the Lord Advocate.