

**THE LONDON SCHEME FOR EXTRADITION WITHIN THE
COMMONWEALTH**

incorporating the amendments agreed at Kingstown in November 2002.

1. (1) The general provisions set out in this Scheme will govern the extradition of a person from the Commonwealth country, in which the person is found, to another Commonwealth country, in which the person is accused of an offence.
- (2) Extradition will be precluded by law, or be subject to refusal by the competent executive authority, only in the circumstances mentioned in this Scheme.
- (3) For the purpose of this Scheme a person liable to extradition as mentioned in paragraph (1) is described as a person sought and each of the following areas is described as a separate country:
 - (a) each sovereign and independent country within the Commonwealth together with any dependent territories 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 sub-paragraph.

EXTRADITION OFFENCES AND DUAL CRIMINALITY RULE

2. (1) A person sought will only be extradited for an extradition offence.
- (2) For the purpose of this Scheme, an extradition offence is an offence however described which is punishable in the requesting and requested country by imprisonment for two years or a greater penalty.
- (3) In determining whether an offence is an offence punishable under the laws of both the requesting and the requested country, it shall not matter whether:
 - (a) the laws of the requesting and requested countries place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;
 - (b) under the laws of the requesting and requested countries the elements of the offence differ, it being understood that the totality of the acts or omissions as presented by the requesting country constitute an offence under the laws of the requested country.
- (4) An offence described in paragraph (2) is an extradition offence notwithstanding that the offence:
 - (a) is of a purely fiscal character; or
 - (b) was committed outside the territory of the requesting country

where extradition for such offences is permitted under the law of the requested country.

WARRANTS, OTHER THAN PROVISIONAL WARRANTS

3. (1) A person sought will only be extradited if a warrant for arrest has been issued in the country seeking extradition and either -
 - (a) that warrant is endorsed by a competent judicial authority in the requested country (in which case, the endorsed warrant will be sufficient authority for arrest), or
 - (b) a further warrant for arrest is issued by the competent judicial authority in the requested country, other than a provisional warrant issued in accordance with clause 4.
- (2) The endorsement or issue of a warrant may be made conditional on the competent executive authority having previously issued an order to proceed.

PROVISIONAL WARRANTS

4. (1) Where a person sought is, or is suspected of being, in or on the way to any country but no warrant has been endorsed or issued in accordance with clause 3, the competent judicial authority in the destination country may issue a provisional warrant for arrest on such information and under such circumstances as would, in the authority's opinion, justify the issue of a warrant if the extradition offence had been an offence committed within the destination country.
- (2) For the purposes of paragraph 1, information contained in an international notice issued by the International Criminal Police Organisation (INTERPOL) in respect of a person sought 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 person.
- (3) A report of the issue of a provisional warrant, with the information in justification or a certified copy thereof, will be sent to the competent executive authority.
- (4) The competent executive authority who receives the information under paragraph (3) may decide, on the basis of that information and any other information which may have become available, that the person should be discharged, and so order.

COMMITTAL PROCEEDINGS

5. (1) A person arrested under a warrant endorsed or issued in accordance with clause 3(1), or under a provisional warrant issued in accordance with 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 person were charged with an offence committed in the requested country.
- (2) The competent judicial authority will receive any evidence which may be tendered to show that the extradition of the person sought is precluded by law.
- (3) Where a provisional warrant has been issued in accordance with clause 4, but within such reasonable time as the competent judicial authority may fix:
 - (a) a warrant has not been endorsed or issued in accordance with clause 3(1), or
 - (b) where such endorsement or issue of a warrant has been made conditional on the issuance of an order to proceed, as mentioned in clause 3(2), no such order has been issued,the competent judicial authority will order the person to be discharged.
- (4) Where a warrant has been endorsed or issued in accordance with 3(1) the competent judicial authority may commit the person to prison to await extradition if -
 - (a) such evidence is produced as establishes a prima facie case that the person committed the offence; and
 - (b) extradition is not precluded by lawbut, otherwise, will order the person to be discharged.
- (5) Where a person sought is committed to prison to await extradition as mentioned in paragraph (4), notice of the fact will be given as soon as possible to the competent executive authority of the country in which committal took place.

OPTIONAL ALTERNATIVE COMMITTAL PROCEEDINGS

6. (1) Two or more countries may make arrangements under which clause 5(4) will be replaced by paragraphs 2-4 of this clause or by other provisions agreed by the countries involved.
- (2) Where a warrant has been endorsed or issued as mentioned in clause 3(1), the competent judicial authority may commit the person sought to prison to await extradition if -

- (a) the contents of a record of the case received, whether or not admissible in evidence under the law of the requested country, and any other evidence admissible under the law of the requested country, are sufficient to warrant a trial of the charges for which extradition has been requested; and
 - (b) extradition is not precluded by law, but otherwise will order that the person be discharged.
- (3) The competent judicial authority will receive a record of the case prepared by an investigating authority in the requesting country 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 country that in his or her opinion the record of the case discloses the existence of evidence under the law of the requesting country sufficient to justify a prosecution.
- (4) A 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 extradition 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 country, including a certified copy of any such definition in the written law of that country;
 - (c) the original or a certified copy of any document of process issued in the requesting country against the person sought for extradition ;
 - (d) a recital of the evidence acquired to support the request for extradition; and
 - (e) a certified copy, reproduction or photograph of exhibits or documentary evidence.

SUPPLEMENTARY INFORMATION

7. (1) If it considers that the material provided in support of a request for extradition is insufficient, the competent authority in the requested country may seek such additional information as it considers necessary from the requesting country, to be provided within such reasonable period of time as it may specify.
- (2) Where a request under paragraph (1) is made after committal proceedings have commenced the competent judicial authority in the requested country may grant an adjournment of the proceedings for such period as that authority

may consider reasonable for the material to be furnished, which aggregate period should not exceed 60 days.

CONSENT ORDER FOR RETURN

8. (1) A person sought may waive committal proceedings, and if satisfied that the person sought 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 person sought to prison, or for admission to bail, to await extradition.
- (2) The competent executive authority may thereafter order extradition at any time, notwithstanding the provisions of clause 9.
- (3) The provisions of clause 20 shall apply in relation to a person sought extradited under this clause unless waived by the person.

RETURN OR DISCHARGE BY EXECUTIVE AUTHORITY

9. After the expiry of 15 days from the date of the committal of a person sought, or, if a writ of habeas corpus or other like process is issued, from the date of the final decision of the competent judicial authority on that application (whichever date is the later), the competent executive authority will order extradition unless it appears to that authority that, in accordance with the provisions set out in this Scheme, extradition is precluded by law or should be refused, in which case that authority will order the discharge of the person.

DISCHARGE BY JUDICIAL AUTHORITY

10. (1) Where after the expiry of the period mentioned in paragraph (2) a person sought has not been extradited an application to the competent judicial authority may be made by or on behalf of the person for a 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 the discharge of the person.
- (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 person's committal to prison, or
 - (b) not later than one month from the date of the order for extradition made in accordance with clause 9.

HABEAS CORPUS AND REVIEW

11. (1) It will be provided that an application may be made by or on behalf of a person sought 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 country for review of the decision of the competent judicial authority in committal proceedings.

POLITICAL OFFENCE EXCEPTION

12. (1) (a) The extradition of a person sought will be precluded by law if the competent authority is satisfied that the offence is of a political character;
 - (b) Sub paragraph (a) shall not apply to:
 - (i) offences established under any multilateral international convention to which the requesting and the requested countries are parties, the purpose of which is to prevent or repress a specific category of offences and which imposes on the parties an obligation either to extradite or to prosecute the person sought;
 - (ii) offences for which the political offence or offence of political character ground of refusal is not applicable under international law.
 - (c) If the competent executive authority is empowered by law to certify that the offence of which a person sought is accused is an offence of a political character, and so certifies in a particular case, the certificate will be conclusive in the matter and binding upon the competent judicial authority for the purposes mentioned in this clause.
- (2) (a) A country may provide by law that certain acts shall not be held to be offences of a political character including:
 - (i) an offence against the life or person of a Head of State or a member of the immediate family of a Head of State 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),
 - (ii) an offence against the life or person of a Head of Government, or of a Minister of a Government, or any related offence as described above,
 - (iii) murder, or any related offence as described above,
 - (iv) any other offence that a country considers appropriate.

- (b) A country may restrict the application of any of the provisions made under sub paragraph (b) to a request from a country which has made similar provisions in its laws.
13. The extradition of a person sought also will be precluded by law if -
- (a) it appears to the competent authority that:
 - (i) the request for extradition although purporting to be made for an extradition offence was in fact made for the purpose of prosecuting or punishing the person on account of race, religion, sex, nationality or political opinions, or
 - (ii) that the person may be prejudiced at trial or punished, detained or restricted in personal liberty by reason of race, religion, sex, nationality or political opinions.
 - (b) the competent authority is satisfied that by reason of
 - (i) the trivial nature of the case, or
 - (ii) the accusation against the person sought not having been made in good faith or in the interests of justice, or
 - (iii) the passage of time since the commission of the offence, or
 - (iv) any other sufficient cause,it would, having regard to all the circumstances be unjust or oppressive or too severe a punishment for the person to be extradited or, as the case may be, extradited before the expiry of a period specified by that authority.
 - (c) the competent authority is satisfied that the person sought 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 for which extradition is sought.

DISCRETIONARY BASIS FOR REFUSAL OF EXTRADITION

14. A request for extradition may be refused in the discretion of the competent authority of the requested country if -
- (a) judgment in the requesting country has been rendered in circumstances where the accused was not present; and
 - (i) no counsel appeared for the accused; or
 - (ii) counsel instructed and acting on behalf of the accused was not permitted to participate in the proceedings;

- (b) the offence for which extradition is requested has been committed outside the territory of either the requesting or requested country and the law of the requested country does not enable it to assert jurisdiction over such an offence committed outside its territory in comparable circumstances;
- (c) the person sought has, under the law of either the requesting [or requested] country become immune from prosecution or punishment because of [any reason, including] lapse of time or amnesty;
- (d) the offence is an offence only under military law or a law relating to military obligations.

DISCRETIONARY GROUNDS OF REFUSAL

- 15. (1) Any country may adopt the provisions of this clause but, where they are adopted, any other country may in relation to the first country reserve its position as to whether it will give effect to the other clauses of the Scheme 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 23(a).
- (2) A request for extradition may be refused if the competent authority of the requested country determines -
 - (a) that upon extradition, the person is likely to suffer the death penalty for the extradition offence and that offence is not punishable by death in the requested country; and
 - (b) it would be, having regard to all the circumstances of the case and to the likelihood that the person would be immune from punishment if not extradited, unjust or oppressive or too severe a punishment for extradition to proceed.
 - (c) In determining under paragraph (a), whether a person would be likely to suffer the death penalty, the executive authority shall take into account any representations which the authorities of the requesting country may make with regard to the possibility that the death penalty, if imposed, will not be carried out.
- (3) (a) A request for extradition may be refused on the basis that the person sought is a national or permanent resident of the requested country.
- (b) For the purpose of sub paragraph a, a person shall be treated as a national of a country that is -
 - (i) a Commonwealth country of which he or she is a citizen; or
 - (ii) a country or territory his or her connection with which determines national status.
- (c) The assessment under paragraph (b) should be at the date of the request.

ALTERNATIVE MEASURES IN THE CASE OF REFUSAL

- 16 (1) For the purpose of ensuring that a Commonwealth country cannot be used as a haven from justice, each country which reserves the right to refuse to extradite nationals or permanent residents in accordance with clause 15 paragraph (3), will take, subject to its constitution, such legislative action and other steps as may be necessary or expedient in the circumstances to facilitate the trial or punishment of a person whose extradition is refused on that ground.
- (2) The legislative action necessary to give effect to paragraph (1) may include –
- (a) providing that the case be submitted to the competent authorities of the requested country for prosecution;
 - (b) permitting:
 - (i) the temporary extradition of the person to stand trial in the requesting country on condition that, following trial and sentence, the person is returned to the requested country to serve his or her sentence; and
 - (ii) the transfer of convicted offenders; or
 - (c) enabling a request to be made to the relevant authorities in the requesting country for the provision to the requested country of such evidence and other information as would enable the authorities of the requested country to prosecute the person for the offence.

COMPETENT AUTHORITY

- 17 (1) The competent authorities for the purpose of clauses 12, 13, 14 and 15 will include
- (a) any judicial authority which hears or is competent to hear an application described in clause 11, and
 - (b) the executive authority responsible for orders for extradition.
- (2) It will be sufficient compliance with sub paragraphs 12, 13, 14 and 15 if a country decides that the competent authority for those purposes is exclusively the judicial authority or the executive authority .

POSTPONEMENT OF EXTRADITION AND TEMPORARY TRANSFER OF PRISONERS TO STAND TRIAL

18. (1) Subject to the following provisions of this clause, where a person sought -
- (a) has been charged with an offence that may be tried by a court in the requested country or
 - (b) is serving a sentence imposed by a court in the requested country,

then until discharge (by acquittal, the expiration or remission of sentence, or otherwise) extradition will either be precluded by law or be subject to refusal by the competent executive authority as the law of the requested country may provide.

- (2) Subject to the provisions of this Scheme, a prisoner serving such a sentence who is also a person sought may, at the discretion of the competent executive authority of the requested country, be extradited temporarily to the requesting country to enable proceedings to be brought against the prisoner in relation to the extradition offence on such conditions as are agreed between the respective countries.

PRIORITY WHERE TWO OR MORE REQUESTS MADE

19. (1) Where the requested country receives two or more requests from different countries for the extradition of the same person, the competent executive authority will determine which request will proceed and may refuse the other requests.
- (2) In making a determination under paragraph (1), the 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 and ordinary residence of the person sought.

SPECIALTY RULE

20. (1) This clause relates to a person sought who has been extradited from one country to another, so long as the person has not had a reasonable opportunity of leaving the second mentioned country.
- (2) In the case of a person sought to whom this clause relates, detention or trial in the requesting country for any offence committed prior to extradition (other than the one for which the person was extradited or any lesser offence proved by the facts on which extradition was based), without the consent of the requested country, will be precluded by law.
- (3) When considering a request for consent under paragraph (2) the executive authority of the requested country may seek such particulars as it may require in order that it may be satisfied that the request is otherwise consistent with the principles of this Scheme

- (4) Consent under paragraph (2) shall not be unreasonably withheld but where, in the opinion of the requested country, it appears that, on the facts known to the requesting country at the time of the original request for extradition, application should have been made in respect of such offences at that time, that may constitute a sufficient basis for refusal of consent.
- (5) The requesting country shall not extradite a person sought who has been surrendered to that country pursuant to a request for extradition, to a third country for an offence committed prior to extradition, without the consent of the requested country .
- (6) In considering a request under paragraph (5) the requested country may seek the particulars referred to in paragraph (3) and shall not unreasonably withhold consent.
- (7) Nothing in this clause shall prevent a court in the requesting country from taking into account any other offence, whether an extradition offence or not under this Scheme, for the purpose of passing sentence on a person convicted of an offence for which he or she was surrendered, where the person consents.

RETURN OF ESCAPED PRISONERS

21. (1) In the case of a person who -
- (a) has been convicted of an extradition offence by a court in any country and is unlawfully at large before the expiry of the sentence for that offence, and
 - (b) is found in another country,
- the provisions set out in this Scheme, as applied for the purposes of this clause by paragraph (2), will govern extradition to the country in which the person 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 for which there is a conviction and, in particular -
- (a) any reference to a person sought 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 evidence that establishes a prima facie case shall be construed as a reference to such evidence as establishes that the person 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

22. Each country 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 transit through its territory of a person sought who is being extradited under this Scheme;
 - (b) the delivery of property found in the possession of a person sought at the time of arrest which may be material evidence of the extradition offence; and
 - (c) the proof of warrants, certificates of conviction, depositions and other documents.

ALTERNATIVE ARRANGEMENTS AND MODIFICATIONS

23. Nothing in this Scheme shall prevent -
- (a) the making of arrangements between Commonwealth countries for further or alternative provision for extradition, or
 - (b) the application of the Scheme with modifications by one country in relation to another which has not brought the Scheme fully into effect.

