

## EXTRADITION FROM THE BAHAMAS

The Extradition Act 1994 ("the 1994 Act") (make the appropriate link please to the 1994 ACT) governs applications for extradition from The Bahamas. The title to the 1994 Act states that it is "An Act to make new provision for the extradition to and from Commonwealth Countries and Foreign States of persons accused or convicted of certain offences and to provide for matters connected therewith".

The 1994 Act is divided into five parts:

Part I, Preliminary;

Part II, Extradition to Approved States;

Part III, Proceeding for Extradition;

Part IV, Extradition from Approved States; and

Part V, Miscellaneous.

Part I

In Part I, section 1 is the interpretation section. It defines important terms, in particular "approved State" and "extradition offence". An "approved State" is defined as either "a designated Commonwealth State or a treaty State". The Act, embraces both Commonwealth and foreign state extradition. An "extradition offence" is defined as "an offence within the meaning of section 5 including any offence specified by any other Act to be an extradition offence to which this Act applies". Section 3 (in the case of Commonwealth States) and section 4 (in the case of foreign States) provide for the application of the 1994 Act to those States by order of the Minister responsible for extradition. Provision is made in subsection 4(2) for the continuation in force of treaties made before the commencement of the 1994 Act. Attached as Appendix B is a list of states with extradition treaties with The Bahamas (either by

separate treaty between The Bahamas and that state, or by the continuation in force between The Bahamas and that state of the extradition treaty between that state and the United Kingdom). Commonwealth countries are also included and attached as Appendix C is a list of those countries.

## Part II

Part II defines the persons liable to extradition (section 6) and the general restrictions on extradition (section 7). Section 7(3) makes provision for specialty and requires that requesting states make provision for that rule in the terms set out in that section, namely in general terms that a person, if surrendered, with some exceptions, may only be tried or punished for the offence for which he was surrendered.

## Part III - Proceedings for extradition

Part III provides for the Proceedings for Extradition. In the case of a request from an approved state these provisions require the following:

[1] A warrant to have been issued in an approved state accusing a fugitive criminal of an extradition offence or for a fugitive criminal to have been convicted of an extradition offence.

[2] A fugitive criminal to be in or suspected to be in The Bahamas (see definition of "fugitive" in section 1).

[3] A request for the surrender of the fugitive to be made by the requesting state. This requisition is made through diplomatic channels to the Minister for Foreign Affairs. In the case of a person accused, the request is required (by section 8(2) of the Act) to be accompanied by:

(a) a warrant or other judicial document for the arrest of the accused issued by the specified authority;

- (b) duly authenticated evidence;
- (c) particulars of fact and law under which he is accused; and
- (d) means of identification of the person claimed.

[4] The Minister for Foreign Affairs to signify to a magistrate that such a request has been made by the issue of an authority to proceed.

[5] A magistrate to issue a warrant for the arrest of the fugitive on receipt of an authority to proceed on such information as would in his opinion justify the issue of a warrant if the crime had been committed in The Bahamas. This is usually called a full warrant. A magistrate has, in any event, power to issue what is usually called a provisional warrant for the apprehension of a fugitive before an authority to proceed has been issued.

[6] When the fugitive is brought before the magistrate, he shall hear the case in the same manner, and have the same jurisdiction and powers, as near as may be, as if the fugitive were brought before him charged with an indictable offence in The Bahamas.

[7] Where an authority to proceed has been issued and the magistrate is satisfied that the offence to which the authority to proceed relates is an extradition offence and, in the case of a person accused, that the evidence would be sufficient to warrant his committal for trial for that offence if the offence had been committed in The Bahamas, then, unless his committal is prohibited under the Act the magistrate shall commit him in custody to await his extradition. Sufficiency of evidence means that a prima facie case must be made out on the evidence presented in the extradition documents in receivable form (authenticated by certification and seal), complying with the local rules of evidence disclosing conduct amounting to a crime in The Bahamas.

[8] If the magistrate commits the fugitive in custody he shall inform him of his right to apply for habeas corpus.

[9] The fugitive will not be surrendered until after the expiration of 15 days, or if a writ of habeas corpus is issued, until after the decision of the court on the return of the writ.

[10] Upon completion of the fugitive's appeals (up to the Privy Council), the Minister may by warrant order his extradition.