

PROPOSED REVISION OF THE LONDON SCHEME ON THE RENDITION OF FUGITIVE OFFENDERS

INTRODUCTION

1. In 1996 Law Ministers noted that because of developments internationally and in the case law of Commonwealth countries, there might be a need to review and modernize Commonwealth extradition practice. The Secretariat was asked to continue work in this area and to report to Senior Officials on the issue. At their 1998 meeting Senior Officials agreed that the London Scheme for the Rendition of Fugitive Offenders (the Scheme) was in need of amendment to take account of experience gained since 1990 and developments in global practice, such as those addressed in the United Nations Model Treaty on Extradition (UN Model Treaty).
2. A paper (LMM)(O)(99)3 on proposed amendments to the Scheme was prepared by the Secretariat for the 1999 Law Ministers Meeting. It included a description of the proposals and a summary of the comments that had been submitted in writing by member countries.
3. Senior Officials discussed the proposed amendments at their meeting in 1999, which immediately preceded the meeting of Law Ministers. However, due to time constraints, officials did not have an opportunity to fully conclude their discussions on the amendments. This was reported to Law Ministers who decided that, notwithstanding the view of some member countries that the Scheme was working satisfactorily, Senior Officials should continue their work with a view to making firm recommendations as to possible amendments for consideration at the next Law Ministers Meeting.
4. At their meeting in London in November 2001 Senior Officials discussed the issue again and reviewed the proposed amendments to the Scheme. After consideration Senior Officials agreed to several specific amendments to the Scheme, which are outlined below. They also recognized that the Scheme was in need of restructuring to properly incorporate amendments made over the years. In addition, it would be useful if the language and terminology of the Scheme were updated and made consistent with modern extradition practice. This included a recommendation that the Scheme be renamed as the London Scheme on Extradition. A summary of the types of changes incorporated in the general revisions is outlined below as well. A revised Scheme containing these specific and general amendments is included in the *Annex* to this paper. Specific amendments are highlighted in the proposed revision but the general non-substantive changes to terminology and language are not.
5. It should also be noted that in the Commonwealth Plan of Action on Terrorism endorsed at the Commonwealth Heads of Government meeting in Coolum, Law Ministers were encouraged to give priority consideration to the recommended revisions to the London Scheme.

GENERAL AMENDMENTS

6. The Scheme was adopted originally in 1966 and has been the subject of amendments and additions over the last 35 years. The last amendment was made over a decade ago. Some of the amendments adopted were placed in Annexes, with the result that subject matters such as grounds of refusal and evidentiary provisions were divided between the Scheme proper and the Annexes. The three Annexes dealt with four optional provisions that may be applied at the discretion of the relevant Commonwealth jurisdiction. These related to the definition of political offence, refusal on the basis of the death penalty, non-return of nationals, and alternative evidence provisions for

committal proceedings. Senior Officials recommended that the Annexes be incorporated into the Scheme. Thus in the proposed revision clause 19 of the Scheme, on the use of the Annexes, has been deleted and the existing Annexes have been included in the body of the Scheme as follows:

- the definition of political offence as paragraph 2 of Clause 12;
- the death penalty and nationals provisions as Clause 15 on optional discretionary grounds of refusal; and
- the optional committal proceedings as Clause 6.

The clauses where the Annexes have been incorporated are highlighted in the text.

7. The terminology of the Scheme has been amended to:

- replace the term “rendition” with extradition and “fugitive offender” with “person sought”;
- introduce the term “country” as opposed to the “part of the Commonwealth” applying the same definition of country as in the Harare Scheme;
- employ gender-neutral language and modernize the text.

SPECIFIC AMENDMENTS

A. Double Criminality (Clause 2(3))

8. Two amendments have been made with respect to the requirement for dual criminality. First, the Scheme contained two provisions impacting on the dual criminality assessment – clauses 2 and 12. Clause 2 defined “returnable offence” as an offence punishable in both the requesting and requested part of the Commonwealth by two years imprisonment or more. It therefore made “dual criminality” with respect to the offence, a prerequisite to rendition. Clause 12 then provided for refusal on a discretionary or mandatory basis where the facts underlying the offence would not constitute an offence in the requested part of the Commonwealth.

9. While there was a slight distinction between the two clauses, it seemed unduly complicated to make reference to both requirements. This approach was very difficult to apply in practice and inconsistent with general international extradition standards. Therefore, in the proposed text Clause 12 has been deleted and Clause 2, consistent with extradition practice generally, has been maintained to establish dual criminality as a pre-condition for extradition.

10. The second change is the addition of sub sections (3)(a) and (b) to Clause 2. These provisions make it clear that the focus should be on whether the underlying acts or omissions would constitute an offence in the requested state, regardless of whether the offence is categorized in the same way or whether the elements of the offences differ. This approach is consistent with modern extradition practice as reflected in the *UN Model Treaty* and other instruments.

B. Offences Committed outside the Territory of the Requesting Part of The Commonwealth – (2(4) and 14(1)(b))

11. The current scheme makes no reference to extraterritorial offences and whether or not extradition is available in such circumstances.

12. Senior Officials recognized that within common law countries, jurisdiction over criminal offences is generally restricted to territorial offences. However, in recent years, primarily as the result of several international conventions, there has been a growing trend, to extend jurisdiction extraterritorially. For example, the Torture Convention and several of the “counter-terrorism” treaties mandate the extension of jurisdiction for States Parties and both the 1988 United Nations

Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the recently concluded Palermo Convention, allow states to extend their jurisdiction extra territorially over relevant offences.

13. In addition to jurisdiction premised on multilateral instruments, there are some offences which are of such a nature that effective law enforcement requires consideration of an extension of jurisdiction. Computer crime offences fall within that category. With the existing technology it is possible to commit a range of offences in another country, without ever physically entering the jurisdiction. For example, there have been several recent instances where an individual in Country A uses a program to gain illegal access to a data base in Country B or to design and input a virus in Country A that destroys a computer system in Country B. The law of some countries may allow for prosecution in such cases on the basis of a liberal interpretation of the concept of territorial jurisdiction or by use of conspiracy charges. In other countries, jurisdiction may be extended by legislation to cover these scenarios. In still others, no action may have been taken to apply or extend jurisdiction to cover such cases.

14. It was because of these possible variations in jurisdiction that the computer crime expert group noted the importance of allowing for extradition, even though the jurisdictional provisions of countries for such offences may vary.

15. As a result of these developments Senior Officials decided to include a specific reference to extraterritorial offences, within the definition of “extradition offence” in the London Scheme. This addition at sub-clause 2(4)(b) makes such extraterritorial offences extraditable pursuant to the Scheme.

16. At the same time, while the legitimate use of extra-territorial jurisdiction has expanded, it is recognized that there will be cases where a claim of extra-territorial jurisdiction is not grounded in principles of international law and is exorbitant. In such instances, a requested country must be able to decline rendition on the basis that it does not recognize or accept that purported exercise of jurisdiction. Therefore, any recognition of extra territorial offences as being extraditable should at the same time allow for refusal, at the discretion of the requested country, to address cases of unacceptable jurisdictional claims. A discretionary ground of refusal reflecting this principle has been included in the proposed revision as subparagraph (1)(b) of Clause 14.

C. Additional Information – (Clause 7)

17. Senior Officials agreed that the Scheme should provide that a competent authority in the requested country may seek additional information where the extradition request is insufficient. There was general agreement as well that a discretionary provision on adjournments, where the request is made after proceedings have commenced, should be included. These additions are reflected in Clause 7 of the proposed revision.

D. The Basis for Refusing Extradition – (Clauses 12, 13, 14 and 15)

18. Most modern extradition treaties and instruments contain two articles on grounds of refusal, divided as between mandatory and discretionary grounds. Senior Officials were of the view that a similar approach should be adopted in the London Scheme and thus clauses 12, 13, 14 and 15 now contain all the applicable grounds of refusal – divided as between mandatory and discretionary grounds. Clauses 12 and 13 are the mandatory grounds of refusal. Clause 12 addresses the political offence exception separately because of the detailed provisions and optional approaches to exclusion of its application. This clause is also the subject of paper LMM(02)14 dealing with terrorism. Clause 13 covers the remaining mandatory grounds. Two clauses on discretionary grounds of refusal – 14 and 15 – have been included to distinguish between discretionary grounds for which there is

general consensus (Clause 14) and those, coming from the Annexes, on which there is not (Clause 15). In the case of the grounds set out under Clause 15, the Scheme provides that if a country adopts these grounds of refusal, another country may vary the application of other sections of the Scheme to that first country or may subject their application to conditions. This reflects the position adopted by Law Ministers when these optional grounds of refusal were incorporated in an Annex to the Scheme in 1966.

19. Senior Officials went on to consider the content of the clauses on refusal of extradition. Taking into account the existing Scheme as well as international practice, Clauses 12 and 13 on mandatory refusal reflect the grounds of refusal found in the existing clause 10 - political offence, discriminatory prosecution or punishment, unjust and oppressive and previous conviction or acquittal. The agreed discretionary grounds - *in absentia* conviction, extraterritorial offences, immunity, and military offence are in Clause 14. The optional discretionary provisions on death penalty and nationality have been moved from the Annexes into Clause 15.

20. Clause 13 on mandatory grounds of refusal has also been slightly amended from the existing clause 10 as follows:

- a. addition of *sex* as a ground of persecution in 13(1)(a), with consequential deletions of gender references in the paragraph; and
- b. the removal of existing paragraphs 10(5) and (6), dealing with judicial and executive authorities, from clause 10 into a separate clause 17.

The addition to paragraph 13(1)(a) reflects the *UN Model Treaty*, as well as many recent instruments such as the *Palermo Convention*, all of which include this ground. Sub clauses 10(5) and (6) have been moved into a separate clause to make the text clearer and more focused.

E. Options where Rendition is Refused on the Basis of Nationality - (Clause 16)

21. Clause 15 includes a discretionary provision on refusal of extradition on the basis that the person sought is a national or permanent resident of a Commonwealth country. Senior Officials were concerned that the refusal of extradition on the basis of nationality could result in safe haven for fugitives if there are no alternatives available to allow for the person to be tried or punished. Thus, Clause 16 has been added to require that steps be taken to facilitate the trial or punishment of the person.

22. Some possible methods for achieving this are listed in paragraph 2 of Clause 16, including allowing for prosecution in the requested country, and providing for temporary surrender for trial, on condition of return for the service of any sentence imposed.

23. This proposal reflects current international practice as evidenced by the *UN Model Treaty* and the *Palermo Convention*, both of which make reference to domestic prosecution in lieu of extradition and temporary surrender.

Action

24. Law Ministers are requested to consider adoption of the revised text of the London Scheme as set out in the proposed revision in the *Annex* to this paper.

THE LONDON SCHEME FOR EXTRADITION WITHIN THE COMMONWEALTH

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 subparagraph.

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

(Clause 6 has not been amended. It is highlighted as it was previously contained in clause 19(2) (now 6(1)) and Annex III (now 6(2) –(4))

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

(The provisions of clause 12, paragraph 2 have not been amended. They are highlighted as they were previously contained in paragraph 1 of Clause 10 and Annex 1)

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 offences established under any multilateral international convention to which the requesting and the requested countries are parties and which are declared thereby not to be regarded as political offences for the purposes of extradition.
- (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) an act declared to constitute an offence under a multilateral international convention 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; or
 - (v) 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. (1) 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. (1) 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.

OPTIONAL DISCRETIONARY GROUNDS OF REFUSAL

(The provisions of clause 15 have not been amended. They are highlighted as they were previously contained in clause 19(1) and Annex 2)

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.