

## ANNEX 1

### DESCRIPTION OF RETURNABLE OFFENCES

- A.
1. Murder of any degree
  2. Manslaughter
  3. An offence against the law relating to abortion
  4. Maliciously or wilfully wounding or inflicting grievous bodily harm
  5. Assault occasioning actual bodily harm
  6. Rape
  7. Unlawful sexual intercourse with a female
  8. Indecent assault
  9. Procuring, or trafficking in, women or young persons for immoral purposes
  10. Bigamy
  11. Kidnapping, abduction or false imprisonment, or dealing in slaves
  12. Stealing, abandoning, exposing or unlawfully detaining a child
  13. Bribery
  14. Perjury or subornation of perjury or conspiring to defeat the course of justice
  15. Arson
  16. An offence concerning counterfeit currency
  17. An offence against the law relating to forgery
  18. Stealing, embezzlement, fraudulent conversion, fraudulent false accounting, obtaining property or credit by false pretences, receiving stolen property or any other offence in respect of property involving fraud
  19. Burglary, housebreaking or any similar offence
  20. Robbery
  21. Blackmail or extortion by means of threats or by abuse of authority
  22. An offence against bankruptcy law or company law
  23. Malicious or wilful damage to property
  24. Acts done with the intention of endangering vehicles, vessels or aircraft
  25. An offence against the law relating to dangerous drugs or narcotics
  26. Piracy
  27. Revolt against the authority of the master of a ship or the commander of an aircraft
  28. Contravention of import or export prohibitions relating to precious stones, gold and other precious metals
- B. 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, any of the offences listed in paragraph A above.

## ANNEX 2

### SUPPLEMENTARY PROVISIONS

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

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 like 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.

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 a 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.

## APPENDIX

### NOTE ON 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

It has for some time been the Australian practice to offer the services of the Crown Solicitor to represent requesting countries in extradition proceedings, including any proceedings by way of appeal or review. In consequence, the costs and disbursements incurred are borne by the Australian Government. The usual practice is for an officer of the Deputy Crown Solicitor's Office in the State or Territory where the application is made to appear for the requesting country. Alternatively the Crown Solicitor will brief counsel if that course appears to be desirable. This practice is largely based upon 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 representation when Australia makes a request.

The treaties recently negotiated with Sweden, the United States of America, Israel and Italy have express provisions as regards legal costs to be borne by the requested country. That is not, however, the case with Austria. The treaties negotiated with Sweden, the United States of America, Austria, Italy and Israel are all in force by virtue of the Statutory Rules enumerated in Schedule 1 to this Survey.

#### 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 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 posed 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 U.S.A. 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 country 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.

## NIGERIA

Under section 1(1) of the Extradition Act, 1966, as amended, Nigeria has entered into agreements on Extradition with the Republic of Liberia and the U.S.A.

Art. 16 of the Extradition Treaty with Liberia provides for:

"All expenses connected with Extradition shall be borne by the demanding State".

Art. 13 of the Treaty with U.S.A. also provides that:

"All expenses connected with the Extradition shall be borne by the High Contracting Party making the application".

## 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

The treaty with Switzerland provides for that country, if it so wishes, to be represented in United Kingdom proceedings by the Law Officers of the Crown in return for similar facilities in Switzerland.

Treaties with certain other foreign States require the requested Party to make all necessary arrangements for and meet the cost of representation of the requesting Party in any proceedings arising out of a request for extradition. Such arrangements have been agreed with Austria, Denmark, Finland, the Federal Republic of Germany, the Netherlands, Norway, Sweden and the United States of America.

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 cost 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 of Ireland) Act, 1965. Similar reciprocal services in Scotland are offered and undertaken by the Lord Advocate.