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FUGITIVE OFFENDERS ACT

An Act to make provision with respect to the extradition of fugitive offenders from and to Guyana and for matters connected therewith. 15 of 1988.

[11TH AUGUST, 1988]

PART I

PRELIMINARY

- 1. This Act may be cited as the Fugitive Offenders Act. Short title.
- 2. In this Act — Interpretation.
 - (a) “Commonwealth country” means any country mentioned in article 47 (3) of the Constitution, and includes—
 - (i) a colony, territory, protectorate or other dependency of any such country;
 - (ii) a territory for the international relations of which any such country is responsible; and
 - (iii) a ship or aircraft of, or registered in, any such country;
 - (b) “extraditable offence” has the meaning given to that expression in section 5;
 - (c) “foreign territory” means any country other than Guyana or a Commonwealth country;

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(d) "Form" means a form set out in the Schedule;

(e) "fugitive offender" means a person who is accused, or alleged to be unlawfully at large after conviction, of an extraditable offence committed within the jurisdiction of Guyana or any commonwealth country or foreign territory and is or is suspected to be in any country or territory, other than the country or territory in which the offence was committed or the person was convicted;

(f) "treaty territory" means a foreign territory in respect of extradition to and from which, from or to Guyana, the provisions of this Act apply with or without modifications, limitations or conditions by virtue of section 4 and includes—

(i) a colony, territory, protectorate or other dependency of any such foreign territory;

(ii) a territory for the international relations of which any such foreign territory is responsible; and

(iii) a ship or aircraft of, or registered in, any such foreign territory.

PART II

GENERAL PROVISIONS

Application of
this Act in
respect of
Common-
wealth
countries.

3. (1) The provisions of this Act shall apply in respect of extradition from and to Guyana to and from every Commonwealth country:

Provided that the Minister may, by order, declare that the provisions of this Act shall apply in respect of extradition from or to Guyana to or from any Commonwealth country specified therein, subject to such modifications, limitations or conditions as may be specified in the order.

(2) Every order made under subsection (1) shall be subject to negative resolution of the National Assembly.

4. (1) Where—

Application of this Act in respect of treaty territories.

(a) an arrangement made between the Government of the United Kingdom and the Government of a foreign territory relating to the extradition of fugitive offenders, prior to the 26th May, 1966, extends to and remains in force in Guyana; or

(b) an arrangement has been made by the Government of Guyana with the Government of a foreign territory relating to the extradition of fugitive offenders, prior to the commencement of this Act, the provisions of this Act shall apply in respect of extradition from and to Guyana to and from that foreign territory so long, and so long only, as that arrangement remains in force:

Provided that the Minister may, by order, declare that this Act shall apply in respect of extradition from or to Guyana to or from a foreign territory referred to in paragraph (a) or (b) subject to such modifications, limitations or conditions as the Minister, having due regard to the terms of the arrangement referred to in paragraph (a) or (b), as the case may be, may deem expedient to specify in the order for the purpose of implementing the terms of the arrangement and any such order shall remain in force so long, and so long only, as such arrangement remains in force.

(2) Where, after the commencement of this Act, an arrangement is made by the Government of Guyana with the Government of any foreign territory relating to the extradition of fugitive offenders, the Minister may, subject to subsection (4), by order, declare that the provisions of this Act shall apply in respect of extradition from and to Guyana to and from that foreign territory subject to such modifications, limitations or conditions as the Minister, having due regard to the terms of the arrangement, may deem expedient to specify in the order for the purposes of implementing such terms.

(3) Every order made under subsection (2) shall recite and embody the terms of the arrangement in consequence of which the order is made and shall remain in force so long, and so long only, as

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such arrangement remains in force and any such order shall be conclusive evidence of the existence and terms of the arrangement and that the arrangement complies with the provisions of subsection (4).

(4) The Minister shall not make an order under subsection (2) unless the arrangement, in consequence of which the order is made, is, in the opinion of the Minister—

(a) in conformity in all respects with the provisions of this Act containing restrictions on the extradition of fugitive offenders; and

(b) substantially in conformity with the other provisions of this Act subject to the modifications, limitations or conditions, if any, specified in the order for the purpose of implementing the terms of such arrangement.

(5) Every order made under the proviso to subsection (1) or under subsection (2) shall be subject to negative resolution of the National Assembly.

Extraditable
offence.

5. (1) For the purposes of this Act, an offence of which a person is accused or has been convicted in Guyana or any Commonwealth country or treaty territory, shall be an extraditable offence, where the act or omission constituting the offence, however described, constitutes an offence, and is punishable with death or imprisonment for life or for a term of not less than two years, under the law of Guyana and of the Commonwealth country or treaty territory making to the Government of Guyana the request for extradition or of the Commonwealth country or treaty territory to which the request for extradition is made by the Government of Guyana.

(2) In determining for the purpose of this section whether an offence against the law of Guyana or a Commonwealth country or a treaty territory is an extraditable offence, any special intent, state of mind or special circumstances of aggravation which may be necessary to constitute that offence under that law shall be disregarded.

(3) Each extraditable offence, however described, shall be deemed to include the offence of attempting or conspiring to commit, of aiding, abetting, counselling, commanding or procuring the commission of, or of being accessory before or after the fact to, such offence, and of impeding the apprehension or prosecution of any person guilty of such offence.

(4) A reference in this section to the law of Guyana, any Commonwealth country or treaty territory shall be deemed to include a reference to the law in force in any part only of Guyana or such country or territory, as the case may be.

6. A certificate issued by the Minister assigned responsibility for foreign affairs, or on his behalf by any other person authorised by him—

Mode of proof of certain arrangements.

(a) confirming the existence of an arrangement, referred to in section 4 (1) (a), made between the United Kingdom and the Government of a foreign territory, and that the arrangement extends to and remains in force in Guyana, and stating the terms thereof; or

(b) confirming the existence of an arrangement referred to in section 4 (1) (b), made between the Government of Guyana and the Government of any foreign territory, and stating the terms thereof,

shall be admissible in evidence as conclusive proof of the matters stated therein without proof of the signature of that Minister or the other person or of the authorisation of the other person by the Minister.

PART III

EXTRADITION FROM GUYANA

7. Subject to this Act, a person found in Guyana who is accused of an extraditable offence in any Commonwealth country or treaty territory, or who is alleged to be unlawfully at large after conviction of any such offence in any such country or territory, may be arrested and returned to that country or territory as provided by this Act.

Persons liable to extradition from Guyana.

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General restrictions on extradition.

8. (1) A person shall not be extradited under this Act from Guyana to a Commonwealth country or treaty territory, or be committed to, or held in, custody for the purposes of such extradition, if it appears to the Minister, to the magistrate before whom he is brought in pursuance of a warrant issued under section 13, to the High Court, where any application under section 17 (1) or 19 (1) is made to that court, or to the Court of Appeal, having regard to any question of law arising in any appeal under section 21, that—

Ref to ICCPR (UNCER)

- (a) the offence of which the person is accused or has been convicted is an offence of a political character;
- (b) the request for extradition, though purporting to be made on account of an extraditable offence, is in fact made for the purpose of prosecuting or punishing him on account of his race, tribe, sex, religion, nationality or political opinions; or
- (c) he might, if extradited, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, tribe, sex, religion, nationality or political opinions.

(2) A person accused of an offence shall not be extradited from Guyana under this Act, other than under section 14, to any Commonwealth country or treaty territory or be committed to, or kept in, custody for the purpose of such extradition, if it appears to the Minister, or to the magistrate, the High Court or the Court of Appeal as aforesaid in subsection (1), that, if the person is charged with that offence in Guyana, he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction.

(3) A person shall not be extradited from Guyana under this Act to any Commonwealth country or treaty territory, or be committed to, or kept in, custody for the purpose of such extradition, unless provision has been made by the law of that Commonwealth country, or, in the case of a treaty territory, by the arrangement with that territory relating to the extradition of fugitive offenders, for securing that he will not—

Amendment
3 A (a) + (b)
3 B (a) (b) (c)

(a) until he has left or has been free to leave that Commonwealth country or treaty territory, as the case may be, be arrested, detained, remanded or otherwise dealt with in that Commonwealth country or treaty territory for or in respect of any offence committed before his aforesaid extradition under this Act, other than—

- (i) the extraditable offence in respect of which the said extradition under this Act is requested;
- (ii) any lesser offence proved by the facts established before the court before which he is brought in pursuance of a warrant issued under section 13; or
- (iii) any other extraditable offence in respect of which the Minister may consent to his being so dealt with; or

(b) be extradited by the Government of that Commonwealth country or treaty territory to any other Commonwealth country or foreign territory, to be dealt with for any offence committed before his aforesaid extradition under this Act, without the consent of the Minister.

(4) The reference in this section to an offence of a political character does not include an offence against the life or person of the Head of State, or a Minister, of Guyana or any Commonwealth country or treaty territory or any related offence referred to in section 5 (3), or an offence established under an international convention to which any Commonwealth country or treaty territory, as the case may be, and Guyana are parties and declared by such convention as an offence not of a political character for the purposes of extradition.

(5) In this section "Head of State" includes—

- (i) any member of a collegial body performing the functions of a Head of State under the constitution of the state concerned; and
- (ii) any head of the Government of the state.

(6) For the purposes of this section an offence against the law of a Commonwealth country or a treaty territory may be regarded as being an offence of a political character notwithstanding that there are not competing political parties in that country or territory.

Request for extradition.

9. (1) A request for the extradition to a Commonwealth country of a person who is, or is suspected to be in or to be arriving in, Guyana may be made to the Minister—

(a) by any person resident in Guyana who is recognised by the Minister as a consular officer of that Commonwealth country;

(b) by the Head of State, Head of Government or any Minister of the Government of the Commonwealth country who communicates with the Minister through the diplomatic representative of Guyana in or for that Commonwealth country; or

(c) by such other person or in such other manner as may be approved by the Minister where it is not convenient for any person referred to in paragraph (a) or (b) to make the request or, in the case of a person referred to in paragraph (b), to make the request in the manner provided in that paragraph.

(2) A request for the extradition to a treaty territory of a person who is, or is suspected to be in or to be arriving in, Guyana may be made to the Minister—

(a) by any person resident in Guyana who is recognised by the Minister as a consular officer of that treaty territory;

(b) by any Minister of the treaty territory who communicates with the Minister through the diplomatic representative of Guyana in or for that treaty territory; or

(c) by such other person or in such other manner as may be approved by the Minister where it is not convenient for any person referred to in paragraph (a) or (b) to make the request or, in the case of a person referred to in paragraph (b), to make the request in the manner provided in that paragraph.

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(3) A request made under subsection (1) or (2) by or on behalf of any Commonwealth country or treaty territory shall be accompanied by—

(a) in the case of a person accused of an offence, a warrant for his arrest issued in the Commonwealth country or treaty territory; or

(b) in the case of a person unlawfully at large after conviction of an offence, a certificate of the conviction and sentence in the Commonwealth country or treaty territory and a statement of the part, if any, of such sentence which has been served, together with, in each case, the particulars of the person whose extradition is requested and of the facts upon which and the law under which he is accused or has been convicted, and of the evidence sufficient to justify the issue of a warrant for his arrest under section 13.

10. Where in respect of any person, the Minister receives requests for his extradition from Guyana—

Concurrent requests.

- (a) from more than one Commonwealth country;
- (b) from more than one treaty territory; or
- (c) from one or more Commonwealth countries and one or more treaty territories,

that person may, subject to the other provisions of this Act, be ordered to be extradited in response to the request of that Commonwealth country or treaty territory which, having regard to all the circumstances, should, in the opinion of the Minister, be preferred.

11. (1) Where a request is made by or on behalf of a Commonwealth country, or treaty territory for the consent of the Minister in respect of an extraditable offence referred to in section 8(3)(a)(iii), the Minister may call for such information as he may deem necessary for the purpose of satisfying himself that such request relates to an extraditable offence for which extradition is not prohibited by this Act and may refuse consent where he is not so satisfied or is of opinion that, on the facts known to the Commonwealth country or treaty

Powers of Minister on request made under section 8(3)(a)(iii) or (b)

territory at the time of the request for the extradition of the fugitive offender, a request for his extradition in respect of that offence could also have been made.

(2) Where a request is made for the consent of the Minister for the extradition of a fugitive offender under section 8(3) (b), the Minister may call for such information as he may deem necessary for the purpose of satisfying himself that the request does not relate to an offence for which extradition is prohibited by this Act and may refuse consent where he is not so satisfied.

(3) The powers of the Minister referred to in this section shall be without prejudice to any other power he may have under this Act.

Authority to proceed.
Form 1.

12. (1) On receipt of a request under section 9 the Minister may issue an order in Form 1 (hereinafter referred to as “authority to proceed”) signifying to a magistrate that the request for the extradition of the person mentioned in the order has been received and requiring the magistrate to proceed with the case in accordance with the provisions of this Act.

(2) The Minister shall not issue an authority to proceed if it appears to him that an order for the extradition of the person concerned could not lawfully be made, or would not in fact be made, in accordance with this Act.

(3) Subject to this Act, no person shall be dealt with by a magistrate under this Act except in pursuance of an authority to proceed issued by the Minister.

Arrest for purposes of committal.
Form 2.

13. (1) On the receipt, by a magistrate, of an authority to proceed in relation to any person the magistrate may issue a warrant for the arrest of the person in Form 2.

(2) Where a magistrate has received information that a person accused of an extraditable offence, or unlawfully at large after conviction of an extraditable offence in a Commonwealth country or

foreign territory is, or is believed to be in or on his way to Guyana, the magistrate may issue a warrant (hereinafter referred to as provisional warrant) for the arrest of the person in Form 3.

Form 3.

(3) A warrant for the arrest of any person under subsection (1) or (2), may be issued upon such evidence as would, in the opinion of the magistrate, justify the issue of a warrant for the arrest of the person if he were accused of committing in Guyana an offence corresponding to the offence of which he is accused, or if he were alleged to be unlawfully at large after conviction in Guyana of any such corresponding offence, as the case may be.

(4) Without prejudice to the provisions of subsection (3), for the purposes of the issue of a provisional warrant, a magistrate may receive in evidence any document which purports to bear the seal of the International Police Organisation (generally referred to as Interpol) and is issued to the Commissioner of Police of Guyana for the purpose of requesting the assistance of the Commissioner of Police in the ascertainment of the location of a person accused of an extraditable offence, or alleged to be unlawfully at large after conviction of an extraditable offence, in a Commonwealth country or foreign territory.

(5) Where a provisional warrant is issued under subsection (2), the magistrate by whom it is issued shall forthwith give notice of its issue to the Minister, and transmit to him the information and evidence, or a certified copy of the information and evidence, upon which it was issued; and the Minister shall, if he decides not to issue an authority to proceed in respect of the person to whom the warrant relates, or may in any other case, cancel the warrant and, if that person has been arrested thereunder, discharge him from custody.

(6) A warrant issued under this section may be executed in any part of Guyana and may be so executed by any person to whom it is directed or by any police constable.

(7) Where a warrant is issued under subsection (1) or (2) for the arrest of a person accused of the offence of stealing or receiving stolen property or any other offence in respect of property, the magistrate

