

No. 12 of 1993.

The Extradition Act, 1993.

ANTIGUA
A .
BARBUDA

[L.S.]

I Assent,

B.T. Carrott,
Governor-General's Deputy.

26th May, 1993.

ANTIGUA AND BARBUDA

No. 12 of 1993

AN ACT to consolidate and revise the Law relating to Extradition.

[17th June 1993]

ENACTED by the Parliament of Antigua and Barbuda as follows —

PART I

PRELIMINARY

1. This Act may be cited as **the Extradition Act 1993** and comes into operation on a day to be fixed by **the Minister** of Legal Affairs by order published in the *Gazette*. Short title and commencement.

2. (1) In **this Act** — Interpretation.

"appropriate authority" has the meaning assigned to it by section 8 (9);

"**authority to proceed**" has the meaning assigned to it by section 9 (1);

"Commonwealth country" means a Commonwealth country (other than Antigua and Barbuda) and includes any part or political **subdivision** thereof or any dependency thereof;

"court of committal" has the meaning assigned to it by section 11 (1);

"dependency" in relation to a foreign state or Commonwealth country means a dependent territory including a protectorate and a protected state of a foreign state or commonwealth country;

"designated commonwealth country" has the meaning assigned to it by section 7 (1);

"extradition crime" is to be construed in accordance with section 4;

"extradition arrangements", "general extradition arrangements" and "special extradition arrangements" have the meanings assigned to them by section 5;

"foreign state" means any state (other than Antigua and Barbuda) that is not a Commonwealth country;

"extradition request" has the meaning assigned to it by section 9 (1);

"Minister" means the Minister charged with the responsibility for External Affairs;

"provisional warrant" has the meaning assigned to it by section 10 (1).

(2) For the purposes of this Act a person convicted in his absence in a Commonwealth country or a dependency shall be **treated as** a person accused of the offence of which he is convicted.

PART II

APPLICATION

Liability to
extradition.

3. (1) Where extradition procedures **under Part IV** are available as between **Antigua and Barbuda and a foreign** s @ & a person in Antigua and Barbuda who —

- (a) is accused in that state of the commission of an extradition crime; or
- (b) is alleged to be unlawfully at large after conviction of an extradition crime by a court in that state, may be arrested and returned to that state in accordance with those procedures.

(2) Subject to the provisions of this Act, a person in Antigua and Barbuda who is **accused** of an extradition crime in a designated Commonwealth country or who is alleged to be unlawfully at large after conviction of such **an** offence in any such country, may be arrested and returned to that country in accordance with extradition procedures under Part IV.

4. (1) In this Act, "extradition crime" means —

Meaning of
"extradition
crime".

- (a) conduct in the territory of a foreign or designated Commonwealth country which, if it occurred in Antigua and Barbuda would constitute **an** offence punishable with imprisonment for a term of twelve months, or any greater punishment, and which, however described in the law of the foreign state or Commonwealth country, is so punishable under that law:
- (b) an extra-territorial offence against the law of a foreign state or designated Commonwealth country which is punishable under that law with imprisonment for a term of twelve months, or any greater punishment, and which satisfies —
 - (i) the condition specified in subsection (2); or
 - (ii) all the conditions specified in subsection (3).

(2) The condition mentioned in subsection (1) (b) (i) is that in corresponding **circumstances** equivalent conduct would constitute **an extra-territorial** offence against the law of Antigua and Barbuda **punishable with** imprisonment for a **term** of 12 **months**, or any **greater** punishment.

(3) **The conditions mentioned** in subsection (1) (b) (ii) are —

ANTIGUA
AND
BARBUDA

4

The *Extradition Act, 1993*.

No. 12 of 1993.

- (a) that the foreign state or Commonwealth country bases its jurisdiction on the nationality of the offender;
- (b) that the conduct constituting the offence occurred outside Antigua and Barbuda; and
- (c) that, if it occurred in Antigua and Barbuda, it would constitute an offence under the law of Antigua and Barbuda punishable with imprisonment for a term of twelve months, or any greater punishment.

(4) For the purposes of subsections (1) to (3) —

- (a) the law of a foreign state or designated Commonwealth country includes the law or any part of it; and
- (b) conduct in a colony or dependency of a foreign state or of a designated Commonwealth country, or a vessel, aircraft or hovercraft of a foreign state or of such a country, shall be treated as if it were conduct in the territory of that state or country.

Arrangements for
availability of Part
IV procedure.

5. (1) In this Act "extradition arrangements" means arrangements made with a foreign state under which extradition procedures under Part IV will be available as between Antigua and Barbuda and that State.

(2) Extradition arrangements may be —

- (a) arrangements of a general nature made with one or more states and relating to the operation of extradition procedures under Part IV (in this Act referred to as "general extradition arrangements"); or
- (b) arrangements relating to the operation of those procedures in particular cases (in this Act referred to as "special extradition arrangements") made with a state with which there are no general extradition arrangements.

Orders as to
extradition.

6. (1) Where general extradition arrangements have been made, the Minister may, by Order published in the Gazette, reciting or embodying the terms of the arrangements, direct that

this Act, so far as it relates to extradition procedures under Part IV, shall apply as between Antigua and Barbuda and the foreign state, or any foreign state, with which they have been made, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the Order.

(2) An Order under this section **shall** not be made unless the general extradition arrangements to which it relates —

- (a) provide for their determination after the expiration of a notice given by a party to them and not exceeding one year or for their denunciation by means of such a notice; and
- (b) are in conformity with the provisions of this Act, and in particular with the restrictions on return contained in Part III.

(3) An Order under this section **shall** be conclusive evidence that the arrangements therein referred to comply with this Act and that this Act, so far as it relates to extradition procedures under Part IV, applies in the case of the foreign state, or any foreign state, mentioned in the Order.

(4) An Order under this section shall be laid before Parliament after being made.

(5) An Order under this section which does not provide that a person may only be returned to the foreign state requesting his return if the court of committal is satisfied that the evidence would be sufficient to warrant his trial if the extradition crime had taken place within the jurisdiction of the court shall be subject to annulment in pursuance of a resolution of the House of Representatives.

7. (1) The Minister may by Order published in the *Gazette* designate for the purposes of section 3 (2) any Commonwealth country; and any country so designated is in this Act referred to as a "designated Commonwealth country".

Procedure for
designation etc.

(2) The Minister may by Order published in the *Gazette* direct that this Act shall have effect in relation to the return of persons to, or in relation to persons returned from, any designated Commonwealth country subject to such exceptions, adaptations

or modifications as may be specified in the Order.

(3) Any Order under this section may contain such transitional or **other** incidental and supplementary provisions as may appear to the Minister to be necessary or expedient.

(4) For the purposes of any Order under subsection (1) any territory for the external relations of which a Commonwealth **country** is responsible may be treated as part of that country or, if the Government of that country so requests, as a separate country.

(5) Any Order under this section shall be subject to annulment in pursuance of a resolution of the House of Representatives.

PART III

RESTRICTIONS ON RETURN

General restrictions.

8. (1) A person shall not be returned under Part IV, or committed or kept in custody for the purposes of return, if it appears to an appropriate authority —

- (a) that the offence of which that person is accused or was convicted is an offence of a political character;
- (b) that it is an offence under military law which is not also an offence under the general criminal law;
- (c) that the request for his return (though purporting to be made on account of an **extradition** crime) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or
- (d) that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

(2) A person who is alleged to **be** unlawfully at large after conviction of an extradition crime shall not be returned to a foreign state, or committed or kept in custody for the purposes of return to a foreign state, if it appears to an appropriate authority —

- (a) that the conviction was obtained in his absence; and
- (b) that it **would not** be in the interests of justice to return him on the ground of that conviction.

(3) A person accused of an offence shall not be returned, or committed or kept in custody for the purposes of return, if it appears to an appropriate authority that if charged with that offence in Antigua and Barbuda he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction.

(4) A person shall not be returned, or committed or kept in custody for the purposes of such return, unless provision is made by relevant law, or by an arrangement made with the relevant foreign state, or Commonwealth country, for securing that he will not, unless he has first **had an** opportunity to leave it, be **dealt** with there for or in respect of any offence committed before his return to it other than —

- (a) the offence in respect of which his return is ordered;
- (b) an offence, other than an offence excluded by subsection (5), which is disclosed by the facts in respect of which his return was ordered; or
- (c) subject to subsection (6), any other offence being an extradition crime in respect of which the Minister may consent to his being dealt with.

(5) The offences excluded from subsection (4)(b) are offences in relation to which an order for the return of the person concerned could not lawfully be made.

(6) The Minister may not give consent under subsection (4)(c) in respect of an offence in relation to which it appears to him that an order for the return of the person concerned could not lawfully be made, or would not in fact be made.

(7) Any such arrangement as is mentioned in subsection (4) which is made with a designated Commonwealth country may be an arrangement made for the particular case or an arrangement of a more general nature; and for the purposes of that subsection a certificate issued by or under the authority of the Minister

confirming the existence of an arrangement with a Commonwealth country and stating its terms shall be conclusive evidence of the matters contained in the certificate.

(8) In relation to a Commonwealth country the reference in subsection (1) to an offence of a political character does not include an offence against the life or person of the Head of the Commonwealth or attempting or conspiring to commit, or assisting, counselling or procuring the commission of or king accessory before or after the fact to such an offence, or of impeding the apprehension or prosecution of persons guilty of such an offence.

(9) In this Act "appropriate authority" means —

- (a) the Minister;
- (b) the court of committal;
- (c) the High Court on an application for *habeas corpus*;
- (d) the court of Appeal on an application for review of the order of committal.

(10) In this section, in relation to Commonwealth countries, "race" includes tribe.

PART IV

PROCEDURE

Extradition request
and authority to
proceed.

9. (1) Subject to the provisions of this Act relating to provisional warrants, a person shall not be dealt with under this Part except in pursuance of an order of the Minister (in this Act referred to as an "authority to proceed") issued in pursuance of a request (in this Act referred to as an "extradition request") for the surrender of a person under this Act made —

- (a) by some person recognized by the Minister as a diplomatic or consular representative of a foreign state; or
- (b) by or on behalf of the Government of a designated Commonwealth country, or the Governor of a colony.

(2) There shall be furnished with any such request —

- (a) particulars of the person whose return is requested;
- (b) particulars of the offence of which he is accused or was convicted (including evidence sufficient to justify the issue of a warrant for his **arrest** under this Act);
- (c) in the case of a person accused of an offence, a warrant for his arrest issued in the foreign state, Commonwealth **country** or colony; and
- (d) in the case of a person unlawfully at large after conviction of an offence, a certificate of the conviction and sentence;

and copies of them shall be served on the person whose return is requested before he is brought before the court of committal.

(3) Regulations under section 30 (2) may make provisions as to the procedure for service under subsection (2).

(4) On receipt of any such request the Minister may issue an authority to proceed unless it appears to him that an order for the return of the person concerned could not lawfully be made, or would not in fact be made, in accordance with the provisions of this Act.

(5) An authority to proceed shall specify the offence or offences under the law of Antigua and Barbuda which it appears to the Minister would be constituted by equivalent conduct in Antigua and Barbuda.

(6) In this section "warrant", in the case of a foreign state, includes any judicial document authorizing the arrest of a person accused of a crime.

10. (1) For the purposes of this Part a warrant for the arrest of a person may be issued —

Arrest for purposes of committal.

- (a) on receipt of an authority to proceed by a **magistrate** or an additional **magistrate**;
- (b) **without** such an authority —

- (i) by a magistrate or an additional magistrate; or
- (ii) by a justice of the peace, upon information that the said person is or is believed to be in or on his way to Antigua and Barbuda,

and any warrant issued by virtue of paragraph (b) is in this Act referred to as a "provisional warrant".

(2) A person empowered to issue warrants of arrest under this section may issue such a warrant if he is supplied with such evidence as would in his opinion justify the issue of a warrant for the arrest of a person accused or, as the case may be, convicted within his jurisdiction and it appears to him that the conduct alleged would constitute an extradition crime.

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

(4) A warrant of arrest issued under this section may, without being backed, be executed in any part of Antigua and Barbuda and may be so executed by any person to whom it is directed or by any member of the police force.

(5) Where a warrant is issued under this section for the arrest of a person accused of an offence of stealing or receiving stolen property in a designated Commonwealth country or a colony or any other offence committed in such a country or in a colony in respect of property, a Magistrate in Antigua and Barbuda shall have the like power to issue a warrant to search for the property as if the offence had been committed within his jurisdiction.

Proceedings for
committal.

11. (1) A person **arrested in pursuance of a warrant** under section 10 shall (unless previously discharged under subsection (3) of that section) be brought as soon as **practicable** before a Magistrates Court (in this Act referred to as "the court of committal") as may be **directed** by the **warrant**.

(2) For the purposes of proceedings under this section a court of committal in Antigua and Barbuda shall have the like jurisdiction and powers, as nearly as may be, including power to remand in custody or on bail, as a magistrate's court acting as an examining justice.

(3) Where —

- (a) the extradition request is made by foreign state; and
- (b) an order such as is mentioned in subsection (7) is in force in relation to that state,

there is no need to furnish the court of committal with evidence sufficient to warrant the trial of the arrested person if the extradition crime had taken place within the jurisdiction of the court.

(4) Where the person arrested is in custody by virtue of a provisional warrant and no authority to proceed has been received in respect of him, the court of committal may fix a period (of which the court shall give notice to the Minister) after which he will be discharged from custody unless such an authority has been received.

(5) In exercising the power conferred by subsection (4) in a case where the extradition request is made under the general extradition arrangements the court shall have regard to any period specified for the purposes in the order relating to the arrangements.

(6) Where —

- (a) the extradition request is made under general extradition arrangements but no period is so specified; or
- (b) the application is made under special extradition arrangements,

the court of committal may fix a reasonable period.

(7) Where an authority to proceed has been issued in respect of the person arrested and the court of committal is satisfied, after hearing any representations made in support of the extradition request or on behalf of that person, that the offence to which the authority relates is an extradition crime, and is further satisfied —

- (a) where that person is accused of the offence, unless an order giving effect to general extradition arrangements under which the extradition request was made otherwise provides, that the evidence would be sufficient to warrant his trial if the extradition crime had taken place within the jurisdiction of the court;
- (b) where that person is alleged to be unlawfully at large after conviction of the offence, that he has been so convicted and appears to be so at large,

the court, unless his committal is prohibited by any other provision of this Act, shall commit him to custody or on bail —

- (i) to await the Minister's decision as to his return; and
- (ii) if the Minister decides that he shall be returned, to await his return.

(8) If the court commits a person under subsection (7), it shall issue a certificate of the offence against the law of Antigua and Barbuda which would be constituted by his conduct.

(9) If the court commits a person to custody in the exercise of that power, it may subsequently grant bail if it considers it appropriate to do so.

(10) If —

- (a) the court is not satisfied as mentioned in subsection (7) in relation to the person arrested; or
- (b) his committal is prohibited by a provision of this Act,

it shall discharge him.

Statement of case
by court.

12. (1) If the court of committal refuses to make an order in relation to a person under section 11 in respect of the offence or, as the case may be, any of the offences to which the authority to proceed relates, the foreign state or Commonwealth country seeking the surrender of that person to it may question the proceedings on the ground that it is wrong in law by applying to the court to state a case for the opinion of the High Court on the question of law involved.

(2) If the foreign state or Commonwealth country **seeking** the return immediately informs the court of committal that it intends to make such an application, the court shall make an order **providing** for the detention of the person to whom the authority to proceed relates, or **directing** that he shall not be released except on bail.

(3) Rules of Court may specify —

- (a) a period within which such **an** application must be made unless the court grants a longer period; and
- (b) a period **within** which the court of committal must comply with such an application.

(4) Where the court of committal fails to comply with an application under subsection (1) within the period specified by Rules of Court, the High Court may, on the application of the foreign state or Commonwealth country that applied for the case to be stated, make an order requiring the court to state a case.

(5) The High Court shall have power —

- (a) to remit the case to the court of committal to decide it according to the opinion of the High Court on the question of law; or
- (b) to dismiss the appeal.

(6) Where the High Court dismisses **an** appeal relating to an offence, it shall by order declare that that offence is not **an** offence in respect of which the Minister has power to make an order for return in respect of the person whose return was requested.

(7) **An** order made by a magistrate under subsection (2) shall cease to have effect if —

- (a) the High Court dismisses the appeal in respect of the offence or **all** of the offences to which it relates; and
- (b) the foreign state or Commonwealth country does not immediately inform the High Court that it intends to appeal to the Court of Appeal.

(8) The Court of Appeal may exercise any powers of the High Court under subsection (3) and subsection (6) shall apply to the Court of Appeal as it applies to the High Court.

(9) An order under subsection (2) shall have effect so long as the case is pending.

(10) For the purposes of this section a case is pending (unless proceedings are discontinued) until (disregarding any power of a court to grant leave to take any step out of time) there is no step that the foreign state or Commonwealth country can take.

*Application for
habeas corpus etc.*

13. (1) Where a person is committed under section 11, the court shall inform him in ordinary language of his right to make an application for *habeas corpus*, and shall forthwith give notice of the committal to the Minister.

(2) A person committed shall not be returned —

- (a) in any case, **until** the expiration of the period of 15 days beginning with the day on which the order for his committal is made;
- (b) if an application for *habeas corpus* is made in his case, so long as proceedings on that application are pending.

(3) Without prejudice to any jurisdiction of the High Court apart from this section, the court shall order the applicant's discharge if it appears to the court in relation to the offence, or each of the offences, in respect of which the applicant's return is sought, that —

- (a) by reason of the trivial nature of the offence; or
- (b) by reason of the passages of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or
- (c) because the accusation against him is not made in good faith in the interests of justice,

it would, having regard to all the circumstances, be unjust or oppressive to return him.

(4) On any such application the court may receive additional evidence relevant to the exercise of its jurisdiction under section 8 or subsection (3) of this section.

(5) Proceedings on an application for *habeas corpus* shall be treated for the purposes of this section as pending (unless they are discontinued) until (disregarding any power of the court to grant leave to appeal out of time) there is no further possibility of an appeal.

14. (1) Where a person is committed under section 11 and is not discharged by order of the High Court, the Minister may by warrant order him to be returned unless his return is prohibited, or prohibited for the time being, by this Act or the Minister decides under this section to make no such order in his case. Order for return.

(2) Without prejudice to his general discretion as to the making of an order for the return of a person to a foreign state or Commonwealth country —

- (a) the Minister shall not make an order in the case of any person if it appears to the Minister in relation to the offence, or each of the offences, in respect of which his return is sought, that —
- (i) by reason of its trivial nature; or
 - (ii) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or
 - (iii) because the accusation against him is not made in good faith in the interests of justice,

it would, having regard to all the circumstances, be unjust or oppressive to return him; and

- (b) the Minister may decide to make no order for the return of a person accused or convicted of an offence not punishable with death in Antigua and Barbuda if the person could be or has been sentenced to death for that offence in the country by which the request for his return is made.

(3) An order for return shall not be made in the case of a person who is serving a sentence of imprisonment or detention, or is charged with an offence in Antigua and Barbuda —

- (a) in the case of a person serving such a sentence, until the sentence has been served;
- (b) in the case of a person charged with an offence, until the charge is disposed of or withdrawn or unless an order is made for it to lie on the file and, if it results in his serving a term of imprisonment or detention, until the sentence has been served.

(4) The Minister may decide to make no order under this section for the return of a person committed in consequence of an extradition request if another extradition request has been made in respect of him and it appears to the Minister, having regard to all the circumstances of the case and in particular —

- (a) the relative seriousness of the offences in question;
- (b) the date on which each such request was made; and
- (c) the nationality or citizenship of the person concerned and his ordinary residence;

that preference should be given to that other request.

(5) Notice of the issue of a warrant under this section for the return of a person to a Commonwealth country shall forthwith be given to the person to be returned.

Return to foreign
state supplement-
ary.

15. (1) The Minister shall give the person to whom an order under section 14 (1) for the return to a foreign state would relate notice in writing that he is contemplating making such an order.

(2) The person to whom such an order would relate shall have a right to make representations, at any time before the expiration of the period of fifteen days commencing with the date on which the notice is given, as to why he should not be returned to the foreign state, and unless he waives that right, no such order shall be made in relation to him before the end of that period.

(3) A notice under subsection (1) shall explain in ordinary language the right conferred by subsection (2).

(4) It shall be the duty of the Minister to consider any representations made in the exercise of that right.

(5) Unless the person to whom it relates waives the right conferred on him by subsection (6), he shall not be returned to the foreign state until the expiration of the period of seven days commencing with the date on which the warrant is issued or such longer period as Rules of Court may provide.

(6) At any time within that period he may apply for leave to seek **judicial** review of the Minister's decision to make the order.

(7) If he applies for judicial review, he may not be returned so long as the proceedings for judicial review are pending.

(8) Proceedings for **judicial** review shall be treated for the purposes of this section **as** pending (unless they are discontinued) until (disregarding any power of the court to grant leave to appeal out of time) there is no further possibility of an appeal.

(9) A warrant under section 14 —

- (a) shall state in ordinary language that the Minister has considered any representations made in the exercise of the right conferred by subsection (2); and
- (b) shall explain in ordinary language the rights conferred by this section on a person whose return to a foreign state **has** been ordered under section 14,

and a copy shall be given to the person to whom it relates as soon **as** the order for his return is made.

16. (1) A person may give notice that he waives the rights conferred on him by section 13.

**Simplified
procedure.**

(2) A notice under this section shall be given in the manner by **rules** under this Act and the power **to make** such rules shall include power to make provision for a magistrate to order the committal for return of a person with his consent at any time after his arrest.

(3) **Where an** order is made by virtue of this section, this Act shall cease to apply to the person in respect of whom it is made, except **that**, if he is not surrendered within one month after the

order is made, the High Court, upon application by or on behalf of that person, may unless reasonable cause is shown for the delay, order him to be discharged.

Special extradition arrangements.

17. (1) Where special extradition arrangements have been made in respect of a person, extradition procedures shall be available in the case of that person, as between Antigua and Barbuda and the foreign state with which arrangements have been made, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the arrangements.

(2) If the Minister issues a **certificate** of special extradition arrangements, it shall be conclusive evidence of all matters stated in it.

(3) In subsection (2) "certificate of special extradition arrangements" means a certificate —

- (a) that special extradition arrangements have been made in respect of a person as between Antigua and Barbuda and a foreign state specified in the certificate; and
- (b) that extradition procedures are **available** in the case of that person as between Antigua and Barbuda and the foreign state to the extent specified in the certificate.

Discharge in case of delay.

18. (1) If a person committed under section 11 is still in Antigua and Barbuda after the expiration of the relevant period, he may apply to the High Court for his discharge.

(2) Unless he has instituted proceedings for judicial review of the Minister's decision to order his return the relevant period is —

- (a) the period of two months beginning with the first day on which, having regard to section 13 (2), he could have been returned;
- (b) where a **warrant** for his return has been issued under section 14, the period of one month beginning with the day on which that ~~warrant~~ was issued.

(3) If he has instituted such **proceedings**, the relevant period is the period expiring one month after they end.

(4) Proceedings for judicial review and for the purposes of this section shall be held —

- (a) if they are discontinued, on the day of discontinuance; and
- (b) if they are determined, on the day of which (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal.

(5) If upon an application under this section the court is satisfied that reasonable notice of the proposed application has been given to the Minister, the court may, unless sufficient cause is shown to the contrary, by order direct the applicant to be discharged and, if a warrant for his return has been issued under section 14, quash that warrant.

19. (1) Any person remanded or committed to custody under this Part shall be committed to prison. Custody.

(2) If any person who is in custody by virtue of a warrant under this Act escapes out of custody, he may be retaken in like manner as a person escaping from lawful custody.

(3) A warrant for the return of any person shall be sufficient authority for all persons to whom it is directed and all members of the police force to receive that person, keep him in custody and convey him to the jurisdiction to which he is to be returned.

PART V

TREATMENT OF PERSONS RETURNED

20. (1) Where any person is returned to Antigua and Barbuda by a foreign state in pursuance of extradition arrangements, he shall not, unless he has first restored or had an opportunity of leaving Antigua and Barbuda, be triable or be tried for any offence committed prior to the state's surrender in Antigua and Barbuda, other than —

Restrictions upon proceedings for other offences in case of persons returned by foreign states.

- (a) an offence in respect of which he was returned; or
- (b) any offence disclosed by the particulars furnished to the foreign state on which his return is grounded; or

- (c) any other offence in respect of which the foreign state may consent to his being tried.

(2) Where any person returned to Antigua and Barbuda in pursuance of extradition arrangements has been convicted before his return of an offence for which his return was not granted, any punishment for that offence shall by operation of this section be remitted; but his conviction for it shall be treated as a conviction for all other purposes.

Restrictions upon proceedings for other offences in case of persons returned by designated Commonwealth countries.

21. (1) This section applies to any person accused or convicted of an offence under the law of Antigua and Barbuda who is returned to Antigua and Barbuda from any designated Commonwealth country, under any law of that country corresponding with this Act.

(2) A person to whom this section applies shall not, during the period described in subsection (3), be dealt with in Antigua and Barbuda for or in respect of any offence committed before he was returned to Antigua and Barbuda other than —

- (a) the offence in respect of which he was returned;
- (b) any lesser offence disclosed by the particulars furnished to the Commonwealth country on which his return is grounded; or
- (c) any other offence in respect of which the Government of the Commonwealth country or Governor of the colony from which he was returned may consent to his being dealt with.

(3) The period referred to in subsection (2) in relation to a person to whom this section applies is the period beginning with the day of his arrival in Antigua and Barbuda on his return as mentioned in subsection (1) and ending forty five days after the first subsequent day on which he has the opportunity to leave Antigua and Barbuda.

(4) Where a person to whom this section applies has been convicted before his return to Antigua and Barbuda of an offence for which his return was not granted, any punishment for that offence shall by operation of this section be remitted; but his conviction for it shall be treated as a conviction for all other purposes.

(5) In this section "dealt with" means trial or returned or surrendered to any country or detained with a view to trial or with a view to such return or surrender.

22. (1) This section applies to any person accused of an offence under the law of Antigua and Barbuda who is returned to Antigua and Barbuda in pursuance of extradition arrangements or as mentioned in section 21 (1).

Restoration of persons not tried or acquitted.

(2) If in the case of a person to whom this section applies either—

- (a) proceedings against him for the offence for which he was returned are not begun within the period of six months beginning with the day of his arrival in Antigua and Barbuda on being returned; or
- (b) on his trial for that offence, he is acquitted,

the Minister may, if he thinks fit, on the request of that person, arrange for him to be sent back free of charge and with as little delay as possible to the jurisdiction of the foreign state or Commonwealth country from which he was returned.

PART VI

SPECIAL CASES

23. (1) This section applies where —

Persons serving sentences outside country of conviction.

- (a) request is made —
 - (i) by some person recognized as a diplomatic or consular representative of a foreign state or as between which state and Antigua and Barbuda extradition procedures under Part IV are available; or
 - (ii) by or on behalf of the Government of a designated Commonwealth country or the Governor of a colony,

for the arrest and return of a person in Antigua and Barbuda who is alleged to be unlawfully at large from a prison in which he was

serving a sentence in pursuance of international arrangements for the repatriation of prisoners sentenced in one country ("the country of conviction") to serve their sentences in another ("the country of imprisonment"); and

- (b) these are furnished with the request —
- (i) particulars of the person whose return is requested;
 - (ii) particulars of the offence of which he was convicted (including evidence sufficient to justify the issue of a warrant for his arrest under the relevant legislation);
 - (iii) a certificate of the conviction and sentence; and
 - (iv) a certificate of the international arrangements for repatriation under which he was held.

(2) Where this section applies, the relevant legislation shall have effect —

- a) if the request is from the country of conviction, as if the person to whom the request relates were alleged to be unlawfully at large from a prison in that country; and
- (b) if it is from the country of imprisonment, as if he were alleged to have been convicted of a corresponding offence under the law of that country committed there,

and the question whether the person to whom the request relates is to be returned shall be determined, subject to subsection (3), in accordance with that legislation.

(3) A person shall not be returned under subsection (2) (b) unless —

- (a) the offence was committed in the country of conviction; or

- (b) the offence was not committed there but was committed in circumstances in which he might be returned on a request made by the country of his conviction.

(4) In this section "the relevant legislation" means the provisions of this Act that are relevant —

- (a) if the case falls within paragraph (2) (a), to extradition to the country of conviction; and
- (b) if the case falls within paragraph (2) (b), to extradition to the country of imprisonment.

24. (1) Except as provided by subsection (6) this section has effect where general extradition arrangements have not been made with a state which is a party to a Convention to which this section applies.

Extension of purposes of extradition for offences under Acts giving effect to international Convention.

(2) The Conventions to which this section applies are:

- (a) the Convention of Offences and certain other Acts committed on board Aircraft, which was signed at Tokyo on 14th September 1963 "the Tokyo Convention";
- (b) the Convention for the suppression of Unlawful Seizure of Aircraft, which was signed at the Hague on 16th December, 1970 ("the Hague Convention");
- (c) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, which was signed at Montreal on 23rd September 1971 ("the Montreal Convention");
- (d) the Convention of the Prevention and Punishment of Crimes against Internationally Protected Persons adopted by the United Nations General Assembly in 1973 ("the Internationally Protected Persons Convention");
- (e) the International Convention against the Taking of Hostages opened for signature at New York on 18th December 1979 ("the Hostages Convention");

- (f) the Convention on the Physical Protection of Nuclear Material opened for signature at Vienna and New York on 3rd March 1980 ("the Nuclear Material Convention");
- (g) The United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the United Nations General Assembly on the 10th December, 1984 ("The Torture Convention").

(3) Where this section has effect, an order applying this Act may be made by the Minister by Statutory Instrument under section 4 as if a Convention to which this section applies that is specified in the order constituted general extradition arrangements between Antigua and Barbuda and the foreign state, or any foreign state party to the Convention; but where this Act is so applied, it shall have effect only in respect —

- (a) of the relevant offences;
- (b) of an attempt to commit a relevant offence;
- (c) of counselling, procuring, commanding, aiding or abetting a relevant offence; and
- (d) of being accessory before or after the fact to a relevant offence.

(4) The relevant offences are —

- (a) in relation to the Tokyo Convention, any offence committed on board an aircraft in flight;
- (b) in relation to the Hague Convention, any offence committed under sections 2 and 3 of the Hijacking Act;
- (c) in relation to the Montreal Convention, any offence committed in relation to unlawful acts against the safety of civil aviation;
- (d) in relation to the Internationally Protected Persons Convention —

ANTIGUA
AND
BARBUDA

26

The *Extradition Act, 1993*.

No. 12 of 1993.

Genocide etc.

NO. 20 of 1975.

25. (1) For the purposes of this Act, no offence which, if committed in Antigua and Barbuda would be punishable as an offence under the Genocide Act or as an attempt, conspiracy or incitement to commit such an offence shall be regarded as an offence of a political character, and no proceedings in respect of such an offence shall be regarded as a criminal matter of a political character.

(2) It shall not be an objection to any proceedings against a person under this Act in respect of an offence which, if committed in Antigua and Barbuda, would be punishable as an offence of genocide or as an attempt, conspiracy or incitement to commit such an offence that under the law in force at the time when and in the place where he is alleged to have committed the act of which he is accused or of which he was convicted he could not have been punished for it.

Suppression of terrorism.

No. 17 of 1993.

26. (1) For the purpose mentioned in subsection (2) —

(a) no offence to which section 3 of the Suppression of Terrorism Act applies shall be regarded as an offence of a political character; and

(b) no proceedings in respect of an offence to which that section applies shall be regarded as a criminal matter of a political character or as criminal proceedings of a political character.

(2) The purpose is the purpose of a request for the return of a person in accordance with extradition proceedings under Part IV made by a country to which this subsection applies.

Hostage taking.

27. (1) A person shall not be returned under this Act to a designated Commonwealth country which is party to the Convention referred to in subsection (3), or committed or kept in custody for the purposes of such return, if it appears to the appropriate authority —

(a) that he might, if returned, be prejudiced at his mal by reason of the impossibility of effecting communications between him and the appropriate authorities of the state entitled to exercise rights of protection in relation to him, and

- (b) that the act or omission constituting the offence of which he has been accused or convicted also constituted an offence under section 3 of the Taking of Hostages Act 1993 or an attempt to commit such an offence.

No. 4 of 1993.

(2) Where the Minister certifies that a country is a party to the Convention, the certificate shall, in any proceedings under this Act, be conclusive evidence of that fact.

(3) The Convention mentioned in subsections (1) and (2) is the International Convention against the Taking of Hostages opened for signature at New York on 18th December 1979.

PART VII

MISCELLANEOUS

28. (1) In extradition proceedings in relation to a person whose return has been requested by a foreign state, foreign documents may be authenticated by the oath of a witness, but shall in any case be deemed duly authenticated —

Authentication of
foreign documents.

- (a) if they purport to be signed by a judge, magistrate or officer of the foreign state where they were issued; and
- (b) if they purport to be certified by being sealed with the official seal of the Minister of Justice, or some other Minister of State, of the foreign state.

(2) Judicial notice shall be taken of such certification as is mentioned in subsection (1) (b), and documents authenticated by such certification shall be received in evidence without further proof.

29. (1) In any proceedings under this Act in relation to a person whose return has been requested by a designated Commonwealth country, including proceedings on an application for habeas corpus in respect of a person in custody under this Act —

Evidence —
Commonwealth
countries.

- (a) a document, duly authenticated, which purports to set out evidence given on oath in a designated Commonwealth country shall be admissible as evi-

dence of the matters stated in it:

- (b) a document, duly authenticated, which purports to have been received in evidence, or to be a copy of a document so received, in any proceedings in any designated Commonwealth country shall be admissible in evidence;
- (c) a document, duly authenticated, which certifies that a person was convicted on a date specified in the document of an offence against the law of, or of a part of, any such country shall be admissible as evidence of the fact and date of the conviction.

(2) A document shall be deemed to be duly authenticated for the purposes of this section —

- (a) in the case of a document purporting to set out evidence given as mentioned in subsection (1)(a), if the document purports to be certified by a judge or magistrate in or of the country in question to be the original document containing or recording that evidence or a true copy of such a document;
- (b) in the case of a document which purports to have been received in evidence as mentioned in subsection (1)(b) or to be a copy of a document so received, if the document purports to be certified as mentioned in paragraph (a) to have been, or to be a true copy of a document which has been, so received;
- (c) in the case of a document which certifies that a person was convicted as mentioned in subsection (1)(c), if the document purports to be certified as mentioned in paragraph (a),

and in any case the document is authenticated either by the oath of a witness or by the official seal of a Minister of the designated Commonwealth country or of the Governor or a Minister, Secretary or other officer administering a department of the government of the colony, as the case may be.

(3) Nothing in this section shall prejudice the admission in evidence of any document which is admissible in evidence apart from this section.

30. (1) Any warrant or order to be issued or made by the Minister under this Act shall be given under the hand of the Minister or a Minister of State.

Form of warrants
and orders.

(2) The Minister may by regulations made by Statutory Instrument make such regulations as are necessary for the purpose of carrying out the provisions of this Act and, without limiting the generality of the foregoing, he may, by such regulations, prescribe the form of any document required for the purposes of this Act in its application to return to foreign states (except a notice under section 16) and the form of any warrant or order to be issued or made under this Act in its application to return to Commonwealth countries.

31. Notwithstanding the provisions of section 32 —

Effect of former
law.

- (a) the Extradition Acts 1870—1989 of the United Kingdom and the Extradition Act (Cap. 108) shall continue to apply to any extradition proceedings pending before any court on the coming into force of this Act;
- (b) any order made under the Extradition Acts 1870—1989 of the United Kingdom and the Extradition Act (Cap. 108) shall have effect as if such order is made under this Act;
- (c) the forms or documents prescribed under the Extradition Acts 1870—1989 of the United Kingdom shall continue to be applied *mutatis mutandis* until they are replaced.

32. (1) The Extradition Acts 1870—1989 of the United Kingdom which applies to Antigua and Barbuda as part of the existing law shall, on the coming into force of this Act, cease to apply to Antigua and Barbuda.

Repeal.

(2) The following Acts are repealed: —

(a) The Extradition Act,

Cap. 108.

(b) The Fugitive Offenders Act.

No. 31 of 1969.

ANTIGUA 30
AND
BARBUDA

The Extradition Act, 1993.

No. 12 of 1993.

Passed the House of Representatives this
26th day of April, 1993.

Passed the Senate this 13th day
of May, 1993.

C.L. Murray,
Speaker.

William A. Robinson,
Vice-President.

L.A. Dowe,
Clerk to the House of Representatives.

L.A. Dowe,
Clerk to the Senate.

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