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## EXTRADITION BILL 2025

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### Explanatory Memorandum

1. This Bill is promoted by the Department of Home Affairs. It provides for extradition from and to the Island.
2. Extradition is a legal process by which a person in one territory –
  - (a) who is accused of an offence in another territory;
  - (b) who has been convicted in another territory of an offence but not sentenced for it; or
  - (c) who has been so convicted and sentenced,may be sent to that other territory.
3. Extradition from the Island will be available only to designated territories (unless special arrangements have been made on behalf of the Island for extradition to a non-designated territory).
4. The process begins with a request from the territory seeking extradition. This is made formally at the outset to the Attorney General. However, proceedings may also be commenced less formally on a provisional basis - for example, in case of urgency.
5. The person concerned is brought before the High Bailiff on an extradition arrest warrant. The High Bailiff will hold an extradition hearing. At the hearing, the High Bailiff must decide whether the request papers are in order, and whether there are any legal bars to the person's extradition. The High Bailiff must also consider whether extradition would infringe the person's human rights. If any of these circumstances apply, the High Bailiff must discharge the person. The High Bailiff in any case has a discretion to discharge a person or to postpone proceedings, on account of the person's health.
6. If none of those considerations applies, the High Bailiff must send the case to the Attorney General, who then has to decide whether to order the person's extradition. In some circumstances (notably, if the person will be liable to the death penalty), the Attorney General must order that the person be discharged. If there are competing requests for extradition, or the person is serving a sentence of custody in the Island, there is in any event a discretion to defer extradition.
7. There are rights of appeal to the High Court, and from there to the Privy Council, against decisions relating to extradition from the Island.
8. The territories from which the Island will ordinarily entertain requests for extradition – the "designated territories" – fall into two categories. The procedure for each of the categories differs in some respects. When dealing with an application from a Part 1 of Schedule 1 designated territory (these comprise (a)

EU member states; and (b) certain of the territories designated as “Category 2” territories under the Extradition Act 2003 (of Parliament) – these are countries which have made extradition arrangements with the United Kingdom and also non-EU states which are parties to international conventions to which the UK is also a party), the High Bailiff may act on information other than evidence. In dealing with an application from a Part 2 of Schedule 1 designated territory (other countries and territories designated as “Category 2” under the Extradition Act 2003 (of Parliament) – including most Commonwealth and South American countries), the High Bailiff must consider the sufficiency of the evidence against a person accused of an offence, or convicted *in absentia* with a right to a retrial.

9. There are also provisions in the Bill for re-extradition. These apply where a person who is already serving a sentence in the Island is extradited to a designated territory and sentenced there for an offence, before being returned to the Island to complete his or her sentence here. On the person’s release from custody in the Island, the High Bailiff may hold an extradition hearing to determine whether the person should be re-extradited to the other territory.
10. The Bill also enables the Attorney General to request any designated territory to extradite a person to the Island. The request may be made by the Attorney General directly to the other designated territory or through the Secretary of State.
11. The procedure on extradition from designated Commonwealth countries or from Hong Kong differs slightly from that for other territories. In both cases, the person may be prosecuted for the extradition offence itself and any other offences disclosed by the information relating to it. He or she may also be prosecuted for any other offence if the extraditing designated territory so consents, and for any offence committed in the Island since his or her extradition. Subject to this, the person may not be prosecuted in the Island for any other offences. However, this restriction ceases to apply to a person who is extradited from a designated Commonwealth jurisdiction, or from Hong Kong, once he or she has been allowed for at least 45 days an opportunity to leave the Island.
12. In the case of other territories, the restriction will cease to apply if for any reason the person returns to the other territory, or he or she is given an opportunity to leave the Island (however brief).
13. The Bill is set out in the following way –

**Part 1 – introductory provisions**

14. *Clauses 1 to 3* deal with the short title, the commencement and the application provisions.
15. *Clauses 4 to 11* contain those provisions concerned with interpretation. The general interpretation provisions are in *clause 4*. A “designated territory” is a territory specified in Schedule 1. A “Part 1 designated territory” is one specified in Part 1 of that Schedule, and a “Part 2 designated territory” is one specified in Part 2 of that Schedule.

16. *Clause 5* explains the expression “extradition offence”, when used in relation to a person who is accused of an offence in a designated territory or who has been convicted of the offence but not yet sentenced for it. Conduct constitutes an extradition offence in relation to a designated territory if certain specified conditions are satisfied. However, *clause 5* must be read subject to *clause 7*.
17. *Clause 6* explains the expression “extradition offence”, when used in relation to a person who has been convicted and sentenced for the offence. Conduct constitutes an extradition offence in relation to a designated territory if certain specified conditions are satisfied. This clause is also subject to *clause 7*.
18. *Clause 7* provides that if a military offence is not an offence under the general criminal law of the Island, it will not be regarded here as an extradition offence.
19. *Clause 8* specifies the date from which time limits for the purposes of *clauses 43 and 49* are to be calculated.
20. *Clause 9* explains when a request for extradition is taken to have been disposed of and *clause 10* explains when a charge is to be taken to have been disposed of.
21. *Clause 11* explains what is meant by a person’s being unlawfully at large.
22. *Clause 12* specifies what is a designated territory and enables the Council of Ministers, by order, to vary the list or description of designated territories.

## **Part 2 – Extradition from the Island**

23. This Part sets out the procedures to be followed on requests to the Island to extradite persons to designated territories.
24. *Clause 13* requires the Attorney General, on receipt of a valid request for the extradition of a person in the Island to such a territory, to issue a certificate that a valid request has been received (subject to certain exceptions where the Attorney General may refuse to issue a certificate). A request is valid if it states that the person is accused in the territory of an offence specified in the request, or is unlawfully at large after conviction by a court in the territory of such an offence, and it is made in the approved way. The request is made in the approved way if it is made by or on behalf of the appropriate authority in the territory. On issuing a certificate, the Attorney General is to send it with the request to the High Bailiff. However, this clause is subject to *clause 76*, under which the Attorney General may defer a request if there are competing requests for extradition.
25. *Clauses 14 to 17* provide for the issue of an extradition arrest warrant, and the procedure to be followed on executing the warrant.
26. *Clause 14* authorises the High Bailiff, after receiving the Attorney General’s certificate, to issue a warrant for the person’s arrest. The High Bailiff may do so if the High Bailiff has reasonable grounds for believing that the offence is an extradition offence, and there is sufficient information (in the case of a Part 1 designated territory) or evidence (in the case of a Part 2 designated territory) to justify the arrest of a person accused of the offence or unlawfully at large after conviction for the offence. The warrant may be executed by any police officer.

27. *Clause 15* provides that a person arrested under a warrant must be given a copy of it as soon as possible. The person must also be brought before the High Bailiff as soon as practicable, unless the Attorney General decides under *clause 76* to defer the request where there is a competing request for extradition. If the person is not given a copy of the warrant promptly, he or she may apply to the High Bailiff to be discharged. The High Bailiff has a discretion to order the person's discharge.
28. If the person is not brought before the High Bailiff as required under the clause, he or she may apply to the High Bailiff to be discharged. In that event, the High Bailiff must order the person's discharge. As soon as possible after the person is brought before the High Bailiff, the High Bailiff must inform the person of the contents of the request for extradition. The High Bailiff must explain that the person may consent to being extradited, and what will happen if the person consents. The person must also be told that consent, once given, is irrevocable. The High Bailiff may remand the person in custody or on bail.
29. *Clause 16* enables the High Bailiff to issue a provisional warrant for the arrest of a person even though a request for extradition has not been received, if the High Bailiff is satisfied that the person is believed to be in or *en route* to the Island.
30. *Clause 17* stipulates that a person arrested on a provisional warrant must be brought before the High Bailiff as soon as practicable. It also contains the other requirements and powers that apply when a person is arrested on an extradition arrest warrant issued under *clause 14*. However, if the High Bailiff does not receive a request for extradition and the Attorney General's certificate within 45 days after the person's arrest, the person must be discharged. The Council of Ministers may by order set a longer time limit than 45 days in respect of requests by any designated territory that is specified in such an order.
31. *Clauses 18 to 42* deal with the procedure to be followed at the hearing before the High Bailiff.
32. *Clause 18* provides that where a person is arrested under an extradition arrest warrant issued under *clause 14*, the High Bailiff must fix a date for the extradition hearing when the person first appears before the High Bailiff. This must be within 2 months of the person's first appearance. If the High Bailiff believes that it is in the interests of justice to do so, he or she may from time to time fix a later date. If the extradition hearing does not commence by the date so fixed, and the person so requests, the High Bailiff must order that he or she be discharged.
33. Under *clause 19*, the same provisions apply in the case of a person arrested on a provisional warrant, if the High Bailiff receives the formal request for extradition and the Attorney General's certificate within the time stipulated in *clause 17*.
34. *Clause 20* provides that the High Bailiff must act in a judicial role at the extradition hearing and has the same powers as if the proceedings were a trial.
35. *Clause 21* requires that where a person has been charged with an offence in the Island before the commencement of extradition proceedings, the High Bailiff

- must adjourn the proceedings until the charge has been disposed of, withdrawn or discontinued.
36. *Clause 22* requires that where a person is already serving a sentence of custody in the Island, the High Bailiff must adjourn extradition proceedings until the person has been released from custody.
37. Under *clause 23*, the High Bailiff must first decide whether the documents sent to the High Bailiff include the request, the Attorney General's certificate, particulars of the person and of the offence and (where applicable) the authorisation in the designated territory for his or her arrest or a certificate of the person's conviction and sentence in that territory. If the High Bailiff decides that they do not include that information, the person must be discharged. If the High Bailiff decides that they do include that information, the High Bailiff must then decide whether the person before the High Bailiff is the one whose extradition is requested, whether the offence is an extradition offence, and whether copies of the documents in support of the request have been given to the person. The question whether the person is the one whose extradition is requested is to be decided on a balance of probabilities. If the High Bailiff decides any of the questions in the negative, the person must be discharged. If all of them are decided in the affirmative, the High Bailiff must then decide whether there are any bars to extradition.
38. *Clause 24* sets out bars to extradition. These are —
- (a) the rule against double jeopardy;
  - (b) extraneous considerations;
  - (c) the passage of time;
  - (d) hostage-taking considerations; and
  - (e) forum.
39. If the High Bailiff finds that any of these bars apply, the High Bailiff must discharge the person. If the High Bailiff decides that there are no bars to extradition, it must proceed under *clause 34* if the person has not been convicted in the designated territory concerned, or under *clause 35* if the person has been convicted there and is alleged to be unlawfully at large.
40. *Clause 25* sets out the rule against double jeopardy, which means that the person's extradition is barred where he or she would be entitled to be discharged by reason of previous acquittal or previous conviction if charged in the Island with the offence.
41. *Clause 26* provides that a person's extradition is barred by reason of extraneous considerations if the real motive for the request for extradition is to prosecute or punish the person for racial, religious, sexual or political considerations, or if the person might be prejudiced at trial or punished for those considerations.
42. *Clause 27* provides that extradition is barred if it would be unjust or oppressive because of the passage of time.
43. Under *clause 28*, a person's extradition is in certain circumstances barred by reason of hostage-taking considerations. These are that the designated territory

seeking extradition is party to the International Convention against the Taking of Hostages opened for signature in New York in 1979, and that the person concerned might be prejudiced at trial because it would not be possible for him or her to communicate with the authorities in the territory who are entitled to exercise rights of protection in relation to that person. It must also appear that the alleged extradition offence constitutes an offence under section 1 of the Taking of Hostages Act 1982 (of Parliament) (as applied to the Island) or an attempt to commit such an offence.

44. *Clauses 29 to 33* provide for a “forum bar”, for extradition to be denied on the grounds that an offence ought to be more naturally tried in the requested state. *Clause 29* sets out the matters that would justify the barring of extradition by reason of forum. *Clause 30* provides that at proceedings on the question of forum the High Bailiff must decide that extradition is not barred by reason of forum if the High Bailiff receives an Attorney General’s certificate. Under *clause 31* the Attorney General may certify that the person should not be prosecuted for an offence or offences that correspond to the extradition offence if certain specified facts apply. *Clause 32* limits the circumstances in which an Attorney General’s certificate may be questioned and *clause 33* provides for relevant definitions.
45. *Clause 34* applies if the person has not been convicted in the territory requesting extradition. If it is a Part 1 designated territory and the High Bailiff has decided that there are no bars to extradition, the High Bailiff must then proceed directly under *clause 37*, which requires the High Bailiff to decide whether the person’s extradition would be compatible with the European Convention on Human Rights. If it is a Part 2 designated territory the High Bailiff must first decide whether there is sufficient evidence for the person to stand trial, before going on to consider his or her human rights. If there is not enough evidence, the High Bailiff must discharge the person. If there is sufficient evidence, the High Bailiff is required to proceed to consider the question of human rights under *clause 37*.
46. *Clause 35* applies if the person has already been convicted in the territory requesting extradition and is alleged to be unlawfully at large. It applies whether the territory is a Part 1 or Part 2 designated territory, but the procedure for each category differs slightly.
47. The High Bailiff must decide whether the person was convicted in his or her absence. If the person was not present, the High Bailiff must also decide whether or not he or she was deliberately absent. If the person was absent but did not stay away deliberately, and would not be entitled to be retried, the High Bailiff must order his or her discharge. If the person was either present or deliberately absent, the High Bailiff must proceed directly to consider the issue of human rights under *clause 37*.
48. If the person was absent but did not stay away deliberately, and the person would in any event be entitled to a retrial if convicted *in absentia*, the following procedure applies —

- (a) if the territory concerned is a Part 1 designated territory, the High Bailiff must proceed directly to consider the issue of the person's human rights under *clause 37*;
  - (b) if the territory concerned is a Part 2 designated territory, the High Bailiff must first proceed under *clause 36*.
- 49. *Clause 36* requires the High Bailiff to decide whether there is sufficient evidence for the person to stand trial in the Part 2 designated territory. If the evidence is insufficient, the High Bailiff must discharge the person. If there is sufficient evidence, the High Bailiff must next proceed under *clause 37*.
- 50. *Clause 37* requires the High Bailiff to decide whether a person's extradition would be compatible with his or her rights under the European Convention on Human Rights. If it would not be, the High Bailiff must discharge the person. If it would be, the High Bailiff must then send the case to the Attorney General for the latter's decision as to whether the person is to be extradited.
- 51. *Clause 38* provides that if the High Bailiff is informed on behalf of the Attorney General during an extradition hearing that the person concerned is charged with an offence in the Island, the High Bailiff must adjourn the hearing until the case is disposed of. If the person is sentenced for the offence, the High Bailiff may then adjourn the extradition hearing until the person has been released from custody.
- 52. *Clause 39* provides that if in the course of an extradition hearing the High Bailiff is informed that the person is already serving a sentence of custody in the Island, the High Bailiff may adjourn the hearing until the person has been released from custody.
- 53. Under *clause 40* the High Bailiff must remand the person, if informed at any time during the extradition hearing that the Attorney General has ordered under *clause 76* that the hearing is to be deferred until a competing extradition request is disposed of.
- 54. Under *clause 41*, the High Bailiff may discharge a person or adjourn extradition proceedings if, because of his or her physical or mental condition, it would be unjust or oppressive to extradite the person.
- 55. *Clause 42* requires the High Bailiff, when sending a case to the Attorney General, to tell the person that there is a right of appeal to the High Court after the Attorney General has made a decision, and to remand the person pending that decision. The duty to inform the person of the right of appeal does not apply if the person has consented to extradition.
- 56. *Clauses 43 to 51* deal with the functions of the Attorney General after the High Bailiff has sent a case, at the end of the extradition hearing, for the Attorney General's decision whether the person is to be extradited.
- 57. Under *clause 43*, the Attorney General must consider whether he or she is prohibited from ordering the person's extradition by reason of any of the following considerations —
  - (a) liability to the death sentence;

- (b) specialty; or
- (c) earlier extradition to the Island from another territory.

58. If the Attorney General decides that any such prohibition applies, the person must be discharged. If the Attorney General decides that the prohibition does not apply, he or she must order the person's extradition unless —
- (a) the request is withdrawn;
  - (b) the proceedings are deferred for a competing extradition claim; or
  - (c) the person is discharged by the Attorney General on grounds of national security.

Furthermore, the Attorney General may order a person's discharge if the person is a refugee or has been granted leave to enter or remain in the Island or the UK on human rights grounds.

59. *Clause 44* prohibits extradition if the person concerned is liable to the death penalty in the territory requesting his extradition, unless the Attorney General receives a written assurance that the person will not be executed and the Attorney General considers the assurance adequate.
60. *Clause 45* prohibits the extradition of a person to a territory with which the Island does not have specialty arrangements. This prohibition does not apply if the person has consented to being extradited, or waives his or her right not to be extradited. A specialty arrangement is one in which a person who is extradited to the territory may only be dealt with in one of the following circumstances —
- (a) if the offence is one in respect of which he or she was extradited,
  - (b) it is an extradition offence (not being a capital offence) disclosed by the same facts,
  - (c) it is an extradition offence in respect of which the Attorney General consents to the person's being dealt with, or
  - (d) the person is given an opportunity to leave the territory before being dealt with there.
61. *Clause 46* prohibits a person's extradition from the Island if he or she was extradited here from another territory the consent of which is required to the further extradition, and it has not given that consent.
62. *Clause 47* requires the Attorney General to defer a decision whether to extradite a person, if the person is charged with an offence in the Island and the charge has not been disposed of. If the person is subsequently sentenced to be detained in the Island in respect of the offence, the Attorney General has a discretion to defer a decision on extradition until the person has been released from custody.
63. *Clause 48* gives the Attorney General a discretion to defer a decision on extradition if the person concerned is already serving another sentence of custody in the Island.
64. *Clause 49* requires the Attorney General to decide within 2 months whether to order a person's extradition. The period for decision will ordinarily begin on the



day on which the High Bailiff sends the case to the Attorney General. However, where the Attorney General is required to defer a decision or has a discretion to do so, the period will be calculated from the date on which the circumstances in which it is deferred cease to obtain. The High Bailiff may in any event extend the time limit periodically.

65. Under *clause 50*, the Attorney General must tell the person concerned that he or she has ordered extradition, and that the person has a right of appeal to the High Court. The Attorney General must also inform a representative of the territory requesting extradition.
66. *Clause 51* provides that an order by the Attorney General for a person's discharge must be made in writing, and signed by the Attorney General.
67. *Clauses 52 to 64* provide for rights of appeal to the High Court and then to the Privy Council.
68. *Clause 52* gives a person whose extradition is requested a right of appeal to the High Court against a decision by the High Bailiff at the end of an extradition hearing. The appeal may not be heard until the Attorney General has decided whether to order extradition, and may not proceed if he or she orders the person's discharge. This provision does not give a right of appeal to a person who has consented to being extradited.
69. *Clause 53* sets out the High Court's powers on such an appeal. It may allow the appeal, refer the case back to the High Bailiff or dismiss the appeal. If it allows the appeal, the High Court must discharge the person and quash the Attorney General's extradition order.
70. *Clause 54* enables an appeal to be made by a designated territory requesting a person's extradition, against a decision by the High Bailiff at the extradition hearing that results in the person's being discharged.
71. *Clause 55* sets out the powers of the High Court on such an appeal. It may allow it, refer the case back to the High Bailiff or dismiss the appeal. The appeal may only be allowed on the ground that the High Bailiff decided a relevant question wrongly, or that a new issue has been raised or that new evidence is available that would have led the High Bailiff to make a different decision. If it allows the appeal, the High Court must quash the order by which the person was discharged, and remit it to the High Bailiff.
72. *Clause 56* provides for the remand of a person, in custody or on bail, pending the determination of an appeal under *clause 54* on behalf of the territory seeking his or her extradition.
73. *Clause 57* gives a person a right of appeal to the High Court if the Attorney General orders his or her extradition, and the person has not consented to the order. *Clause 58* sets out the High Court's powers on allowing such an appeal. If it does so, it must discharge the person and quash the order.
74. *Clause 59* enables an appeal to be made by a designated territory requesting a person's extradition, against an order by the Attorney General that the person be

discharged. *Clause 60* sets out the High Court's powers on allowing such an appeal. If it does so, it must quash the order discharging the person and order his or her extradition.

75. *Clause 61* provides that if an appeal against the Attorney General's discharge of a person is brought on behalf of the territory requesting extradition, the High Bailiff must remand the person in custody or on bail while the appeal is pending.
76. *Clause 62* provides that rules of court must prescribe the time limit for starting the hearing of an appeal to the High Court.
77. *Clause 63* provides that if an appeal against a person's discharge by the High Court is to be brought on behalf of the territory requesting extradition, the High Court must remand the person in custody or on bail while the further appeal is pending.
78. *Clause 64* provides that a decision by the High Bailiff or the Attorney General under Part 2 may only be questioned in legal proceedings on appeal under Part 2.
79. *Clauses 65 to 69* deal with the time limits for carrying out an extradition order.
80. *Clause 65* provides that if the Attorney General orders a person's extradition, and no notice of appeal is filed within the time limit for doing so, or a notice is so filed but leave to appeal is refused, the person must be extradited within 28 days. If extradition does not take place within that time the person may apply to the High Bailiff to be discharged. The High Bailiff must discharge the person unless there is reasonable cause for the delay. This clause is subject to *clause 69* (under which the Attorney General may in certain circumstances require an undertaking to return the person to complete a sentence in the Island).
81. *Clause 66* provides that if there is an appeal under Part 2, and the outcome is that the person is to be extradited, he or she must be extradited within 28 days. If the person is not, he or she may apply to the High Bailiff to be discharged. The High Bailiff must discharge the person unless there is reasonable cause for the delay. This provision is also subject to *clause 69*.
82. Under *clause 67*, where an extradition order is made but before it can be carried out the High Bailiff is informed that the person is charged with an offence in the Island, the High Bailiff must halt the extradition process until the charge is disposed of. If the person is sentenced to custody the High Bailiff may provide that the extradition must wait until the end of the sentence.
83. Under *clause 68*, where after an extradition order is made the High Bailiff is informed that the person is serving a sentence in the Island it may delay extradition until the end of the sentence.
84. *Clause 69* provides that if the Attorney General orders the extradition of a person who is serving a sentence of custody in the Island, the order may be made on the condition that the person is not to be extradited until an undertaking is given on behalf of the territory concerned to the Attorney General. In imposing that condition, the Attorney General may specify the terms of the undertaking.

85. If the person is accused but not convicted of the offence in the other territory, the terms may include a requirement that he or she be kept in custody until the outcome of proceedings against the person in that territory, and then returned to the Island to complete his or her sentence here. Where the person is alleged to be unlawfully at large after conviction in the territory requesting extradition, the terms may include a requirement that he or she must be returned to the Island, to complete his or her sentence here, after the person has served any sentence imposed in the other territory for the extradition offence and for any other offence for which he or she may be dealt with in that territory. If the undertaking is not received within 21 days and the person applies to the High Court to be discharged, the High Court must order his or her discharge.
86. *Clauses 70 to 72* provide for the discharge of a person on the withdrawal of a request for extradition.
87. Under *clause 70*, the High Bailiff must discharge the person if informed by the Attorney General before the extradition hearing has ended that the request has been withdrawn.
88. Under *clause 71*, the Attorney General must order the person's discharge, if after the case has been referred to the Attorney General but before the person is extradited, the Attorney General is informed that the request has been withdrawn.
89. *Clause 72* applies where an extradition request is withdrawn while an appeal (or application for leave to appeal) is pending. If the appeal is by a person whose extradition is requested, the High Court must discharge the person and quash any extradition order. If the appeal is by the territory concerned against the discharge of a person whose extradition is requested, the High Court must dismiss the application or appeal.
90. *Clause 73* provides that a person arrested under an extradition arrest warrant may consent to being extradited. Consent must be in writing. Once given, it is irrevocable.
91. *Clause 74* provides that if the case has not been sent to the Attorney General for a decision whether to make an extradition order, the consent must be given to the High Bailiff in the prescribed form.
92. *Clause 75* provides that if the case has been sent to the Attorney General for a decision whether to make an extradition order, the consent is to be given to the Attorney General.
93. *Clause 76* provides that if the Attorney General receives a request for the extradition of a person who is in the Island, and another request is then received for the same person's extradition before the first is disposed of, the Attorney General may defer one of the requests until the other is dealt with. If an extradition order has already been made, but it has not been carried into effect, the Attorney General may defer its execution. In deciding which request to defer, the Attorney General must take into account the relative seriousness of each offence, the places where the offences were allegedly committed, the date of

receipt of each request, and whether in each case the person concerned is accused of the offence or alleged to be unlawfully at large.

94. *Clause 77* enables the Attorney General to consent, in the case of a person who has already been extradited to another territory, to the person's being dealt with there for an offence other than the one for which he or she was extradited. However, the Attorney General may only do so if he or she decides –
- (a) that the other offence is also an extradition offence;
  - (b) that the case is one which the High Bailiff would have sent to the Attorney General for a decision whether to extradite; and
  - (c) that the Attorney General is not prohibited by the Bill from ordering extradition.
95. *Clause 78* deals with the case in which, after a person has been extradited to a designated territory from the Island, the Attorney General receives a request from the appropriate authority in that territory for the Attorney General's consent to that person's further extradition from the territory to another designated territory. The Attorney General may order extradition, subject to the same requirements as apply under *clause 77*.
96. *Clause 79* provides that if a person who is serving a sentence of custody in the Island is extradited to a designated territory and subsequently returned to serve the remainder of his or her sentence here, the person is liable to complete the sentence in the Island. The time spent by the person abroad, in consequence of his or her extradition, will not count as time served as part of the sentence in the Island. However, this exclusion will not apply if the person was extradited to be prosecuted for an offence and has not been convicted.
97. *Clauses 80 and 81* provide for the award of costs, respectively, where extradition is ordered and where discharge is ordered.
98. *Clause 82* relates to the case in which a person, having been sentenced in one territory, is transferred in pursuance of repatriation arrangements to serve the sentence in another territory. If the person's extradition from the Island is sought by either of those territories on the ground that he or she is unlawfully at large, and the territory making the request is a designated territory, extradition proceedings may be pursued in the Island.

### **Part 3 – Re-extradition from the Island**

99. *Clause 83* sets out 5 conditions for a re-extradition hearing. In particular, the person concerned must have been extradited under Part 2 to the designated territory. At the time of extradition, he or she must have been serving a sentence of custody in the Island. The person must also have been sentenced to at least 4 months' detention in the designated territory for an offence committed there before his or her extradition – and before serving that sentence, the person must have been returned to the Island to serve the remainder of his or her sentence here.

100. *Clause 84* provides for a re-extradition hearing before the High Bailiff. The person concerned must be brought before the High Bailiff as soon as possible after the time at which he or she is due to be released in the Island. If the High Bailiff finds that the territory is not a designated territory, and the person applies for his or her release, the High Bailiff must discharge the person. If the High Bailiff decides it is a designated territory, the hearing is to proceed under *clause 85* as if it were an extradition hearing and the proceedings are to be held in accordance with Part 2, subject to the modifications in Schedule 2.
101. *Clause 86* provides that the fact that the High Bailiff discharges the person does not affect any conditions of his or her release pursuant to the Manx sentence.

#### **Part 4 – Extradition to the Island**

102. This Part of the Bill sets out the procedure to be followed on requests to overseas territories to extradite persons to the Island.
103. Under *clause 87*, the Attorney General may, directly or through the Secretary of State, request the extradition of a person from any other territory.
104. *Clause 88* sets out the conditions on which the Island may deal with a person who is extradited here from a Commonwealth country or Hong Kong. The person may be dealt with only for –
- (a) the offence for which he or she was extradited,
  - (b) lesser offences disclosed by the information provided to the other territory in support of the Island's request for extradition, and
  - (c) other offences for which the other territory consents to the person's being dealt with here.
105. However, these conditions do not prevent the person's being prosecuted for offences committed in the Island after his or her extradition here. They cease to apply in any event on the expiry of a period of 45 days starting on the first day on which the person is given an opportunity to leave the Island after being extradited here.
106. Under *clause 89*, the same restrictions apply if a person is extradited to the Island from any other designated territory, with the difference that those conditions will in any event cease to apply if the person returns to the territory from which he or she was extradited or is given an opportunity to leave the Island (whether or not he or she has been allowed 45 days in which to do so).
107. *Clause 90* provides that *clauses 88 and 89* do not prevent a person to whom those clauses apply from being detained with a view to trial in the Island if the territory from which the person was extradited has made a declaration under Article 14(3) of the European Convention on Extradition, subject to certain requirements.
108. *Clause 91* provides that if a person who is extradited to the Island from a designated territory was before extradition convicted in the Island for an offence other than the one for which he or she is extradited, the punishment for that other offence must be remitted, but the conviction for the other offence will nevertheless stand.

109. *Clause 92* requires the Attorney General to arrange the free repatriation of a person who has been extradited to the Island, where —
- (a) the extradition proceedings have not commenced here within 6 months, or
  - (b) the person is acquitted or discharged,
- and the person asks for repatriation.
110. *Clause 93* makes provision enabling the Attorney General to give an undertaking as to the return of a person to the territory from where the person has been extradited to the Island where the extradition was made subject to the giving of that undertaking. The terms of the undertaking may include that if the person is convicted and a sentence of custody is imposed in the Island, that the person will be returned to the territory to serve the sentence.
111. Under *clause 94* if the Attorney General has given an undertaking in connection with a person's extradition to the Island that includes terms that he or she be kept in custody until the conclusion of proceedings for an offence here, bail can be granted only in exceptional circumstances.

#### **Part 5 – Police powers**

112. Under *clause 95*, the High Bailiff may, on the application of a constable, issue a search and seizure warrant. A search and seizure warrant authorises a police officer to enter and search specified premises and seize material that may be used in evidence. This provision does not authorise the seizure of “special procedure material” or “excluded material” within the meaning of the Police Powers and Procedures Act 1998. Searches under search and seizure warrants must be conducted solely for the purpose of obtaining evidence for the prosecution of the extradition offence, and must not be used for an investigation as to whether or not the extradition offence has been committed.
113. Under *clause 96*, the High Bailiff may, on the application of a constable, issue a production order. A production order requires a specified person to produce special material or excluded material to a constable, or to give a constable access to it, within a specified time.
114. *Clause 97* sets out the grounds on which a production order may be made.
115. *Clause 98* stipulates the way in which special procedure material or excluded material that is stored electronically must be made available to comply with a production order.
116. Under *clause 99*, the High Bailiff may issue a warrant authorising a constable to seize and retain special procedure material or excluded material if the High Bailiff is satisfied that it is not practicable to communicate with a person in order to implement a production order.
117. *Clause 100* authorises a constable to enter and search premises for the purpose of executing an extradition arrest warrant, and to seize and retain relevant evidence found there.

118. *Clause 101* authorises a constable to enter and search premises and to seize and retain relevant evidence found there, if a person was arrested on the premises on an extradition arrest warrant or was there immediately before being arrested.
119. *Clause 102* enables a constable to search a person who has been arrested on an extradition arrest warrant elsewhere than at a police station. The constable may do so if he or she has reasonable grounds for believing that the person presents a danger, or is concealing evidence or anything that might assist the person to escape. The constable may seize and retain anything relating to those considerations found on the person.
120. *Clause 103* enables a constable to enter and search premises occupied or controlled by a person who has been arrested on an extradition arrest warrant, and to seize and retain any relevant thing found there. This power may be exercised only on the written authorisation of a police officer not below the rank of inspector unless exercised before the person arrested is taken to a police station and the presence of the person at a place other than a police station is necessary for the effective exercise of the power of search.
121. *Clause 104* provides for the taking of fingerprints and samples from a person arrested on an extradition arrest warrant.
122. *Clause 105* deals with the search and examination of a person who is detained in a police station after being arrested on an extradition arrest warrant. The powers under this provision may be exercised only for the purpose of ascertaining identity, and only on the authorisation of an officer not below the rank of inspector.
123. *Clause 106* provides for the photographing of a person who is arrested on an extradition arrest warrant and detained at a police station.
124. *Clause 107* enables the Department of Home Affairs, by order, to apply modified provisions of the Police Powers and Procedures Act 1998 relating to searches of detained persons, intimate searches, the right to have someone informed on a person's arrest and access to legal advice.
125. *Clause 108* enables a constable to deliver to the appropriate authority in a designated territory, or to its representative, anything seized or produced under this Part of the Bill.
126. *Clause 109* enables the Department of Home Affairs to make codes of practice in respect of matters arising from the exercise of powers under this Part. If the Department proposes to do so, it must publish a draft and consider any representations. A code of practice is admissible in evidence in proceedings under the Bill, and is to be taken into account by a court when considering anything to which the code appears to it to be relevant. However, non-compliance with a code does not of itself give rise to criminal or civil liability.
127. *Clause 110* authorises the use of reasonable force, if necessary, in the exercise of powers conferred by the Bill.

#### **Part 6 – Non-Island extradition: transit through the Island**

128. This Part of the Bill makes provision in relation to foreign extraditions which do not involve the Island but which entail a person being extradited to transit through the Island.
129. *Clause 111* provides for the Attorney General to issue a transit certificate which empowers an authorised officer to carry out certain functions in relation to the transit for the purposes of the extradition.
130. *Clause 112* makes provision in relation to an unscheduled arrival in the Island pertaining to a non-Island extradition and confers on authorised officers powers to escort the person, to take the person into custody and to search the person.
131. *Clause 113* sets out how an authorised officer may exercise the extradition transit powers conferred under the preceding two clauses. Reasonable force may be used where necessary.
132. *Clause 114* enables the Department of Home Affairs to issue a code of practice in connection with the exercise of the extradition transit powers.
133. *Clause 115* defines certain terms used in Part 6.

#### **Part 7 – Other provisions**

134. *Clause 116* stipulates time limits for extradition in cases in which it has been deferred pending the disposal of another request for extradition, and the High Bailiff has ordered under *clause 118* that the deferral must cease. In those circumstances, the period of 28 days within which the person must be extradited if the Attorney General subsequently makes an extradition order on the deferred request is to be calculated either from the day on which the order is made or, if there is an appeal, on the day on which the appeal becomes final.
135. *Clause 117* provides that where extradition proceedings in respect of one request are deferred in favour of another that is then disposed of, the High Bailiff may order the deferred proceedings to be resumed. Such an order may only be made within 21 days of the date of disposal of the other proceedings. The High Bailiff also has a discretion to discharge the person to whom the deferred proceedings relate. If the High Bailiff does not within the 21 day period either order that the proceedings be resumed or discharge the person, and he or she applies to be discharged, the High Bailiff must then discharge the person.
136. *Clause 118* contains corresponding provisions where an extradition order has already been made but has been deferred until a competing extradition claim has been disposed of.
137. *Clause 119* enables proceedings to be taken in the Island for the extradition of a person to a territory that is not a designated territory, if special arrangements have been made in respect of the Island with that territory. A certificate by the Attorney General that the arrangements have been made, and that the territory is not a designated territory, is conclusive evidence of those matters. Extradition proceedings may then be taken as if the territory were a Part 2 designated territory, and the Bill applies accordingly. However, the period within which the extradition papers must be given to the High Bailiff may not be extended beyond



- the initial 45-day time limit under *clause 17(10)(a)*. In giving the certificate, the Attorney General may also certify that other provisions of the Bill are to be treated as having been modified, if the special arrangements so provide.
138. *Clause 120* provides that on a request for extradition for genocide, a crime against humanity or a war crime, it is not an objection that it is an offence having retrospective effect.
139. The effect of *clause 121* is that an extradition hearing relating to a person under the age of 18 years will not be open to the public unless the High Bailiff orders otherwise.
140. *Clause 122* provides for the custody of persons who are remanded without bail under the Bill. They are to be held in the appropriate institutions to which they would be sent if charged with offences in the Island. However, if it would be inappropriate because of the nature of an extradition offence or a young person's circumstances to send the young person to a place ordinarily required for persons of his or her age, the High Bailiff may remand the person to some other suitable place of custody.
141. *Clause 123* provides that if an order is made under Part 2 for the extradition of a person serving custody, the order is sufficient authority for the person to be removed from custody.
142. *Clause 124* makes provision for extradition for more than one offence.
143. *Clause 125* enables the Council of Ministers by order to designate international conventions and specify conduct to which the conventions apply. If the Attorney General certifies certain matters in relation to a territory, the Bill will apply in relation to the extradition of a person to the territory as if the territory were a designated territory.
144. *Clauses 126, 127 and 128* make provision about the use of live links in proceedings under the Bill, other than the extradition hearing.
145. Under *clause 129*, the Attorney General may on the grounds of national security issue a certificate directing that a request for extradition is not to be proceeded with.
146. *Clause 130* allows documents relating to proceedings under the Bill to be sent by facsimile or email, and for facsimile and email documents to be receivable in evidence.
147. *Clause 131* allows documents authenticated abroad to be received in evidence.
148. *Clause 132* applies to extradition proceedings the provisions of the Criminal Law Act 1981 relating to admissions of fact and the admissibility of written statements in evidence.
149. *Clause 133* applies the criminal burden and standard of proof to extradition proceedings, except where the Bill expressly provides otherwise.
150. *Clause 134* enables the Treasury, by order, to extend the provisions of the Bill relating to constables to customs officers.

151. *Clause 135* enables the Council of Ministers, by order, to modify the Bill to give effect to international obligations that apply to or bind the Island.
152. *Clause 136* contains general machinery provisions relating to subordinate legislation made under the Bill.
153. *Clause 137* consequentially amends other enactments.
154. *Schedule 1* lists designated territories.
155. *Schedule 2* sets out the modifications to Part 2 of the Bill as it applies to re-extradition.
156. *Schedule 3* contains consequential amendments to other enactments.
157. Given the relatively few requests for extradition made or received in recent years, and the fact that the Attorney General's Chambers is in practice currently involved in those which do take place, the introduction of the Bill is not expected to require any additional manpower or financial resources.
158. In the view of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

# C

## EXTRADITION BILL 2025

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# C

## EXTRADITION BILL 2025

A **BILL** to provide for extradition.

**BE IT ENACTED** by the King's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

### PART 1 – INTRODUCTORY

#### 1 Short title

The short title of this Act is the Extradition Act 2025.

#### 2 Commencement

- (1) This Act, apart from section 1, this section and the meaning of the “Department” in section 4, comes into operation on such day or days as the Department by order appoints.

Tynwald procedure – laying only.

- (2) An order under subsection (1) may make such supplemental, incidental, consequential and transitional provisions as the Department considers to be necessary or expedient.

#### 3 Application

- (1) This Act applies for the purposes of —
- (a) every request for extradition that is received in the Island on or after the day on which this section comes into operation; and
  - (b) every request for extradition to the Island that is made by the Attorney General on or after the day on which this section comes into operation.
- (2) For the purposes of this Act, it is immaterial whether an extradition offence is committed before or after the commencement of this Act.

#### 4 General interpretation

(1) In this Act, unless the context otherwise requires —

“**appropriate consent**” has the same meaning as it has in section 69(1) of PPPA;

“**appropriate day**” has the meaning given by section 8;

“**British overseas territory**” has the same meaning as in the British Nationality Act 1981 (of Parliament);

“**Department**” means the Department of Home Affairs;

“**designated territory**” has the meaning given by section 12(1);

“**disposed of**” —

(a) in relation to a request for a person’s extradition, is to be construed in accordance with section 9; and

(b) in relation to a charge against a person, is to be construed in accordance with section 10;

“**excluded material**” has the same meaning as it has in section 14(1) of PPPA;

“**extradition**” includes re-extradition;

“**extradition offence**” is to be construed in accordance with sections 5 to 7;

“**extradition arrest warrant**” means —

(a) a warrant issued under section 14; or

(b) a provisional warrant;

“**extradition hearing**” means the hearing at which the High Bailiff is to deal with a request for extradition to a designated territory;

“**fingerprints**” has the same meaning as it has in section 69(1) of PPPA;

“**High Court**” means the Staff of Government Division of the High Court when sitting as an appellate court;

“**Human Rights Convention**” has the meaning given to “the Convention” by section 19(1) of the *Human Rights Act 2001*;

“**Human Rights Convention rights**” has the meaning given to “the Convention rights” by section 1(1) of the *Human Rights Act 2001*;

“**intimate search**” has the same meaning as it has in section 69(1) of PPPA;

“**items subject to legal privilege**” has the same meaning as it has in section 13 of PPPA;

“**non-intimate sample**” has the same meaning as it has in section 69(1) of PPPA;

“**Part 1 designated territory**” means a designated territory that is specified in Part 1 of Schedule 1;

“**Part 2 designated territory**” means a designated territory that is specified in Part 2 of Schedule 1;

- “**PPPA**” means the *Police Powers and Procedures Act 1998*;
- “**premises**” has the same meaning as it has in section 81(1) of PPPA;
- “**provisional warrant**” means a warrant issued under section 16;
- “**re-extradition hearing**” means a re-extradition hearing under Part 3;
- “**Refugee Convention**” means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to that Convention;
- “**special procedure material**” has the same meaning as it has in section 17 of PPPA;
- “**territory**” includes a State and any other country;
- “**unlawfully at large**” is to be construed in accordance with section 11;
- “**war crime**” means —
- (a) an offence under section 45 of the *International Criminal Court Act 2003* (genocide, crimes against humanity and war crimes); and
  - (b) an offence under section 46 of that Act (conduct that is ancillary to those crimes and is committed outside the jurisdiction).
- (2) In this Act, references to a valid request for a person’s extradition are references to a request that is valid because it satisfies the requirements in section 13(3).
- (3) In this Act, taking a photograph includes using any process by means of which a visual image may be produced.

## 5 Meaning of “extradition offence”: persons not sentenced

- (1) This section sets out whether a person’s conduct constitutes an “extradition offence” for the purposes of this Act in a case where the person —
- (a) is accused in a designated territory of an offence constituted by the conduct; or
  - (b) has been convicted in that territory of an offence constituted by the conduct but not sentenced for it.
- (2) The conduct constitutes an extradition offence in relation to a designated territory if the conditions in subsections (3), (4) or (5) are satisfied.
- (3) The conditions in this subsection are that —
- (a) the conduct occurs in the designated territory;
  - (b) the conduct would constitute an offence under Manx law punishable with custody for a term of 12 months or a greater punishment if it occurred in the Island; and
  - (c) the conduct is so punishable under the law of the designated territory.

- (4) The conditions in this subsection are that —
  - (a) the conduct occurs outside the designated territory;
  - (b) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under Manx law punishable with custody for a term of 12 months or a greater punishment; and
  - (c) the conduct is so punishable under the law of the designated territory.
- (5) The conditions in this subsection are that —
  - (a) the conduct occurs outside the designated territory;
  - (b) no part of the conduct occurs in the Island;
  - (c) the conduct constitutes, or if committed in the Island would constitute, a war crime; and
  - (d) the conduct is punishable under the law of the designated territory with custody or another form of detention for a term of 12 months or a greater punishment.
- (6) This section is subject to section 7.
- (7) References in this section to “conduct” (except in the expression “equivalent conduct”) are to the conduct specified in the request for the person’s extradition.

## 6 Meaning of “extradition offence”: persons sentenced

- (1) This section sets out whether a person’s conduct constitutes an “extradition offence” for the purposes of this Act in a case where the person —
  - (a) has been convicted, in the designated territory to which extradition is requested, of an offence constituted by the conduct; and
  - (b) has been sentenced for the offence.
- (2) The conduct constitutes an extradition offence in relation to the designated territory if the conditions in subsections (3), (4) or (5) are satisfied.
- (3) The conditions in this subsection are that —
  - (a) the conduct occurs in the designated territory;
  - (b) the conduct would constitute an offence under Manx law punishable with custody for a term of 12 months or a greater punishment if it occurred in the Island; and
  - (c) a sentence of custody or another form of detention for a term of 4 months or a greater punishment has been imposed in the designated territory in respect of the conduct.
- (4) The conditions in this subsection are that —
  - (a) the conduct occurs outside the designated territory;

- (b) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under Manx law punishable as mentioned in subsection (3)(b); and
  - (c) a sentence of custody or another form of detention for a term of 4 months or a greater punishment has been imposed in the designated territory in respect of the conduct.
- (5) The conditions in this subsection are that —
- (a) the conduct occurs outside the designated territory;
  - (b) no part of the conduct occurs in the Island; and
  - (c) the conduct constitutes, or if committed in the Island would constitute, a war crime; and
  - (d) a sentence of custody or another form of detention for a term of 4 months or a greater punishment has been imposed in the designated territory in respect of the conduct.
- (6) This section is subject to section 7.
- (7) References in this section to “conduct” (except in the expression “equivalent conduct”) are to the conduct specified in the request for the person’s extradition.

## **7 Military offences: qualification to meaning of “extradition offence”**

If conduct constitutes an offence under the military law of the designated territory, but does not constitute an offence under the general criminal law of the Island, it does not constitute an extradition offence under section 5 or section 6.

## **8 Meaning of “appropriate day”**

- (1) This section applies for the purposes of sections 43 and 49 if the High Bailiff sends a case to the Attorney General for the latter’s decision whether a person is to be extradited.
- (2) If the person is charged with an offence in the Island, the appropriate day is —
  - (a) the day on which the charge is disposed of;
  - (b) the day on which the charge is withdrawn; or
  - (c) the day on which proceedings in respect of the charge are otherwise discontinued.
- (3) If under section 47(2) or section 48, the Attorney General defers making a decision until the person has served a sentence, the appropriate day is the day on which the person is released from custody pursuant to the sentence (whether on licence or otherwise).
- (4) If section 76 (competing extradition requests) applies to the request for the person’s extradition (“the request concerned”), the appropriate day is —

- (a) the day on which the Attorney General makes an order under section 76(2), if the order is for proceedings on the other request to be deferred; or
  - (b) the day on which an order is made under section 117, if the order under section 76(2) is for proceedings on the request concerned to be deferred and the order under section 117 is for the proceedings to be resumed.
- (5) If two or more of subsections (2) to (4) apply, the appropriate day is the latest of the days specified in those subsections.
- (6) In any other case, the appropriate day is the day on which the High Bailiff sends the case to the Attorney General for a decision as to whether the person is to be extradited.

## 9 Meaning of “disposed of”: requests for extradition

- (1) A request for a person’s extradition is disposed of —
- (a) when an order is made for the person’s discharge in respect of the request and there is no further possibility of an appeal;
  - (b) when the person is taken to be discharged in respect of the request; or
  - (c) when an order is made for the person’s extradition in pursuance of the request and there is no further possibility of an appeal.
- (2) There is no further possibility of an appeal against an order for a person’s discharge or extradition —
- (a) when the period permitted for giving notice of the appeal to the High Court ends, if notice is not given before the end of that period;
  - (b) when the decision of the High Court on the appeal becomes final, if there is no appeal to the Privy Council against that decision; or
  - (c) when the decision of the Privy Council on the appeal is made, if there is such an appeal.
- (3) The decision of the High Court on the appeal becomes final —
- (a) when the period permitted for applying to the High Court for leave to appeal to the Privy Council ends, if there is no such application;
  - (b) when the period permitted for applying to the Privy Council for leave to appeal ends, if the High Court refuses leave to appeal and there is no application to the Privy Council for leave to appeal;
  - (c) when the Privy Council refuses leave to appeal; or
  - (d) at the end of the period of 28 days starting with the day on which leave to appeal to the Privy Council is granted, if no such appeal is brought before the end of that period.
- (4) For the purposes of subsections (2) and (3) —

- (a) any power of a court to extend the period permitted for giving notice of appeal or for applying for leave to appeal; and
- (b) any power of a court to grant leave to take a step out of time, must be ignored.

## 10 Meaning of “disposed of”: charges

- (1) A charge against a person is disposed of —
  - (a) if the person is acquitted in respect of it, when he or she is acquitted; or
  - (b) if the person is convicted in respect of it, when there is no further possibility of an appeal against the conviction.
- (2) There is no further possibility of an appeal against a conviction —
  - (a) when the period permitted for giving notice of application for leave to appeal to the High Court against the conviction ends, if the leave of the High Court is required and no such notice is given before the end of that period;
  - (b) when the High Court refuses leave to appeal against the conviction, if the leave of the High Court is required and notice of application for leave is given before the end of that period;
  - (c) when the period permitted for giving notice of appeal to the High Court against the conviction ends, if notice is not given before the end of that period;
  - (d) when the decision of the High Court becomes final, if there is no appeal to the Privy Council against that decision; or
  - (e) when the decision of the Privy Council is made, if there is such an appeal.
- (3) The decision of the High Court becomes final —
  - (a) when the period permitted for applying to the Privy Council for special leave to appeal ends, if there is no application for leave to appeal; or
  - (b) when the Privy Council refuses leave to appeal, if there is such an application.
- (4) For the purposes of subsections (2) and (3) —
  - (a) any power of a court to extend the period permitted for giving notice of appeal or of application for leave to appeal or for applying for leave to appeal; and
  - (b) any power of a court to grant leave to take a step out of time, must be ignored.

## 11 Meaning of “unlawfully at large” after conviction

Except in sections 27 and 82 or where the context otherwise requires, a person is alleged to be unlawfully at large after conviction of an offence —

- (a) if the person is alleged to have been convicted of it; and
- (b) if the person’s extradition is sought for the purpose of the person’s being sentenced for the offence or for the serving of a custodial sentence imposed following such conviction.

## 12 Designated territories

- (1) A designated territory means a territory that is specified in Part 1 or Part 2 of Schedule 1.
- (2) A designated territory may be specified in Part 1 of Schedule 1 for some purposes of this Act and specified in Part 2 of that Schedule for other purposes of this Act and references to a designated territory so specified are to be construed accordingly.
- (3) The Council of Ministers may by order amend Schedule 1 so as to —
  - (a) add to or delete from the list of designated territories; or
  - (b) vary the description of any designated territory.Tynwald procedure – affirmative.
- (4) Orders under this section —
  - (a) may designate a territory by name or by its falling within a description set out in the order;
  - (b) may provide that this Act has effect in respect of a designated territory with such modifications as are specified in the order.

# PART 2 — EXTRADITION FROM THE ISLAND

## DIVISION 1 — GENERAL

### 13 Extradition request and certificate

- (1) If the Attorney General receives a valid request for the extradition to a designated territory of a person who is in the Island, the Attorney General must issue a certificate under this section unless subsection (2) applies.
- (2) The Attorney General may refuse to issue a certificate under this section if —
  - (a) there is a competing extradition request and the Attorney General has decided under section 76 (competing extradition requests) to order that proceedings on the request be deferred;



- (b) the Secretary of State has recorded the person whose extradition is requested as a refugee within the meaning of the Refugee Convention; or
  - (c) the person whose extradition is requested has been granted leave to enter or remain in the Island or the United Kingdom on the ground that it would be a breach of Article 2 or 3 of the Human Rights Convention to remove the person to the territory to which extradition is requested.
- (3) A request for a person's extradition is valid if —
  - (a) it contains the statement referred to in either subsection (4) or subsection (5); and
  - (b) it is made in the approved way.
- (4) The statement is one that —
  - (a) the person is accused in the designated territory of the commission of an offence specified in the request; and
  - (b) the request is made with a view to the person's arrest and extradition to the designated territory for the purpose of being prosecuted for the offence.
- (5) The statement is one that —
  - (a) the person has been convicted of an offence specified in the request by a court in the designated territory; and
  - (b) the request is made with a view to the person's arrest and extradition to the designated territory for the purpose of being sentenced for the offence or of serving a custodial sentence imposed in respect of the offence.
- (6) A request for extradition to a designated territory that is a British overseas territory is made in the approved way if it is made by or on behalf of the person administering the designated territory.
- (7) While the Hong Kong Special Administrative Region of the People's Republic of China is a designated territory, a request for extradition to it is made in the approved way if it is made by or on behalf of the government of the Region.
- (8) A request for extradition to any other designated territory is made in the approved way if it is made by —
  - (a) an authority of the designated territory whom the Attorney General believes to have the function of making requests for extradition in that designated territory; or
  - (b) a diplomatic or consular representative of the designated territory.
- (9) A certificate under this section must certify that the request is made in the approved way.

- (10) If a certificate is issued under this section, the Attorney General must send the request and the certificate to the High Bailiff.
- (11) Subsection (12) applies at all times after the Attorney General issues a certificate under this section.
- (12) The Attorney General must not consider whether the extradition would be compatible with the Human Rights Convention rights.

## DIVISION 2 – ARREST

### 14 Arrest warrant following extradition request

- (1) This section applies where the Attorney General sends documents to the High Bailiff under section 13.
- (2) If the High Bailiff has reasonable grounds for believing –
  - (a) that the offence in respect of which extradition is requested is an extradition offence; and
  - (b) that there is evidence to which subsection (3) refers,the High Bailiff may issue a warrant for the arrest of the person whose extradition is requested.
- (3) The evidence is –
  - (a) if the person whose extradition is requested is accused of the commission of the offence, evidence that would justify the arrest of a person accused of the offence within the Island; or
  - (b) if the person whose extradition is requested is alleged to be unlawfully at large after conviction of the offence, evidence that would justify the arrest of a person unlawfully at large after conviction of the offence within the Island.
- (4) However, if the designated territory to which extradition is requested is a Part 1 designated territory, subsections (2) and (3) have effect as if references in them to evidence were references to information.
- (5) A warrant may be executed by a constable.
- (6) A warrant may be executed whether or not, at the time of the arrest, the warrant or a copy of it is in the possession of the constable executing it.

### 15 Person arrested under section 14

- (1) This section applies if a person is arrested under a warrant issued under section 14.
- (2) As soon as practicable after his or her arrest, a copy of the warrant must be given to the person.
- (3) The arrested person must be brought as soon as practicable before the High Bailiff.

- (4) However, subsection (3) does not apply if the Attorney General decides under section 76 (competing extradition requests) that the request for the person's extradition is to be deferred.
- (5) If subsection (2) is not complied with, and the person applies to the High Bailiff to be discharged, the High Bailiff may order that he or she be discharged.
- (6) If subsection (3) is not complied with, and the person applies to the High Bailiff to be discharged, the High Bailiff must order that he or she be discharged.
- (7) As soon as is practicable after the person first appears or is brought before the High Bailiff, the High Bailiff must —
  - (a) inform the person of the contents of the request for extradition;
  - (b) inform the person that he or she may consent to being extradited to the designated territory to which the person's extradition is requested;
  - (c) explain to the person the effect of consent, and the procedure that will apply if the person gives consent; and
  - (d) explain to the person that consent must be given in writing, and that it is irrevocable.
- (8) When the person first appears or is brought before the High Bailiff, the High Bailiff must remand the person in custody or on bail.
- (9) If the High Bailiff remands the person in custody, the High Bailiff may later grant bail to the person.

## 16 Provisional warrant

- (1) This section applies if the High Bailiff is satisfied on information in writing and on oath that a person to whom subsection (2) refers —
  - (a) is or is believed to be in the Island; or
  - (b) is or is believed to be on his or her way to the Island.
- (2) This subsection refers to —
  - (a) a person who is accused in a designated territory of the commission of an offence; or
  - (b) a person who is alleged to be unlawfully at large after conviction of an offence by a court in a designated territory.
- (3) The High Bailiff may issue a warrant for the arrest of the person (a provisional warrant) if the High Bailiff has reasonable grounds for believing —
  - (a) that the offence of which the person is accused or has been convicted is an extradition offence; and
  - (b) that there is written evidence to which subsection (4) refers.

- (4) The evidence to which this subsection refers is —
  - (a) if the person in respect of whom the warrant is sought is accused of the commission of the offence, evidence that would justify the arrest of a person accused of the offence within the Island; or
  - (b) if the person in respect of whom the warrant is sought is alleged to be unlawfully at large after conviction of the offence, evidence that would justify the arrest of a person unlawfully at large after conviction of the offence within the Island.
- (5) However, if the designated territory to which extradition is requested is a Part 1 designated territory, subsections (3) and (4) have effect as if references in them to evidence were references to information.
- (6) A provisional warrant may be executed by a constable.
- (7) A provisional warrant may be executed whether or not, at the time of the arrest, the warrant or a copy of it is in the possession of the constable executing it.

## **17 Person arrested under provisional warrant**

- (1) This section applies if a person is arrested under a provisional warrant.
- (2) As soon as practicable after his or her arrest, a copy of the warrant must be given to the person.
- (3) The arrested person must be brought as soon as practicable before the High Bailiff.
- (4) However, subsection (3) does not apply in a case where the Attorney General has received a valid request for the person's extradition, if the Attorney General decides under section 76 (competing extradition requests) that the request is to be deferred.
- (5) If subsection (2) is not complied with, and the person applies to the High Bailiff to be discharged, the High Bailiff may order that he or she be discharged.
- (6) If subsection (3) is not complied with, and the person applies to the High Bailiff to be discharged, the High Bailiff must order that he or she be discharged.
- (7) As soon as is practicable after the person first appears or is brought before the High Bailiff, the High Bailiff must —
  - (a) inform the person that he or she is accused of the commission of an offence in a designated territory, or that he or she is alleged to be unlawfully at large in a designated territory;
  - (b) inform the person that he or she may consent to being extradited to the designated territory in which the person is accused of the commission of an offence or is alleged to have been convicted of an offence;

- (c) explain to the person the effect of consent, and the procedure that will apply if the person gives consent; and
  - (d) explain to the person that consent must be given in writing, and that it is irrevocable.
- (8) When the person first appears or is brought before the High Bailiff, the High Bailiff must remand the person in custody or on bail.
- (9) If the High Bailiff remands the person in custody, the High Bailiff may later grant bail to the person.
- (10) The High Bailiff must order that the person be discharged if the documents referred to in section 13(10) are not received by the High Bailiff —
- (a) within 45 days starting with the day on which the person was arrested; or
  - (b) within any longer period that is specified, by order of the Council of Ministers, in respect of that designated territory.
- Tynwald procedure – approval required.

### DIVISION 3 – THE EXTRADITION HEARING

#### **18 Date of hearing on arrest under section 14**

- (1) When a person arrested under a warrant issued under section 14 first appears or is brought before the High Bailiff, the High Bailiff must fix a date on which the extradition hearing is to begin.
- (2) The date fixed under subsection (1) must not be later than the end of the period of 2 months starting with the date on which the person first appears or is brought before the High Bailiff.
- (3) If before the date fixed under subsection (1) (or under this subsection) a party to the proceedings applies to the High Bailiff for a later date to be fixed, and the High Bailiff believes that it is in the interests of justice to do so, the High Bailiff may fix a later date.
- (4) If the extradition hearing does not begin on or before the date fixed under this section and the person applies to the High Bailiff to be discharged, the High Bailiff must order that he or she be discharged.

#### **19 Date of hearing on arrest under provisional warrant**

- (1) When —
  - (a) a person is arrested under a provisional warrant; and
  - (b) the documents referred to in section 13(10) are received by the High Bailiff within the period required by section 17(10),

the High Bailiff must fix a date on which the extradition hearing is to begin.

- (2) The date fixed under subsection (1) must not be later than the end of the period of 2 months starting with the date on which the High Bailiff receives the documents.
- (3) If before the date fixed under subsection (1) (or under this subsection) a party to the proceedings applies to the High Bailiff for a later date to be fixed, and the High Bailiff believes that it is in the interests of justice to do so, the High Bailiff may fix a later date.
- (4) If the extradition hearing does not begin on or before the date fixed under this section and the person applies to the High Bailiff to be discharged, the High Bailiff must order that he or she be discharged.

## **20 High Bailiff's powers at extradition hearing**

- (1) At the extradition hearing, the High Bailiff has the same powers (as nearly as may be) as the High Bailiff would have if the proceedings were a summary trial before the High Bailiff of the person whose extradition is requested.
- (2) If the High Bailiff adjourns the proceedings, the High Bailiff must remand the person in custody or on bail.
- (3) If the High Bailiff remands the person in custody, the High Bailiff may later grant bail to the person.

## **21 Person charged with offence in the Island before extradition hearing**

- (1) This section applies if —
  - (a) a person has been brought before the High Bailiff under section 15(3) or 17(3) but the extradition hearing has not begun; and
  - (b) the High Bailiff is informed that the person is charged with an offence in the Island.
- (2) The High Bailiff must order further proceedings in respect of the extradition to be adjourned until one of these occurs —
  - (a) the charge is disposed of;
  - (b) the charge is withdrawn;
  - (c) proceedings in respect of the charge are discontinued.
- (3) If a sentence of custody is imposed in respect of the offence charged, the High Bailiff may order further proceedings in respect of the extradition to be adjourned until the person is released from custody pursuant to the sentence (whether on licence or otherwise).

**22 Person serving sentence in the Island before extradition hearing**

- (1) This section applies if —
  - (a) a person has been brought before the High Bailiff under section 15(3) or 17(3) but the extradition hearing has not begun; and
  - (b) the High Bailiff is informed that the person is serving a sentence of custody in the Island.
- (2) Where this section applies the High Bailiff may order further proceedings in respect of the extradition to be adjourned until the person is released from custody pursuant to the sentence (whether on licence or otherwise).

**23 Initial stages of extradition hearing**

- (1) If a person who is alleged to be the person whose extradition is requested appears or is brought before the High Bailiff for the extradition hearing, the High Bailiff must decide whether the documents sent to the High Bailiff under section 13 consist of or include any of the following —
  - (a) the documents to which section 13(10) refers;
  - (b) particulars of the person whose extradition is requested;
  - (c) particulars of the offence specified in the request;
  - (d) in the case of a person accused of an offence, a warrant for the person's arrest issued in the designated territory, or a judicial document issued in that designated territory and authorising his or her arrest;
  - (e) in the case of a person alleged to be unlawfully at large after conviction of an offence, a certificate of the conviction, and of the sentence (if the person has been sentenced), issued in the designated territory.
- (2) If the High Bailiff decides the question in subsection (1) in the negative, the High Bailiff must order that the person be discharged.
- (3) If the High Bailiff decides that question in the affirmative, the High Bailiff must decide —
  - (a) whether the person appearing or brought before the High Bailiff is the person whose extradition is requested;
  - (b) whether the offence specified in the request is an extradition offence; and
  - (c) whether copies of the documents sent to the High Bailiff under section 13 have been served on the person.
- (4) The High Bailiff must decide the question in subsection (3)(a) on a balance of probabilities.
- (5) If the High Bailiff decides any of the questions in subsection (3) in the negative, the High Bailiff must order that the person be discharged.

- (6) If the High Bailiff decides each of those questions in the affirmative, the High Bailiff must proceed under section 24.

## 24 Bars to extradition

- (1) If the High Bailiff is required to proceed under this section, the High Bailiff must decide whether the person's extradition to the designated territory is barred by reason of —
- (a) the rule against double jeopardy;
  - (b) extraneous considerations;
  - (c) the passage of time;
  - (d) hostage-taking considerations; or
  - (e) forum.
- (2) But the High Bailiff is to decide whether the person's extradition is barred by reason of forum only in a case where the request for extradition contains the statement referred to in section 13(4) (warrant issued for purposes of prosecution for offence in designated territory).
- (3) The questions in subsection (1) must be determined in accordance with sections 25 to 29.
- (4) If the High Bailiff decides any of the questions in subsection (1) in the affirmative, the High Bailiff must order the person's discharge.
- (5) If the High Bailiff decides each of those questions in the negative, and the person is accused of the commission of the extradition offence but is not alleged to be unlawfully at large after conviction of the offence, the High Bailiff must proceed under section 34 (case where person has not been convicted).
- (6) If the High Bailiff decides each of those questions in the negative, and it is alleged that the person is unlawfully at large after conviction of the extradition offence, the High Bailiff must proceed under section 35 (case where person has been convicted).

## 25 Rule against double jeopardy

A person's extradition to a designated territory is barred by reason of the rule against double jeopardy if (but only if) it appears that the person would be entitled to be discharged under any rule of law relating to previous acquittal or previous conviction if charged with the extradition offence in the Island.

## 26 Extraneous considerations

A person's extradition to a designated territory is barred by reason of extraneous considerations if (but only if) it appears —

- (a) that the request for extradition, though purporting to be made on account of the extradition offence, is in fact made for the purpose



of prosecuting or punishing the person on account of the person's race, religion, nationality, ethnic origin, gender, sexual orientation or political opinions; or

- (b) that, if extradited, the person might be prejudiced at trial or punished, detained or restricted in personal liberty by reason of the person's race, religion, nationality, ethnic origin, gender, sexual orientation or political opinions.

## **27 Passage of time**

A person's extradition to a designated territory is barred by reason of the passage of time if (but only if) it appears that it would be unjust or oppressive to extradite the person by reason of the passage of time —

- (a) where the person is accused of committing the extradition offence, since he or she is alleged to have committed it; or
- (b) where the person is alleged to have been convicted of the extradition offence, since he or she is alleged to have become unlawfully at large.

## **28 Hostage-taking considerations**

- (1) A person's extradition to a designated territory is barred by reason of hostage-taking considerations if (but only if) the designated territory is a party to the International Convention against the Taking of Hostages opened for signature at New York on 18th December 1979, and it appears that —
  - (a) the person, if extradited, might be prejudiced at trial because communication between the person and the appropriate authorities would not be possible; and
  - (b) the act or omission constituting the extradition offence also constitutes an offence under section 1 of the Taking of Hostages Act 1982 (of Parliament) as it applies to the Island<sup>1</sup>, or an attempt to commit such an offence.
- (2) The appropriate authorities are the authorities of the territory that is entitled to exercise rights of protection in relation to the person.
- (3) A certificate issued by the Attorney General that a territory is a party to the Convention is conclusive evidence of that fact for the purposes of subsection (1).

## **29 Forum**

- (1) The extradition of a person ("D") to a designated territory is barred by reason of forum if the extradition would not be in the interests of justice.

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<sup>1</sup> See SI 1982/1839

- (2) For the purposes of this section, the extradition would not be in the interests of justice if the High Bailiff —
- (a) decides that a substantial measure of D’s relevant activity was performed in the Island; and
  - (b) decides, having regard to the specified matters relating to the interests of justice (and only those matters), that the extradition should not take place.
- (3) The specified matters relating to the interests of justice are —
- (a) the place where most of the loss or harm resulting from the extradition offence occurred or was intended to occur;
  - (b) the interests of any victims of the extradition offence;
  - (c) that the Attorney General believes that the Island is not the most appropriate jurisdiction in which to prosecute D in respect of the conduct constituting the extradition offence;
  - (d) were D to be prosecuted in the Island for an offence that corresponds to the extradition offence, whether evidence necessary to prove the offence is or could be made available in the Island;
  - (e) any delay that might result from proceeding in one jurisdiction rather than another;
  - (f) the desirability and practicability of all prosecutions relating to the extradition offence taking place in one jurisdiction, having regard (in particular) to —
    - (i) the jurisdictions in which witnesses, co-defendants and other suspects are located; and
    - (ii) the practicability of the evidence of such persons being given in the Island or in jurisdictions outside the Island; and
  - (g) D’s connections with the Island.
- (4) In deciding whether the extradition would not be in the interests of justice, the High Bailiff must have regard to the desirability of not requiring the disclosure of material which is subject to restrictions on disclosure in the designated territory concerned.
- (5) If, on an application by the Attorney General, it appears to the High Bailiff that the Attorney General has considered the offences for which D could be prosecuted in the Island in respect of the conduct constituting the extradition offence, the High Bailiff must make the Attorney General a party to the proceedings on the question of whether D’s extradition is barred by reason of forum.
- (6) In this section “D’s relevant activity” means activity that is material to the commission of the extradition offence and is alleged to have been performed by D.

**30 Effect of Attorney General's certificate on forum proceedings**

- (1) When hearing proceedings under section 29 (the "forum proceedings"), the High Bailiff must decide that the extradition is not barred by reason of forum if (at a time when the High Bailiff has not yet decided the proceedings) the High Bailiff receives an Attorney General's certificate relating to the extradition.
- (2) That duty to decide the forum proceedings in that way is subject to the determination of any question relating to the Attorney General's certificate raised in accordance with section 32.
- (3) The Attorney General may apply for the forum proceedings to be adjourned for the purpose of assisting the Attorney General —
  - (a) in considering whether to give a certificate relating to the extradition;
  - (b) in giving such a certificate; or
  - (c) in sending such a certificate to the High Bailiff.
- (4) If such an application is made, the High Bailiff must —
  - (a) adjourn the forum proceedings until the application is decided; and
  - (b) continue the adjournment, for such period as appears to the High Bailiff to be reasonable, if the application is granted.
- (5) But the High Bailiff must end the adjournment if the application is not granted.

**31 Attorney General's certificate**

- (1) An "Attorney General's certificate" is a certificate given by the Attorney General that —
  - (a) the Attorney General has considered the offences for which D could be prosecuted in the Island in respect of the conduct constituting the extradition offence and decided that there are one or more such offences that correspond to the extradition offence (the "corresponding offences"); and
  - (b) certifies either the facts set out in subsection (2) or those set out in subsection (3).
- (2) The facts are that —
  - (a) the Attorney General has made a formal decision as to the prosecution of D for the corresponding offences;
  - (b) that decision is that D should not be prosecuted for the corresponding offences; and
  - (c) the reason for that decision is a belief that —
    - (i) there would be insufficient admissible evidence for the prosecution; or

- (ii) the prosecution would not be in the public interest.
- (3) The facts are that the Attorney General believes that D should not be prosecuted for the corresponding offences because there are concerns about the disclosure of sensitive material in —
  - (a) the prosecution of D for the corresponding offences; or
  - (b) any other proceedings.
- (4) In relation to the extradition of any person to a designated territory, neither this section nor any other rule of law (whether or not contained in an enactment) may require the Attorney General —
  - (a) to consider any matter relevant to giving an Attorney General's certificate; or
  - (b) to consider whether to give an Attorney General's certificate.
- (5) In this section, "sensitive material" means material that appears to the Attorney General to be sensitive, including material appearing to be sensitive on grounds relating to —
  - (a) national security;
  - (b) international relations; or
  - (c) the prevention or detection of crime (including grounds relating to the identification or activities of witnesses, informants or any other persons supplying information to the police or any other law enforcement agency who may be in danger if their identities are revealed).

### **32 Questioning of Attorney General's certificate**

- (1) No decision of the Attorney General relating to an Attorney General's certificate in respect of D's extradition (a "relevant certification decision") may be questioned except on an appeal under section 52 or section 57 against an order for that extradition.
- (2) For the purpose of —
  - (a) determining whether to give permission for a relevant certification decision to be questioned; and
  - (b) determining any such question (if that permission is given),the High Court must apply the procedures and principles which would be applied by it on an application for judicial review by way of a doleance claim.
- (3) When quashing an Attorney General's certificate, the High Court must decide the question of whether or not the extradition is barred by reason of forum.

- (4) In deciding that question, sections 29 to 31 and this section apply in relation to the decision (with the appropriate modifications) as they apply to a decision by the High Bailiff.

### 33 Interpretation of sections 29 to 32

- (1) This section applies for the purposes of section 29 to 32 (and this section).

- (2) The following definitions apply —

“**Attorney General’s certificate**” has the meaning given in section 31(1);

“**D**” has the meaning given in section 29(1);

“**extradition offence**” means the offence specified in the request for extradition (including the conduct that constitutes the extradition offence);

“**forum proceedings**” has the meaning given in section 30(1).

- (3) In determining for any purpose whether an offence corresponds to the extradition offence, regard must be had, in particular, to the nature and seriousness of the 2 offences.
- (4) A reference to a formal decision as to the prosecution of D for an offence is a reference to a decision (made after complying with, in particular, any applicable requirement concerning a code of practice) that D should, or should not, be prosecuted for the offence.

### 34 Case where person has not been convicted

- (1) If the High Bailiff is required to proceed under this section in respect of a request to extradite a person to a Part 1 designated territory, the High Bailiff must proceed under section 37 (consideration of human rights).
- (2) If the High Bailiff is required to proceed under this section in respect of a request to extradite a person to a Part 2 designated territory, the High Bailiff must decide whether there is sufficient evidence for the person to stand trial.
- (3) In deciding the question in subsection (2), the High Bailiff may treat a statement made by a person in a document as admissible evidence of a fact if —
  - (a) the statement is made by the person to a constable or to another person charged with the duty of investigating offences or charging offenders; and
  - (b) direct oral evidence by the person of the fact would be admissible.
- (4) In deciding whether to treat a statement made by a person in a document as admissible evidence of a fact, the High Bailiff must in particular have regard to —
  - (a) the nature and source of the document;

- (b) whether or not, having regard to the nature and source of the document and to any other circumstances that appear to the High Bailiff to be relevant, it is likely that the document is authentic;
  - (c) the extent to which the statement appears to supply evidence that would not readily be available if the statement were not treated as being admissible evidence of the fact;
  - (d) the relevance of the evidence that the statement appears to supply to any issue likely to have to be determined by the High Bailiff in deciding the question in subsection (2); and
  - (e) any risk that the admission or exclusion of the statement will result in unfairness to the person whose extradition is sought, having regard in particular to whether it is likely to be possible effectively to challenge the statement if the person making it does not attend to give oral evidence in the proceedings.
- (5) A summary in a document of a statement made by a person must be treated as a statement made by the person in the document for the purposes of subsection (3).
- (6) If the High Bailiff decides the question in subsection (2) in the negative, the High Bailiff must order that the person be discharged.
- (7) If the High Bailiff decides that question in the affirmative, the High Bailiff must proceed under section 37.
- (8) If the High Bailiff is required to proceed under this section and the territory to which extradition is requested is designated for the purposes of this section by order made by the Department —
- (a) the High Bailiff must not decide under subsection (2); and
  - (b) the High Bailiff must proceed under section 37.
- Tynwald procedure for order – affirmative.

### **35 Case where person has been convicted**

- (1) If the High Bailiff is required to proceed under this section, the High Bailiff must decide whether the person was present when convicted.
- (2) If the High Bailiff decides that the person was present when convicted, the High Bailiff must proceed under section 37 (consideration of human rights).
- (3) If the High Bailiff decides that the person was not present when convicted, the High Bailiff must decide whether the person deliberately absented himself or herself from the trial.
- (4) If the High Bailiff decides that the person deliberately absented himself or herself from the trial, the High Bailiff must proceed under section 37.
- (5) If the High Bailiff decides that the person did not deliberately absent himself or herself from the trial, the High Bailiff must decide whether the

- person would be entitled to a retrial or (on appeal) to a review amounting to a retrial.
- (6) If the High Bailiff decides that the person would not be entitled to a retrial or (on appeal) to a review amounting to a retrial, the High Bailiff must order that the person be discharged.
- (7) If —
- (a) the High Bailiff decides that the person would be entitled to a retrial or (on appeal) to a review amounting to a retrial; and
- (b) the designated territory to which extradition is requested is a Part 1 designated territory,
- the High Bailiff must proceed under section 37.
- (8) If —
- (a) the High Bailiff decides that the person would be entitled to a retrial or (on appeal) to a review amounting to a retrial; and
- (b) the designated territory to which extradition is requested is a Part 2 designated territory,
- the High Bailiff must proceed under section 36.
- (9) The High Bailiff must not decide under subsection (7) or subsection (8) that a person would be entitled to a retrial or (on appeal) to a review amounting to a retrial unless, in any proceedings that would allegedly constitute a retrial or review amounting to a retrial —
- (a) the person would have the right to defend himself or herself in person or through legal assistance of his or her own choosing or, if the person does not have sufficient means to pay for legal assistance, the right to be given it free when the interests of justice so require; and
- (b) the person would also have the right to examine witnesses against him or her or to have them examined, and to obtain the attendance and examination of witnesses on his or her own behalf under the same conditions as the witnesses against the person.

### **36 Conviction in person's absence**

- (1) If the High Bailiff is required to proceed under this section, the High Bailiff must decide whether there is sufficient evidence for the person to stand trial.
- (2) In deciding the question in subsection (1), the High Bailiff may treat a statement made by a person in a document as admissible evidence of a fact if —
- (a) the statement is made by the person to a constable or to another person charged with the duty of investigating offences or charging offenders; and

- (b) direct oral evidence by the person of the fact would be admissible.
- (3) A summary in a document of a statement made by a person must be treated as a statement made by the person in the document for the purposes of subsection (2).
- (4) In deciding whether to treat a statement made by a person in a document as admissible evidence of a fact, the High Bailiff must in particular have regard to –
- (a) the nature and source of the document;
  - (b) whether or not, having regard to the nature and source of the document and to any other circumstances that appear to the High Bailiff to be relevant, it is likely that the document is authentic;
  - (c) the extent to which the statement appears to supply evidence that would not readily be available if the statement were not treated as being admissible evidence of the fact;
  - (d) the relevance of the evidence that the statement appears to supply to any issue likely to have to be determined by the High Bailiff in deciding the question in subsection (1); and
  - (e) any risk that the admission or exclusion of the statement will result in unfairness to the person whose extradition is sought, having regard in particular to whether it is likely to be possible effectively to challenge the statement if the person making it does not attend to give oral evidence in the proceedings.
- (5) Except as otherwise provided in this section, in deciding the question in subsection (1), the High Bailiff may admit evidence if (but only if) it would be admissible in criminal proceedings.
- (6) If the High Bailiff decides in the negative the question in subsection (1), the High Bailiff must order that the person be discharged.
- (7) If the High Bailiff decides that question in the affirmative, the High Bailiff must proceed under section 37.
- (8) If the High Bailiff is required to proceed under this section and the territory to which extradition is requested is designated for the purposes of this section by order made by the Department –
- (a) the High Bailiff must not decide under subsection (1); and
  - (b) the High Bailiff must proceed under section 37.

Tynwald procedure for order – affirmative.

### **37 Consideration of human rights**

- (1) If the High Bailiff is required by any of sections 34, 35 or 36 to proceed under this section, the High Bailiff must decide whether the person's extradition would be compatible with the Human Rights Convention rights.



- (2) If the High Bailiff decides the question in subsection (1) in the negative, the High Bailiff must order that the person be discharged.
- (3) If the High Bailiff decides that question in the affirmative, the High Bailiff must send the case to the Attorney General for the Attorney General to decide whether the person is to be extradited.

### **38 Deferral by High Bailiff where person charged with offence in the Island**

- (1) If at any time during the extradition hearing the High Bailiff is informed on behalf of the Attorney General that the person is charged with an offence in the Island, the High Bailiff must adjourn the extradition hearing until —
  - (a) the charge is disposed of;
  - (b) the charge is withdrawn; or
  - (c) proceedings in respect of the charge are otherwise discontinued.
- (2) If a sentence of custody is imposed in respect of the offence in the Island with which the person is charged, the High Bailiff may adjourn the extradition hearing until the person is released from custody pursuant to the sentence (whether on licence or otherwise).
- (3) If, before the High Bailiff adjourns the extradition hearing under subsection (2), the High Bailiff has decided under section 25 whether the person's extradition is barred by reason of the rule against double jeopardy, the High Bailiff must decide that question again after the resumption of the extradition hearing.

### **39 Deferral by High Bailiff where person serving sentence in the Island**

- (1) If at any time during the extradition hearing the High Bailiff is informed on behalf of the Attorney General that the person whose extradition is requested is serving a sentence of custody in the Island, the High Bailiff may adjourn the extradition hearing until the person is released from custody pursuant to the sentence (whether on licence or otherwise).
- (2) In a case where an extradition hearing is adjourned under subsection (1), section 86(1) of the *Summary Jurisdiction Act 1989* has effect as if the references in paragraphs (a) and (b) to 28 clear days were references to 6 months.

### **40 Other requests for extradition**

- (1) If at any time during the extradition hearing, the High Bailiff is informed by or on behalf of the Attorney General —
  - (a) that the Attorney General has received another valid request for the person's extradition to a designated territory;

- (b) that the request has not been disposed of; and
- (c) that the Attorney General has made an order under section 76(2) for further proceedings on the request under consideration by the High Bailiff to be deferred until the other request has been disposed of,

the High Bailiff must remand the person in custody or on bail.

- (2) If the High Bailiff remands the person in custody, the High Bailiff may later grant bail to the person.

#### **41 Consideration of physical or mental condition**

- (1) If at any time in the extradition hearing it appears to the High Bailiff that the condition to which subsection (2) refers is satisfied, the High Bailiff must —
  - (a) order the person's discharge; or
  - (b) adjourn the extradition hearing until it appears to the High Bailiff that the condition to which subsection (2) refers is no longer satisfied.
- (2) The condition to which this subsection refers is that the physical or mental condition of the person is such that it would be unjust or oppressive to extradite the person.

#### **42 Sending of case to Attorney General**

- (1) This section applies if the High Bailiff sends a case to the Attorney General for decision whether a person is to be extradited.
- (2) The High Bailiff must inform the person in ordinary language —
  - (a) that the person has a right to appeal to the High Court; and
  - (b) that if the right of appeal is exercised, the appeal will not be heard until the Attorney General has made the decision.
- (3) However, subsection (2) does not apply if the person has consented under section 73 to his or her extradition.
- (4) The High Bailiff must remand the person in custody or on bail —
  - (a) to await the Attorney General's decision; and
  - (b) to await extradition to the designated territory to which extradition is requested (if the Attorney General orders the person to be extradited).
- (5) If the High Bailiff remands the person in custody, the High Bailiff may later grant bail to the person.

## DIVISION 4 – ATTORNEY GENERAL’S FUNCTIONS

**43 Attorney General’s consideration of case**

- (1) If the High Bailiff sends a case to the Attorney General for a decision as to whether a person is to be extradited, the Attorney General must decide whether he or she is prohibited under –
  - (a) section 44 (death sentence);
  - (b) section 45 (specialty); or
  - (c) section 46 (earlier extradition to the Island from another territory), from ordering the person’s extradition.
- (2) If the Attorney General decides that he or she is so prohibited, the Attorney General must order that the person be discharged.
- (3) If the Attorney General decides that he or she is not so prohibited, the Attorney General must order the person to be extradited to the designated territory to which the person’s extradition is requested unless –
  - (a) the Attorney General is informed that the request has been withdrawn;
  - (b) the Attorney General makes an order under section 76(2) or (3) (competing extradition requests) for further proceedings on the request to be deferred and the person is discharged under section 117; or
  - (c) the Attorney General orders under subsection (7) or under section 129 (national security) that the person be discharged.
- (4) In deciding the questions in subsection (1), the Attorney General is not required to consider any representations received by him or her after the end of the permitted period.
- (5) The permitted period is the period of 4 weeks starting with the appropriate day.
- (6) In the case of a person who has consented to being extradited under section 73, the Attorney General is not required –
  - (a) to wait until the end of the permitted period before ordering the person’s extradition; or
  - (b) to consider any representations received after the order is made.
- (7) The Attorney General may order the person’s discharge if the person –
  - (a) has been recorded by the Secretary of State as a refugee within the meaning of the Refugee Convention; or
  - (b) has been granted leave to enter or remain in the Island or the United Kingdom on the ground that it would be a breach of Article 2 or 3 of the Human Rights Convention to remove the person to the territory to which extradition is requested.

#### 44 Death sentence

- (1) The Attorney General must not order a person's extradition to a designated territory if the person could be, will be or has been sentenced to death for the offence concerned in that designated territory.
- (2) Subsection (1) does not apply if the Attorney General receives a written assurance that a sentence of death —
  - (a) will not be imposed; or
  - (b) if imposed, will not be carried out,and the Attorney General considers that assurance adequate.

#### 45 Specialty

- (1) The Attorney General must not order a person's extradition to a designated territory if there are no specialty arrangements with that designated territory.
- (2) However, subsection (1) does not apply if before the case was sent to the Attorney General, the person had consented under section 73 to being extradited.
- (3) There are specialty arrangements with a designated territory if (but only if) under the law of that designated territory or arrangements made between it and the Island, a person who is extradited to the designated territory from the Island may be dealt with in the designated territory for an offence committed before the person's extradition only if —
  - (a) the offence is one to which subsection (4) refers; or
  - (b) the person is first given an opportunity to leave the designated territory.
- (4) The offences to which this subsection refers are —
  - (a) the offence in respect of which the person is extradited;
  - (b) an extradition offence disclosed by the same facts as that offence, other than one in respect of which a sentence of death could be imposed;
  - (c) an extradition offence in respect of which the Attorney General consents to the person's being dealt with; and
  - (d) an offence in respect of which the person waives the right that he or she would otherwise have had not to be dealt with for the offence.
- (5) Arrangements made with a designated territory that is a Commonwealth country or a British overseas territory may be made —
  - (a) for a particular case;
  - (b) for a particular class or particular classes of case; or
  - (c) generally, in respect of all cases.

- (6) A certificate issued by or under the authority of the Attorney General confirming the existence of arrangements with a designated territory that is a Commonwealth country or a British overseas territory and stating the terms of the arrangements is conclusive evidence of those matters.

#### **46 Earlier extradition to the Island from another territory**

The Attorney General must not order a person's extradition to a designated territory if —

- (a) the person was extradited to the Island from another territory ("the extraditing territory");
- (b) under arrangements existing between the Island and the extraditing territory, that territory's consent is required to the person's extradition from the Island to the designated territory in respect of the extradition offence under consideration; and
- (c) that consent has not been given on behalf of the extraditing territory.

#### **47 Deferral by Attorney General where person charged with offence in the Island**

- (1) If the High Bailiff sends a case to the Attorney General for a decision as to whether a person is to be extradited, and the person is charged with an offence in the Island, the Attorney General must not make a decision with regard to the person's extradition until —
  - (a) the charge is disposed of;
  - (b) the charge is withdrawn; or
  - (c) proceedings in respect of the charge are otherwise discontinued.
- (2) If a sentence of custody is imposed in respect of the offence in the Island with which the person is charged, the Attorney General may defer making a decision with regard to the person's extradition until the person is released from custody pursuant to the sentence (whether on licence or otherwise).

#### **48 Deferral by Attorney General where person serving sentence in the Island**

If —

- (a) the High Bailiff sends a case to the Attorney General for a decision as to whether a person is to be extradited; and
- (b) the person is serving a sentence of custody in the Island,

the Attorney General may defer making a decision with regard to the person's extradition until the person is released from custody pursuant to the sentence (whether on licence or otherwise).

**49 Time limit for order for extradition or discharge**

- (1) If —
  - (a) the High Bailiff sends a case to the Attorney General for a decision whether a person is to be extradited;
  - (b) within the period of 2 months starting on the appropriate day, the Attorney General does not make an order for the person's extradition or discharge; and
  - (c) the person applies to the High Bailiff to be discharged,the High Bailiff must order that the person be discharged.
- (2) The High Bailiff may, on an application made by the Attorney General before the end of the period specified in subsection (1)(b), extend that period from time to time.

**50 Information to be given by Attorney General**

- (1) If the Attorney General orders a person's extradition under this Part, the Attorney General must —
  - (a) inform the person of the order;
  - (b) inform the person in ordinary language that he or she has a right of appeal to the High Court; and
  - (c) inform any person who is acting on behalf of the designated territory concerned that the Attorney General has made the order.
- (2) However, the requirement to inform a person of his or her right of appeal does not apply if the person has consented under section 73 to being extradited.
- (3) If the Attorney General —
  - (a) orders a person's extradition under this Part; and
  - (b) has received in respect of the matter an assurance to which section 44(2) (death sentence) refers,the Attorney General must give the person a copy of the assurance when informing the person of the order under subsection (1).
- (4) If the Attorney General orders that a person be discharged, the Attorney General must inform —
  - (a) the person; and
  - (b) a person acting on behalf of the designated territory concerned,that the Attorney General has made the order.

**51 Making of order for extradition or discharge**

An order —

- (a) under section 43 (Attorney General's consideration of case) for a person's extradition; or
  - (b) under section 43 or section 71 (withdrawal of request after case sent to Attorney General) that a person be discharged,
- must be made in writing, and signed by the Attorney General.

#### DIVISION 5 – APPEALS

### **52 Appeal against sending of case to Attorney General**

- (1) A person may appeal to the High Court against a decision of the High Bailiff resulting in the case being sent to the Attorney General for a decision as to whether the person is to be extradited.
- (2) However, subsection (1) does not apply if the person consented under section 73 to being extradited before the case was sent to the Attorney General.
- (3) An appeal under this section may be brought on a question of law or fact but lies only with the leave of the High Court.
- (4) If an appeal is brought under this section before the Attorney General has decided whether the person is to be extradited, the appeal must not be heard until the Attorney General has made that decision.
- (5) No appeal may be brought or proceeded with under this section if the Attorney General has ordered that the person be discharged.
- (6) If notice of an appeal under section 59 against the decision that resulted in the order for the person's discharge is given in accordance with subsection (4) of that section –
  - (a) subsection (5) does not apply; and
  - (b) no appeal may be brought under this section if the High Court has made its decision on the appeal.
- (7) Notice of an appeal under this section must be given in accordance with rules of court before the end of the period of 14 days starting with the day on which the Attorney General informs the person under section 50(1) that the Attorney General has ordered the person's extradition ("the permitted period").
- (8) But where a person gives notice of application for leave to appeal after the end of the permitted period, the High Court must not for that reason refuse to entertain the application if the person did everything reasonably possible to ensure that the notice was given as soon as it could be given.

### **53 High Court's powers on appeal against sending of case to Attorney General**

- (1) On an appeal under section 52, the High Court may –

- (a) allow the appeal;
  - (b) direct the High Bailiff to decide again any question or questions that the High Bailiff decided at the extradition hearing; or
  - (c) dismiss the appeal.
- (2) The High Court may allow the appeal only on the ground specified in subsection (3) or the ground specified in subsection (4).
- (3) The ground to which this subsection refers is —
- (a) that the High Bailiff ought to have decided a question before the High Bailiff at the extradition hearing differently; and
  - (b) that if the High Bailiff had decided the question in the way in which the High Bailiff ought to have decided it, the High Bailiff would have been required to order that the person be discharged.
- (4) The ground to which this subsection refers is —
- (a) that an issue is raised that was not raised at the extradition hearing, or that evidence is available that was not available at the extradition hearing;
  - (b) that the issue or evidence would have resulted in the High Bailiff's deciding differently a question before the High Bailiff at the extradition hearing; and
  - (c) that if the High Bailiff had decided the question in that different way, the High Bailiff would have been required to order that the person be discharged.
- (5) If the High Court allows the appeal, it must —
- (a) order that the person be discharged; and
  - (b) quash the order for the person's extradition.
- (6) Where, on an appeal under section 52, the High Court has directed the High Bailiff to decide any question again, and the High Bailiff does so —
- (a) if the High Bailiff comes to a different decision on any such question than at the extradition hearing, the High Bailiff must order that the person be discharged; and
  - (b) if the High Bailiff does not come to a different decision on any such question than at the extradition hearing, the appeal must be taken to have been dismissed by a decision of the High Court.
- (7) If the High Court makes a direction under subsection (1)(b) it must remand the person in custody or on bail, and if it remands the person in custody it may later grant bail.

#### **54 Appeal against discharge by High Bailiff**

- (1) An appeal on behalf of the designated territory concerned may be brought to the High Court against a decision of the High Bailiff at an extradition



hearing that results in the High Bailiff's ordering that a person be discharged.

- (2) However, subsection (1) does not apply if the order that the person be discharged was made under section 70 (withdrawal of extradition request before end of extradition hearing).
- (3) An appeal under this section may be brought on a question of law or fact but lies only with the leave of the High Court.
- (4) Notice of an appeal under this section must be given in accordance with rules of court before the end of the period of 14 days starting with the day on which the order for the person's discharge is made.

### **55 High Court's powers on appeal against discharge by High Bailiff**

- (1) On an appeal under section 54, the High Court may —
  - (a) allow the appeal;
  - (b) direct the High Bailiff to decide the relevant question again; or
  - (c) dismiss the appeal.
- (2) A question is the relevant question if the High Bailiff's decision on it resulted in the order that the person be discharged.
- (3) The High Court may allow the appeal only on the ground specified in subsection (4) or the ground specified in subsection (5).
- (4) The ground to which this subsection refers is —
  - (a) that the High Bailiff ought to have decided the relevant question differently; and
  - (b) that if the High Bailiff had decided that question in the way in which it ought to have been decided, the High Bailiff would not have been required to order that the person be discharged.
- (5) The ground to which this subsection refers is —
  - (a) that an issue is raised that was not raised at the extradition hearing, or that evidence is available that was not available at the extradition hearing;
  - (b) that the issue or evidence would have resulted in the High Bailiff's deciding the relevant question differently; and
  - (c) that if the High Bailiff had decided that question in that way, the High Bailiff would not have been required to order that the person be discharged.
- (6) If the High Court allows the appeal, it must —
  - (a) quash the order that the person be discharged;
  - (b) remit the case to the High Bailiff; and

- (c) direct the High Bailiff to proceed as required if the High Bailiff had decided the relevant question differently at the extradition hearing.
- (7) Where, on an appeal under section 54, the High Court has directed the High Bailiff to decide the relevant question again, and the High Bailiff does so —
  - (a) if the High Bailiff comes to a different decision on that question than at the extradition hearing, the High Bailiff must proceed as would have been required if the High Bailiff had decided that question in that different way at the extradition hearing; and
  - (b) if the High Bailiff does not come to a different decision on that question than at the extradition hearing, the appeal must be taken to have been dismissed by a decision of the High Court.
- (8) If the High Court —
  - (a) allows the appeal; or
  - (b) makes a direction under subsection (1)(b),
 it must remand the person in custody or on bail, and if it remands the person in custody it may later grant bail.

## **56 Detention pending conclusion of appeal against discharge by High Bailiff**

- (1) If, immediately after the High Bailiff orders that a person be discharged, the High Bailiff is informed on behalf of the designated territory concerned of an intention to appeal under section 54, the High Bailiff must remand the person in custody or on bail while the appeal is pending.
- (2) If the High Bailiff remands the person in custody, the High Bailiff may later grant bail to the person.
- (3) An appeal under section 54 is pending until —
  - (a) proceedings in respect of the appeal are discontinued;
  - (b) the High Court allows the appeal, makes a direction under section 55(1)(b) or dismisses the appeal and the circumstances to which subsection (4) refers apply;
  - (c) the end of the period of 28 days starting with the day on which leave to appeal to the Privy Council, against the decision of the High Court on the appeal, is granted, if no appeal to the Privy Council is brought before the end of that period; or
  - (d) no further step can be taken on behalf of the designated territory in relation to the appeal unless a court grants leave to take a step out of time,
 whichever occurs first.
- (4) The circumstances to which this subsection refers are that on the dismissing of the appeal by the High Court the High Court is not

immediately informed on behalf of the designated territory of an intention to apply for leave to appeal to the Privy Council.

### **57 Appeal against extradition order by Attorney General**

- (1) A person may appeal to the High Court against a decision by the Attorney General ordering the person's extradition.
- (2) However, subsection (1) does not apply if the person has consented to being extradited under section 73.
- (3) An appeal under this section may be brought on a question of law or fact but lies only with the leave of the High Court.
- (4) Notice of an application for leave to appeal under this section must be given in accordance with rules of court before the end of the period of 14 days starting with the day on which the Attorney General informs the person under section 50(1) that the Attorney General has ordered the person's extradition ("the permitted period").
- (5) Notice of an application for leave to appeal under this section may be given after the end of the permitted period if it is an appeal on human rights grounds.
- (6) Notice of an application for leave to appeal on human rights grounds given after the end of the permitted period must be given before the person is extradited to the designated territory in accordance with section 65.
- (7) Where notice of an application for leave to appeal is given in accordance with subsections (5) and (6), the High Court must grant leave only if it appears to the High Court that –
  - (a) the appeal is necessary to avoid real injustice; and
  - (b) the circumstances are exceptional and make it appropriate to consider the appeal.
- (8) Where a person gives notice of application for leave to appeal after the end of the permitted period (whether or not the application is for leave to appeal on human rights grounds), the High Court must not for that reason refuse to entertain the application if the person did everything reasonably possible to ensure that the notice was given as soon as it could be given.
- (9) In this section, "to appeal on human rights grounds" means to appeal against the order for the person's extradition on the grounds (and only on the grounds) that the extradition would not be compatible with the Human Rights Convention rights.

**58 High Court's powers on appeal against extradition order by Attorney General**

- (1) On an appeal under section 57, the High Court may allow or dismiss the appeal.
- (2) The High Court may allow the appeal only on the ground specified in subsection (3) or the ground specified in subsection (4).
- (3) The ground to which this subsection refers is —
  - (a) that the Attorney General ought to have decided a question before him or her differently; and
  - (b) that if the Attorney General had decided the question in the way in which it ought to have been decided, he or she would not have ordered the person's extradition.
- (4) The ground to which this subsection refers is —
  - (a) that an issue is raised that was not raised when the case was being considered by the Attorney General, or information is available that was not available at that time;
  - (b) that the issue or information would have resulted in the Attorney General's deciding a question before him or her differently; and
  - (c) that if the Attorney General had decided the question in that way, he or she would not have ordered the person's extradition.
- (5) If the High Court allows the appeal, it must —
  - (a) order that the person be discharged; and
  - (b) quash the order for the person's extradition.

**59 Appeal against discharge by Attorney General**

- (1) An appeal to the High Court may be brought on behalf of the designated territory concerned against a decision by the Attorney General that results in the Attorney General ordering that a person be discharged.
- (2) However, subsection (1) does not apply if the order that the person be discharged was made under section 71 (withdrawal of extradition request after case sent to Attorney General).
- (3) An appeal under this section may be brought on a question of law or fact but lies only with the leave of the High Court.
- (4) Notice of an application for leave to appeal under this section must be given in accordance with rules of court before the end of the period of 14 days starting with the day on which under section 50(4) the Attorney General informs a person acting on behalf of the designated territory that the order has been made.

**60 High Court's powers on appeal against discharge by Attorney General**

- (1) On an appeal under section 59, the High Court may —
  - (a) allow the appeal; or
  - (b) dismiss the appeal.
- (2) The High Court may allow the appeal only on the ground specified in subsection (3) or the ground specified in subsection (4).
- (3) The ground to which this subsection refers is —
  - (a) that the Attorney General ought to have decided a question before him or her differently; and
  - (b) that if the Attorney General had decided the question in the way in which it ought to have been decided, the Attorney General would have ordered the person's extradition.
- (4) The ground to which this subsection refers is —
  - (a) that an issue is raised that was not raised when the case was being considered by the Attorney General, or information is available that was not available at that time;
  - (b) that the issue or information would have resulted in the Attorney General deciding a question before him or her differently; and
  - (c) if the Attorney General had so decided the question, he or she would have ordered the person's extradition.
- (5) If the High Court allows the appeal, it must —
  - (a) quash the order that the person be discharged; and
  - (b) order the person's extradition.
- (6) If the High Court allows the appeal, it must remand the person in custody or on bail, and if it remands the person in custody it may later grant bail.

**61 Detention pending conclusion of appeal against discharge by Attorney General**

- (1) In a case where the Attorney General orders the person's discharge under this Part —
  - (a) the order made by the High Bailiff under section 42(4) ("the remand order") remains in force until the end of the period of 3 days beginning with the day on which the person's discharge is ordered; and
  - (b) if within that period the Attorney General is informed in writing on behalf of the designated territory of an intention to appeal under section 59, the remand order remains in force while the appeal is pending.
- (2) If the High Bailiff remands the person in custody, the High Bailiff may later grant bail to the person.

- (3) An appeal under section 59 is pending until —
- (a) proceedings in respect of the appeal are discontinued;
  - (b) the High Court allows the appeal or dismisses the appeal and the circumstances to which subsection (4) refers apply;
  - (c) the end of the period of 28 days starting with the day on which leave to appeal to the Privy Council, against the decision of the High Court on the appeal, is granted, if no appeal to the Privy Council is brought before the end of that period; or
  - (d) no further step can be taken on behalf of the designated territory in relation to the appeal unless a court grants leave to take a step out of time,
- whichever occurs first.
- (4) The circumstances to which this subsection refers are that on the dismissing of the appeal by the High Court, the High Court is not immediately informed on behalf of the designated territory of an intention to apply for leave to appeal to the Privy Council.

## **62 Time limit for start of hearing of appeal**

- (1) Rules of court must prescribe the period within which the High Court must begin to hear an appeal under any of sections 52, 54, 57 and 59.
- (2) The High Court may from time to time extend the period in a particular case, if the High Court believes that it is in the interests of justice to do so.
- (3) The High Court must begin to hear the appeal before the end of the period.
- (4) If subsection (3) is not complied with and the appeal is under section 52 or section 57 —
- (a) the appeal must be taken to have been allowed by a decision of the High Court;
  - (b) the person whose extradition has been ordered must be taken to have been discharged by order of the High Court; and
  - (c) the order for the person's extradition must be taken to have been quashed by the High Court.
- (5) If subsection (3) is not complied with and the appeal is under section 54 or section 59, the appeal must be taken to have been dismissed by a decision of the High Court.

## **63 Detention pending conclusion of certain appeals**

- (1) If, immediately after ordering a person's discharge on an appeal under section 54 or section 59, the High Court is informed on behalf of the designated territory of its intention to appeal to the Privy Council under section 24 of the *High Court Act 1991*, the High Court must remand the

person in custody or on bail while the appeal is pending, and if it remands the person in custody it may later grant bail.

- (2) The appeal is pending until —
- (a) proceedings in respect of the appeal are discontinued;
  - (b) the end of the period of 28 days starting with the day on which leave to appeal to the Privy Council, against the decision of the High Court on the appeal under section 54 or section 59, is granted, if no appeal to the Privy Council is brought before the end of that period; or
  - (c) no further step can be taken on behalf of the designated territory in relation to the appeal unless a court grants leave to take a step out of time,
- whichever occurs first.

#### **64 Appeal to be only remedy**

A decision of the High Bailiff or the Attorney General under this Part may be questioned in legal proceedings only by means of an appeal under this Part.

### **DIVISION 6 — TIME LIMIT FOR EXTRADITION**

#### **65 Time limit for extradition if there is no appeal**

- (1) This section applies if the Attorney General orders a person's extradition to a designated territory and —
- (a) no notice of an appeal under section 52 or section 57 is given before the end of the period of 14 days starting with the day on which the Attorney General informs the person under section 50(1) that the Attorney General has ordered the person's extradition; or
  - (b) notice is given during that period but the High Court refuses leave to appeal.
- (2) The person must be extradited to the designated territory before the end of the period of 28 days starting with —
- (a) the day on which the Attorney General makes the extradition order (where subsection (1)(a) applies and no order is made under section 67 or section 68);
  - (b) the day on which the decision of the High Court refusing leave to appeal to it becomes final (where subsection (1)(b) applies and no order is made under section 67 or section 68); or
  - (c) the earliest day on which the extradition order may be carried out (where an order is made under section 67 or section 68).

- (3) The decision of the High Court refusing leave to appeal becomes final when, in accordance with rules of court, there is no further step that can be taken in relation to the application for leave to appeal.
- (4) If subsection (2) is not complied with and the person applies to the High Bailiff to be discharged, the High Bailiff must order that the person be discharged, unless reasonable cause is shown for the delay.
- (5) For the purposes of subsections (1) to (3) —
  - (a) any power of a court to extend the period permitted for giving notice of appeal; and
  - (b) any power of a court to grant leave to take a step out of time, must be disregarded.
- (6) If leave to appeal to the High Court is granted on an application notice of which was given after the end of the period of 14 days commencing on the day on which the Attorney General informs the person under section 50(1) that the Attorney General has ordered the person's extradition, this section ceases to apply (but section 66 applies instead).
- (7) This section is subject to section 69.

## **66 Time limit for extradition if there is an appeal**

- (1) If —
  - (a) there is an appeal to the High Court under any of sections 52, 57 and 59 against a decision or order relating to a person's extradition to a designated territory; and
  - (b) the effect of the decision of the relevant court on appeal is that the person is to be extradited there,the person must be extradited to the designated territory before the end of the required period.
- (2) The required period is 28 days starting with —
  - (a) the day on which the decision of the relevant court on appeal becomes final; or
  - (b) the day on which further proceedings on appeal are discontinued.
- (3) But if the day referred to in paragraph (a) or (b) of subsection (2) is earlier than the earliest day on which, by reason of an order under section 67 or 68, the extradition order may be carried out ("the postponed date"), the required period is 28 days beginning with the postponed date.
- (4) The relevant court on appeal is —
  - (a) the High Court, if there is no further appeal to the Privy Council against the decision on the appeal to the High Court, or proceedings on any further appeal to the Privy Council are discontinued; or



- (b) the Privy Council, if there is a further appeal to the Privy Council and proceedings on that further appeal are not discontinued.
- (5) The decision of the High Court becomes final —
  - (a) at the end of the period for applying to the High Court for leave to appeal to the Privy Council under section 24 of the *High Court Act 1991*, if there is no application to the High Court for leave;
  - (b) at the end of the period permitted for applying to the Privy Council for leave to appeal, if the High Court refuses leave to appeal and there is no further application for leave;
  - (c) if the Privy Council refuses leave to appeal; or
  - (d) if the time limit for bringing an appeal is not complied with.
- (6) The decision of the Privy Council becomes final when it is made.
- (7) If—
  - (a) subsection (1) is not complied with; and
  - (b) the person applies to the High Bailiff to be discharged,the High Bailiff must order that the person be discharged, unless reasonable cause is shown for the delay.
- (8) For the purposes of subsection (5) —
  - (a) any power of a court to extend the period permitted for giving notice of appeal; and
  - (b) any power of a court to grant leave to take a step out of time, must be disregarded.
- (9) This section is subject to section 69.

**67 High Bailiff informed after extradition order that person is charged with offence in the Island**

- (1) This section applies if —
  - (a) the Attorney General has ordered a person's extradition; and
  - (b) before the extradition order is carried out the High Bailiff is informed that the person is charged with an offence in the Island.
- (2) The High Bailiff must order the extradition order not to be carried out until one of these occurs —
  - (a) the charge is disposed of;
  - (b) the charge is withdrawn;
  - (c) proceedings in respect of the charge are discontinued.
- (3) If a sentence of custody is imposed in respect of the offence charged, the High Bailiff may order the extradition order not to be carried out until the

person is released from custody pursuant to the sentence (whether on licence or otherwise).

- (4) Rules of court may provide that where there is an appeal against the extradition order —
  - (a) a reference in this section to the High Bailiff has effect, in prescribed circumstances, as if it were a reference to the High Court; and
  - (b) this section has effect with any other prescribed modifications.

## **68 High Bailiff informed after extradition order that person is serving sentence in the Island**

- (1) This section applies if —
  - (a) the Attorney General has ordered a person's extradition; and
  - (b) before the extradition order is carried out the High Bailiff is informed that the person is serving a sentence of custody in the Island.
- (2) The High Bailiff may order the extradition order not to be carried out until the person is released from custody pursuant to the sentence (whether on licence or otherwise).
- (3) Rules of court may provide that where there is an appeal against the extradition order —
  - (a) a reference in this section to the High Bailiff has effect, in prescribed circumstances, as if it were a reference to the High Court; and
  - (b) this section has effect with any other prescribed modifications.

## **69 Undertaking in relation to person serving sentence in the Island**

- (1) If—
  - (a) the Attorney General orders a person's extradition to a designated territory; and
  - (b) the person is serving a sentence of custody in the Island either —
    - (i) in custody; or
    - (ii) on licence,

the Attorney General may make the order for extradition subject to the condition that extradition is not to take place before the Attorney General receives an undertaking given on behalf of the designated territory in terms specified by the Attorney General.

- (2) The terms that may be specified by the Attorney General in relation to a person serving a sentence in circumstances covered by subsection (1)(b)(i) and accused in a designated territory of the commission of an offence include terms —

- (a) that the person be kept in custody until the conclusion of the proceedings against the person for the offence and any other offence in respect of which the person is permitted to be dealt with in the designated territory; and
  - (b) that the person be returned to the Island on the conclusion of those proceedings to serve the remainder of his or her sentence.
- (3) The terms that may be specified by the Attorney General in relation to a person serving a sentence in circumstances covered by subsection (1)(b)(ii) and accused in a designated territory of the commission of an offence include terms that the person be returned to the Island to serve the remainder of his or her sentence after serving any sentence imposed on the person in the designated territory for –
  - (a) the offence; and
  - (b) any other offence in respect of which the person is permitted to be dealt with in the designated territory.
- (4) The terms that may be specified by the Attorney General in relation to a person alleged to be unlawfully at large after conviction of an offence by a court in a designated territory include terms that the person be returned to the Island to serve the remainder of his or her sentence after serving any sentence imposed on that person in the designated territory for –
  - (a) the offence; and
  - (b) any other offence in respect of which the person is permitted to be dealt with in the designated territory.
- (5) Subsections (6) and (7) apply if the Attorney General makes an order for extradition subject to a condition under subsection (1).
- (6) If the Attorney General does not receive the undertaking before the end of the period of 21 days starting with the day on which he or she makes the order, and the person applies to the High Court to be discharged, the High Court must order that the person be discharged.
- (7) If the Attorney General receives the undertaking before the end of that period –
  - (a) in a case where section 65 (time limit for extradition if there is no appeal) applies, the period of 28 days specified in section 65(3) for the person's extradition to the designated territory concerned starts with the day on which the Attorney General receives the undertaking; and
  - (b) in a case where section 66 (time limit for extradition if there is an appeal) applies, the period of 28 days specified in section 66(2) for the person's extradition to the designated territory concerned starts with the day on which the decision on the appeal becomes final (within the meaning of that section) or the day on which the Attorney General receives the undertaking, whichever is later.

## DIVISION 7 — WITHDRAWAL OF EXTRADITION REQUEST

**70 Withdrawal of request before end of extradition hearing before High Bailiff**

- (1) If, at any time in the period to which subsection (2) refers, the High Bailiff is informed by the Attorney General that a request for a person's extradition has been withdrawn, the High Bailiff must order that the person be discharged.
- (2) The period to which this subsection refers is the period —
  - (a) starting when the person first appears or is brought before the High Bailiff following the person's arrest; and
  - (b) ending when the High Bailiff orders the person to be discharged or sends the case to the Attorney General for a decision as to whether the person is to be extradited.
- (3) If the person is not before the High Bailiff at the time when the High Bailiff orders that the person be discharged, the High Bailiff must inform the person of the order as soon as practicable.

**71 Withdrawal of request after case sent to Attorney General**

If at any time in the period —

- (a) starting when the High Bailiff sends the case to the Attorney General for a decision as to whether the person is to be extradited; and
- (b) ending when the person is extradited in pursuance of the request for extradition or is discharged,

the Attorney General is informed that the request for the person's extradition has been withdrawn, the Attorney General must order that the person be discharged.

**72 Withdrawal of request while application or appeal pending**

- (1) This section applies if at any time in the relevant period the High Court is informed by the Attorney General that a request for a person's extradition has been withdrawn.
- (2) The relevant period is the period —
  - (a) starting when notice of application for leave to appeal to the High Court is given by the person whose extradition is requested or by a person acting on behalf of the designated territory to which the person's extradition is requested;
  - (b) ending with the relevant day.
- (3) "The relevant day" is —

- (a) if the High Court refuses leave to appeal to it, the day on which the decision to refuse leave becomes final;
  - (b) if leave to appeal is given but proceedings on the appeal are discontinued, the day of discontinuance;
  - (c) if leave to appeal is given and proceedings on the appeal are not discontinued, the day on which the High Court makes its decision on the appeal.
- (4) For the purposes of subsection (3)(a), the decision to refuse leave becomes final when, in accordance with rules of court, there is no further step that can be taken in relation to the application for leave to appeal (ignoring any power of a court to grant leave to take a step out of time).
  - (5) If the application or appeal is under section 52 or section 57 (appeals by persons whose extradition is requested), the High Court must –
    - (a) order the person's discharge; and
    - (b) quash the order for the person's extradition, if the Attorney General has so ordered.
  - (6) If the application or appeal is under section 54 or section 59 (appeals against discharge of persons whose extradition is requested), the High Court must dismiss the application or appeal.
  - (7) If the person is not before the High Court at the time when the High Court orders that the person be discharged, the High Court must inform the person of the order as soon as practicable.

#### DIVISION 8 – CONSENT TO EXTRADITION

### **73 General provisions as to consent to extradition**

- (1) A person arrested under a warrant issued under section 14 may consent to being extradited to the designated territory to which extradition is requested in relation to one or more offences contained within the extradition request.
- (2) A person arrested under a provisional warrant may consent to being extradited in relation to one or more offences contained within the extradition request to the designated territory in which the person is accused of the commission of an offence or is alleged to have been convicted of an offence.
- (3) Consent under this section must be given in writing, and is irrevocable.

### **74 Consent to extradition before case sent to Attorney General**

- (1) If a person consents under section 73 to being extradited before the person's case is sent to the Attorney General for a decision as to whether

the person is to be extradited, the consent must be given to the High Bailiff, in a manner to be prescribed by rules of court.

- (2) However, a person may not give consent under this section unless —
  - (a) the person has the assistance of an advocate to represent him or her before the High Bailiff; or
  - (b) the person has refused or failed to apply for legal aid (despite being informed of the right to apply for it and being given the opportunity to do so), or his or her application for legal aid has been refused, or legal aid has been withdrawn.
- (3) If the High Bailiff has not under section 18 or section 19 fixed a date on which the extradition hearing is to begin, the High Bailiff is not required to do so unless there are other offences contained within the extradition request in relation to which the person has not consented to his or her extradition.
- (4) If the extradition hearing has begun, the High Bailiff is no longer required to proceed or continue proceeding under any of sections 23 to 41 (relating to the extradition hearing) unless there are other offences contained within the extradition request in relation to which the person has not consented to his or her extradition.
- (5) The High Bailiff must send the case to the Attorney General for a decision as to whether the person is to be extradited.
- (6) The person must be taken to have waived any right that he or she would have (apart from the consent) not to be dealt with in the designated territory for an offence committed before the person's extradition if the person has consented to his or her extradition in relation to every offence contained within the extradition request.

## **75 Consent to extradition after case sent to Attorney General**

If a person consents to being extradited under section 73 after the person's case is sent to the Attorney General for a decision as to whether the person is to be extradited, the consent must be given to the Attorney General.

### **DIVISION 9 – COMPETING EXTRADITION REQUESTS**

## **76 Competing extradition requests**

- (1) This section applies if —
  - (a) the Attorney General receives a valid request for a person's extradition to a designated territory;
  - (b) the person is in the Island; and

- (c) before the person is extradited in pursuance of the request or discharged, the Attorney General receives another valid request for the person's extradition.
- (2) If neither of the requests has been disposed of, the Attorney General may order proceedings (or further proceedings) on one of the requests to be deferred until the other request has been disposed of.
- (3) If an order for a person's extradition has been made in pursuance of the request under consideration, the Attorney General may order the person's extradition in pursuance of that request to be deferred until the other request has been disposed of.
- (4) In applying this section, the Attorney General must take account of —
  - (a) the relative seriousness of the offences concerned;
  - (b) the place where each offence was committed (or was alleged to have been committed);
  - (c) the date when each request was received; and
  - (d) whether, in the case of each offence, the person is alleged to be accused of its commission (but not convicted of the offence), or is alleged to be unlawfully at large after conviction of the offence.

#### DIVISION 10 — POST-EXTRADITION MATTERS

### 77 Consent to dealing with another offence

- (1) This section applies if —
  - (a) a person is extradited to a designated territory; and
  - (b) the Attorney General receives a valid request to give consent to the person's being dealt with in the designated territory for an offence other than the offence in respect of which the person was extradited.
- (2) A request for consent is valid if it is made by an authority of the designated territory, and the Attorney General believes that the authority has the function in that designated territory of making requests for the consent to which subsection (1)(b) refers.
- (3) The Attorney General must serve on the person notice of receipt of the request for consent, unless the Attorney General is satisfied that it would be impracticable to do so.
- (4) The Attorney General must decide whether the offence is an extradition offence.
- (5) If the Attorney General decides that the offence is not an extradition offence, the Attorney General must refuse to give consent.
- (6) If the Attorney General decides that the offence is an extradition offence, the Attorney General must decide whether the High Bailiff would send

the case to the Attorney General under sections 24 to 41 for the Attorney General's decision whether the person should be extradited if —

- (a) the person were in the Island; and
  - (b) the High Bailiff were required to proceed under section 24 (bars to extradition) in respect of the offence for which the Attorney General's consent is requested.
- (7) If the Attorney General decides the question in subsection (6) in the negative, the Attorney General must refuse to give consent.
- (8) If the Attorney General decides that question in the affirmative, the Attorney General must decide whether, if the person were in the Island, the person's extradition in respect of the offence would be prohibited under any of sections 44, 45 and 46.
- (9) If the Attorney General decides the question in subsection (8) in the affirmative, the Attorney General must refuse to give consent.
- (10) If the Attorney General decides that question in the negative, the Attorney General may give consent.

## **78 Consent to further extradition to designated territory**

- (1) This section applies if —
- (a) a person is extradited to a designated territory ("the requesting territory"); and
  - (b) the Attorney General receives a valid request to give consent to the person's extradition to another designated territory for an offence other than the offence in respect of which the person was extradited.
- (2) A request for consent is valid if it is made by an authority that is an authority of the requesting territory, and the Attorney General believes that the authority has the function in that territory of making requests for the consent to which subsection (1)(b) refers.
- (3) The Attorney General must serve notice on the person that the Attorney General has received the request for consent, unless the Attorney General is satisfied that it would be impracticable to do so.
- (4) The Attorney General must decide whether the offence is an extradition offence in relation to the designated territory to which subsection (1)(b) refers.
- (5) If the Attorney General decides that the offence is not an extradition offence, the Attorney General must refuse to give consent.
- (6) If the Attorney General decides that the offence is an extradition offence, the Attorney General must decide whether the High Bailiff would send the case to the Attorney General under sections 24 to 41 for the Attorney General's decision whether the person should be extradited if —



- (a) the person were in the Island; and
  - (b) the High Bailiff were required to proceed under section 24 (bars to extradition) in respect of the offence for which the Attorney General's consent is requested.
- (7) If the Attorney General decides the question in subsection (6) in the negative, the Attorney General must refuse to give consent.
- (8) If the Attorney General decides that question in the affirmative, the Attorney General must decide whether, if the person were in the Island, the person's extradition in respect of the offence would be prohibited under any of sections 44, 45 and 46.
- (9) If the Attorney General decides the question in subsection (8) in the affirmative, the Attorney General must refuse to give consent.
- (10) If the Attorney General decides that question in the negative, the Attorney General may give consent.

#### **79 Return of person to the Island to serve remainder of sentence**

- (1) This section applies to a person who —
- (a) is serving a sentence of custody in the Island;
  - (b) is extradited to a designated territory;
  - (c) is subsequently returned to the Island to serve the remainder of that sentence; and
  - (d) is not yet entitled to be released from custody pursuant to his or her sentence (whether on licence or otherwise).
- (2) A person to whom this section applies is liable to be detained in pursuance of the person's sentence.
- (3) If the person is at large, he or she must be treated as being unlawfully at large.
- (4) Time during which, as a result of his or her extradition, the person was not in the Island does not count as time served by the person as part of his or her sentence.
- (5) However, subsection (4) does not apply if —
- (a) the person was extradited for the purpose of being prosecuted for an offence; and
  - (b) he or she has not been convicted of the offence or of any other offence in respect of which the person was permitted to be dealt with in the designated territory.
- (6) In a case to which subsection (5) refers, time during which as a result of his or her extradition the person was not in the Island counts as time served by the person as part of his or her sentence if (but only if) it was spent in custody in connection with the offence or any other offence in

respect of which he or she was permitted to be dealt with in the designated territory.

- (7) In a case where the person is entitled to be released from detention on licence pursuant to the sentence —
- (a) if the person was released on licence at the time of extradition, the licence is suspended until the person's return;
  - (b) if the person was not released on licence at that time, subsections (8) to (10) apply in relation to the person ("the offender").
- (8) On return, the offender is liable to custody.
- (9) A constable may take the offender into custody.
- (10) The offender must be released on licence within the period of 5 days beginning when the offender is taken (or retaken) into custody under this section.

#### DIVISION 11 — COSTS

### 80 Costs where extradition ordered

- (1) If —
- (a) an order for a person's extradition is made under this Part;
  - (b) the High Court dismisses an appeal under section 52 or section 57; or
  - (c) the High Court dismisses an application by the person for leave to appeal to the Privy Council under section 24 of the *High Court Act 1991*,
- the appropriate authority may make such order as to costs as that authority considers just and reasonable with regard to the costs to be paid by the person.
- (2) In subsection (1), "appropriate authority" means —
- (a) in a case falling within subsection (1)(a), the High Bailiff;
  - (b) in a case falling within subsection (1)(b) by virtue of section 53(6)(b), the High Bailiff;
  - (c) in any other case, the High Court.
- (3) An order for costs under this section —
- (a) must specify their amount;
  - (b) may name the person to whom they are to be paid.

### 81 Costs where discharge ordered

- (1) If —
- (a) an order for a person's discharge is made under this Part;

- (b) the person is taken to be discharged under this Part;
- (c) the High Court dismisses an appeal under section 54 or section 59;  
or
- (d) the High Court dismisses an application by a designated territory for leave to appeal to the Privy Council under section 24 of the *High Court Act 1991*,

the appropriate authority may make an order in favour of the person, to be paid out of money provided by Tynwald, of such amount as that authority considers reasonably sufficient to compensate the person in whose favour the order is made for any expenses properly incurred by the person in proceedings under this Part.

- (2) However, if the appropriate authority considers that there are circumstances that make it inappropriate that the person in whose favour the order is made should recover the full amount mentioned in subsection (3), that authority must –
  - (a) assess what amount would be just and reasonable; and
  - (b) specify that amount in the order.
- (3) Unless subsection (2) applies or rules of court otherwise provide, if the person in whose favour the order is made agrees the amount of costs to be paid, the appropriate authority may specify the amount in the order.
- (4) In this section “appropriate authority” means –
  - (a) in a case falling within subsection (1)(a) or (b), the High Bailiff;
  - (b) in a case falling within subsection (1)(c) or (d), the High Court.

#### DIVISION 12 – REPATRIATION CASES

### **82 Persons serving sentences outside territory where convicted**

- (1) This section applies if –
  - (a) a request is made for a person’s extradition to a designated territory, and the request contains the statement to which subsection (2) refers; or
  - (b) a provisional warrant for a person’s arrest is sought on behalf of a designated territory, and information given in writing and on oath contains the statement to which subsection (2) refers.
- (2) The statement to which this subsection refers is a statement –
  - (a) that the person is unlawfully at large from a prison in one territory (“the imprisoning territory”) in which the person was serving a sentence after conviction of an offence by a court in another territory (“the convicting territory”); and
  - (b) that the person was serving the sentence in pursuance of international arrangements for prisoners sentenced in one territory

to be repatriated to another territory in order to serve their sentences.

- (3) If the designated territory is either the imprisoning territory or the convicting territory –
  - (a) section 13(3) has effect as if the reference in that provision to the statement to which that subsection refers were a reference to the statement to which subsection (2) of this section refers; and
  - (b) section 16(1) has effect as if the reference in that provision to a person to whom subsection (2) of that section refers were a reference to the person to whom subsection (1)(b) of this section refers.
- (4) If the designated territory is the imprisoning territory –
  - (a) sections 14(2)(a), 16(3)(a) and 23(3)(b) have effect as if the references in those provisions to an extradition offence were references to an extradition offence in relation to the convicting territory;
  - (b) sections 17(7)(b) and 73(2) have effect as if the references in those provisions to the designated territory in which the person is accused of the commission of an offence or is alleged to have been convicted of an offence were references to the imprisoning territory;
  - (c) section 17(10)(b) has effect as if the reference in that provision to the designated territory were a reference to the imprisoning territory;
  - (d) sections 6, 7, 23(1)(e) and 69(4) have effect as if the reference in those provisions to a designated territory were references to the convicting territory; and
  - (e) subsections (5), (7)(a) and (8)(a) of section 35 have effect as if the references in those provisions to the person's being entitled were references to the person's being entitled in the convicting territory.

### **PART 3 — RE-EXTRADITION FROM THE ISLAND**

#### **83 Conditions for re-extradition**

- (1) Section 84 applies in relation to a person if the 5 conditions in the following provisions of this section are satisfied.
- (2) The first condition is that the person was extradited to a designated territory in accordance with Part 2.
- (3) The second condition is that the person was serving a sentence of custody in the Island (“the Manx sentence”) before he or she was extradited.

- (4) The third condition is that the request in pursuance of which the person was extradited contained a statement that the person was accused of the commission of an offence.
- (5) The fourth condition is that a certificate issued by a judicial authority of the designated territory shows that —
  - (a) a custodial sentence of 4 months or a greater punishment (“the overseas sentence”) was imposed on the person in that designated territory; and
  - (b) the overseas sentence was imposed on the person in respect of the offence specified in the warrant or request, or any other offence committed before the person’s extradition in respect of which he or she was permitted to be dealt with in that designated territory.
- (6) The fifth condition is that before serving the overseas sentence the person was returned to the Island to serve the remainder of the Manx sentence.

#### **84 Initial stages of re-extradition hearing**

- (1) If this section applies in relation to a person, he or she must be brought as soon as practicable after the relevant time before the High Bailiff, who must decide whether the person is to be re-extradited to the designated territory in which the overseas sentence was imposed.
- (2) The relevant time is the time at which the person would otherwise be released from custody pursuant to the Manx sentence (whether or not on licence).
- (3) If subsection (1) is not complied with, and the person applies to the High Bailiff to be discharged, the High Bailiff must order that the person be discharged.
- (4) The person must be treated as continuing in legal custody until he or she is brought before the High Bailiff under subsection (1) or is taken to be discharged under subsection (3).
- (5) If the person is brought before the High Bailiff under subsection (1), the High Bailiff must decide whether or not the territory in which the overseas sentence was imposed is a designated territory.
- (6) If the High Bailiff decides that the territory is a designated territory, section 85 applies.
- (7) If the High Bailiff decides that the territory is not a designated territory, the High Bailiff must order the person’s discharge.

#### **85 Applicability of Act to re-extradition**

- (1) If this section applies, this Act applies as it would if —
  - (a) a valid request for the person’s extradition to the designated territory concerned had been made under Part 2;

- (b) the request contained a statement that the person had been convicted of the relevant offence;
  - (c) the relevant offence were specified in the request;
  - (d) the hearing at which the High Bailiff is to make the decision referred to in section 84(1) were the extradition hearing; and
  - (e) the proceedings before the High Bailiff were under Part 2.
- (2) Part 2 applies to proceedings under this Part, subject to the modifications in Schedule 2.
- (3) In this section “relevant offence” means the offence in respect of which the overseas sentence is imposed.

#### **86 Discharge not to affect conditions of release**

A person’s discharge as a result of section 84 or section 85 does not affect any conditions on which the person is released from custody pursuant to the Manx sentence.

### **PART 4 — EXTRADITION TO THE ISLAND**

#### **87 Attorney General may request extradition to the Island**

- (1) The Attorney General may, directly or through the Secretary of State, request an appropriate authority of any other territory to extradite a person to the Island.
- (2) In this section, “appropriate authority” means the judicial authority of the territory which the Attorney General believes has the function of issuing arrest warrants in that territory.

#### **88 Commonwealth countries etc. and Hong Kong**

- (1) If —
- (a) a person is extradited to the Island from a designated territory under a law of the designated territory corresponding to this Act; and
  - (b) the designated territory is a Commonwealth country, a British overseas territory or the Hong Kong Special Administrative Region of the People’s Republic of China,

the person may be dealt with in the Island, for an offence committed before the person’s extradition, only if the offence is one to which subsection (3) refers or the protected period has ended.

This is subject to section 90.

- (2) A person is dealt with in the Island for an offence if the person is —

- (a) tried in the Island for the offence; or
  - (b) detained with a view to trial in the Island for the offence.
- (3) The offences to which this subsection refers are —
- (a) the offence in respect of which the person is extradited;
  - (b) a lesser offence disclosed by the information provided to the designated territory in respect of that offence; and
  - (c) an offence in respect of which consent to the person being dealt with is given by or on behalf of the relevant authority.
- (4) The protected period is 45 days starting on the first day after the person's extradition to the Island on which the person is given an opportunity to leave the Island.
- (5) An offence is a lesser offence in relation to another offence if the maximum punishment for it is less severe than the maximum punishment for the other offence.
- (6) The relevant authority is —
- (a) if the person has been extradited from a Commonwealth country, the government of that country;
  - (b) if the person has been extradited from a British overseas territory, the person administering the territory; and
  - (c) if the person has been extradited from the Hong Kong Special Administrative Region of the People's Republic of China, the government of that Region.

## 89 Other designated territories

- (1) If —
- (a) a person is extradited to the Island from a designated territory under the law of the designated territory corresponding to this Act; and
  - (b) the designated territory is not one specified in section 88(1)(b),
- the person may be dealt with in the Island for an offence committed before his or her extradition only if the offence is one to which subsection (3) refers or the condition to which subsection (4) refers is satisfied.

This is subject to section 90.

- (2) A person is dealt with in the Island for an offence if the person is —
- (a) tried in the Island for the offence; or
  - (b) detained with a view to trial in the Island for the offence.
- (3) The offences to which this subsection refers are —
- (a) the offence in respect of which the person is extradited;

- (b) an offence disclosed by the information provided to the designated territory in respect of that offence; and
  - (c) an offence in respect of which consent to the person being dealt with is given on behalf of that designated territory.
- (4) The condition to which this subsection refers is —
- (a) that the person has returned to the designated territory from which the person was extradited; or
  - (b) that the person has been given an opportunity to leave the Island.

## **90 Detention of a person for trial in the Island for other offences**

- (1) Section 88 or section 89 does not prevent a person in relation to whom either section applies from being detained with a view to trial in the Island for an offence if the conditions in subsection (2) are satisfied.
- (2) The conditions are —
- (a) the United Kingdom (in respect of the Island) and the territory from which the person was extradited have each made a declaration under Article 14(3) of the Convention on Extradition done at Paris on 13 December 1957, and the declarations are still in force;
  - (b) the Attorney General makes a request for the consent referred to in section 88(3)(c) or 89(3)(c) in respect of the offence (“the consent request”); and
  - (c) the Attorney General gives notification, which is explicitly acknowledged on behalf of the territory, of the date on which the detention is to begin (“the notified date”).
- (3) This section applies only to detention during the period beginning with the notified date and ending with whichever of the following occurs first —
- (a) if a notification of opposition to the detention is given on behalf of the territory, the date on which the Attorney General receives it;
  - (b) the date on which the Attorney General receives notification given on behalf of the territory as to whether the consent request is granted or refused;
  - (c) the expiry of the period of 90 days beginning with the date on which the consent request is received.

## **91 Remission of punishment for other offences**

If —

- (a) a person is extradited to the Island from a designated territory under a law of the designated territory corresponding to this Act;
- (b) before the person’s extradition, he or she has been convicted of an offence in the Island; and



(c) the person has not been extradited in respect of that offence, the sentence for the offence must be treated as served, but the person's conviction for the offence is to be treated as a conviction for all other purposes.

## **92 Return of person acquitted or not tried**

- (1) If —
- (a) a person is accused in the Island of the commission of an offence;
  - (b) the person is extradited to the Island in respect of the offence from a designated territory under law of the designated territory corresponding to this Act; and
  - (c) the condition to which subsection (2) refers or the condition to which subsection (3) refers is satisfied,
- the Attorney General must, if asked to do so by the person, arrange for the person to be sent back to the designated territory free of charge and with as little delay as possible.
- (2) The condition to which this subsection refers is that —
- (a) proceedings against the person for the offence are not begun before the end of the period of 6 months starting with the day on which the person arrives in the Island on his or her extradition; and
  - (b) before the end of the period of 3 months starting immediately after the end of the period in paragraph (a), the person asks the Attorney General to return him or her to the designated territory from which the person was extradited.
- (3) The condition to which this subsection refers is that —
- (a) at the person's trial for the offence, he or she is acquitted or discharged; and
  - (b) before the end of the period of 3 months starting immediately after the date of his or her acquittal or discharge, the person asks the Attorney General to return him or her to the designated territory from which the person was extradited.

## **93 Return to extraditing territory to serve sentence**

- (1) This section applies if —
- (a) a person is extradited to the Island from a territory for the purposes of being prosecuted for an offence; and
  - (b) the person's extradition is made subject to a condition that an undertaking is given by or on behalf of the Island as to the person's return to the territory.
- (2) The Attorney General may give an undertaking to a person acting on behalf of the territory as to the person's return to the territory.

- (3) The terms which may be included by the Attorney General in an undertaking given under subsection (2) in relation to a person include terms that if the person is convicted of the offence and a sentence of custody is imposed in respect of it, the person is to be returned to the territory to serve the sentence.
- (4) A person who is to be returned to a territory by virtue of an undertaking given under subsection (2) must be returned as soon as is reasonably practicable after the sentence is imposed and any other proceedings in respect of the offence are concluded.
- (5) If subsection (4) is complied with the sentence for the offence is treated as served but the person's conviction for the offence must be treated as a conviction for all other purposes.
- (6) The sentence for the offence is treated as served under subsection (5) only in so far as it consists of the sentence of custody mentioned in subsection (3).
- (7) Subsection (8) applies if —
  - (a) subsection (4) is not complied with; and
  - (b) the person applies to the court which imposed the sentence to expedite return to the territory.
- (8) The court must order return by such date as is specified in the order unless reasonable cause is shown for the delay.
- (9) If a person is to be returned by virtue of an undertaking given under subsection (2), a constable may —
  - (a) remove the person from any prison or other institution where the person is detained;
  - (b) keep the person in custody until returned; and
  - (c) convey the person to the territory to which the person is to be returned.
- (10) Nothing in this section requires the return of a person to a territory in a case in which the Attorney General is not satisfied that the return is compatible with the Human Rights Convention rights.

#### **94 Restriction on bail where undertaking given by Attorney General**

If the Attorney General has given an undertaking in connection with a person's extradition to the Island that includes terms that the person be kept in custody until the conclusion of any proceedings against the person in the Island for an offence, the High Bailiff or the High Court may grant bail only in exceptional circumstances.

## PART 5 – POLICE POWERS

### DIVISION 1 – WARRANTS AND ORDERS

#### 95 Search and seizure warrants

- (1) The High Bailiff may, on an application made by a constable, issue a search and seizure warrant if the High Bailiff is satisfied that the requirements for the issue of a search and seizure warrant are fulfilled.
- (2) An application for a search and seizure warrant under this section must state –
  - (a) that the extradition of a person specified in the application is sought under Part 2 or Part 3;
  - (b) that the warrant is sought in relation to premises specified in the application;
  - (c) that the warrant is sought in relation to material, or material of a description, specified in the application; and
  - (d) that the material, or material of that description, is believed to be on the premises.
- (3) The application must also state that the person is accused in a designated territory of the commission of an offence that is specified in the application and is an extradition offence.
- (4) A search and seizure warrant is a warrant authorising a constable –
  - (a) to enter and search the premises specified in the application for the warrant; and
  - (b) to seize and retain any material to which subsection (5) refers that is found there.
- (5) This subsection refers to material –
  - (a) that would be likely to be admissible evidence at a trial in the Island for the offence specified in the application for the warrant (on the assumption that conduct constituting that offence would constitute an offence in the Island); and
  - (b) that does not consist of or include items subject to legal privilege, special procedure material or excluded material.
- (6) The requirements for the issue of a search and seizure warrant are that there are reasonable grounds for believing –
  - (a) that the offence specified in the application has been committed by the person specified in the application;
  - (b) that the person is in the Island, or is on his or her way to the Island;
  - (c) that the offence is an extradition offence;

- (d) that there is material specified in subsection (5) on premises specified in the application; and
  - (e) that any of the conditions to which subsection (7) refers is satisfied.
- (7) The conditions to which this subsection refers are —
- (a) that it is not practicable to communicate with a person entitled to grant entry to the premises;
  - (b) that it is practicable to communicate with a person entitled to grant entry to the premises, but it is not practicable to communicate with a person entitled to grant access to the material to which subsection (6)(d) refers;
  - (c) that entry to the premises will not be granted unless a warrant is produced; or
  - (d) that the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.

## 96 Production orders

- (1) The High Bailiff may, on an application made by a constable, make a production order if satisfied that the requirements for the making of a production order are fulfilled.
- (2) An application for a production order under this section must state —
  - (a) that the extradition of a person specified in the application is sought under Part 2 or Part 3;
  - (b) that the order is sought in relation to premises specified in the application;
  - (c) that the order is sought in relation to material, or material of a description, specified in the application;
  - (d) that the material is special procedure material or excluded material; and
  - (e) that a person specified in the application appears to be in possession or control of the material.
- (3) The application must also state that the person is accused in a designated territory of the commission of an offence that —
  - (a) is specified in the application; and
  - (b) is an extradition offence.
- (4) A production order is an order either —
  - (a) requiring the person whom the application for the order specifies as appearing to be in possession or control of special material or excluded material to produce it to a constable (within the period stated in the order) for the constable to take away; or

- (b) requiring that person to give a constable access to the material within the period stated in the order.
- (5) The period stated in a production order must be a period of 7 days starting with the day on which the order is made, unless it appears to the High Bailiff that a longer period would be appropriate.
- (6) Production orders have effect as if they were orders of the High Court.

## **97 Requirements for making of production order**

- (1) The requirements for the making of a production order are that there are reasonable grounds for believing —
  - (a) that the offence specified in the application has been committed by the person so specified;
  - (b) that the person is in the Island, or is on his or her way to the Island;
  - (c) that the offence is an extradition offence;
  - (d) that there is material that consists of or includes special procedure material or excluded material on premises specified in the application; and
  - (e) that the material would be likely to be admissible evidence at a trial in the Island for the offence specified in the application (on the assumption that conduct constituting that offence would constitute an offence in the Island).
- (2) It must also appear that other methods of obtaining the material —
  - (a) have been tried without success; or
  - (b) have not been tried because they were bound to fail.
- (3) It must also be in the public interest that the material should be produced or that access to it should be given.

## **98 Electronically stored information**

- (1) This section applies if any of the special procedure material or excluded material that is specified in an application for a production order consists of information stored in any electronic form.
- (2) If the order requires a person to produce the material to a constable to take away, it has effect as an order to produce the material in a form —
  - (a) in which it can be taken away by the constable; and
  - (b) in which it is visible and legible, or from which it can readily be produced in a visible and legible form.
- (3) If the order requires a person to give a constable access to the material, it has effect as an order to give the constable access to the material —
  - (a) in a form in which it is visible and legible; or

- (b) in a form from which it can readily be produced in a visible and legible form.

## 99 Warrants: special procedure material and excluded material

- (1) The High Bailiff may, on an application made by a constable, issue a warrant under this section if satisfied —
  - (a) that the requirements for the making of a production order are fulfilled; and
  - (b) that any of the conditions to which subsection (4) refers is satisfied.
- (2) An application for a warrant under this section must state —
  - (a) that the extradition of a person specified in the application is sought under Part 2 or Part 3;
  - (b) that the warrant is sought in relation to premises specified in the application;
  - (c) that the warrant is sought in relation to material, or material of a description, specified in the application; and
  - (d) that the material is special procedure material or excluded material.
- (3) The application must also state that the person is accused in a designated territory of the commission of an offence that is specified in the application and is an extradition offence.
- (4) The conditions to which this subsection refers are —
  - (a) that it is not practicable to communicate with a person entitled to grant entry to the premises;
  - (b) that it is practicable to communicate with a person entitled to grant entry to the premises, but it is not practicable to communicate with a person entitled to grant access to the special procedure material or excluded material to which section 97(1)(d) refers; and
  - (c) that the material contains information that is subject to a restriction on disclosure or to an obligation of secrecy contained in an enactment (whether passed or made before or after the coming into operation of this section) and is likely to be disclosed in breach of the restriction or obligation if a warrant is not issued.
- (5) A warrant under this section authorises a constable to enter and search the premises specified in the application for the warrant, and —
  - (a) to seize and retain any material found there that is special procedure material to which subsection (6) refers, if the application for the warrant states that the warrant is sought in relation to special procedure material; and
  - (b) to seize and retain any material found there that is excluded material to which subsection (6) refers, if the application for the

warrant states that the warrant is sought in relation to excluded material.

- (6) This subsection refers to material that would be likely to be admissible in evidence at a trial in the Island for the offence specified in the application for the warrant, if conduct constituting the offence would constitute an offence in the Island.

## DIVISION 2 – SEARCH AND SEIZURE WITHOUT WARRANT

### 100 Entry and search to effect arrest

- (1) If a constable has power to arrest a person under an extradition arrest warrant, and has reasonable grounds for believing that the person is on any premises, the constable may enter and search those premises for the purpose of exercising the power of arrest.
- (2) The power to search conferred by subsection (1) is exercisable only to the extent reasonably required for the purpose of exercising the power of arrest.
- (3) A constable who has entered premises in exercise of the power conferred by subsection (1) may seize and retain anything that is on the premises, if he or she has reasonable grounds for believing –
  - (a) that it has been obtained in consequence of the commission of an offence or it is evidence in relation to an offence; and
  - (b) that it is necessary to seize it in order to prevent its being concealed, lost, damaged, altered or destroyed.
- (4) An offence includes an offence committed outside the Island.
- (5) If the premises contain 2 or more separate dwellings, the power to enter and search that is conferred by subsection (1) is exercisable only in respect of –
  - (a) parts of the premises that the occupiers of any dwelling comprised in the premises use in common with the occupiers of any other dwelling comprised in the premises; and
  - (b) any dwelling that is comprised in the premises, if the constable has reasonable grounds for believing that the person to whom the search relates may be in that dwelling.

### 101 Entry and search of premises on arrest

- (1) This section applies if a person has been arrested under an extradition arrest warrant at a place other than a police station.
- (2) A constable may enter and search any premises in which the person was present at the time of the arrest; or immediately before the arrest, if the constable has reasonable grounds for believing –

- (a) where the person has not been convicted of the offence to which subsection (3) refers, that there is on the premises evidence (other than items subject to legal privilege) relating to the offence; or
  - (b) where in any case, there is on the premises evidence (other than items subject to legal privilege) relating to the identity of the person.
- (3) The offence to which this subsection refers is —
- (a) the offence in respect of which extradition is requested, if the arrest was under a warrant issued under section 14; or
  - (b) the offence of which the person is accused, if the arrest was under a provisional warrant.
- (4) The power to search that is conferred by subsection (2) —
- (a) is, if the person has not been convicted of the offence, a power to search for evidence (other than items subject to legal privilege) relating to the offence; and
  - (b) is, in any case, a power to search for evidence (other than items relating to legal privilege) relating to the identity of the person.
- (5) The power to search that is conferred by subsection (2) is exercisable only to the extent that is reasonably required for the purpose of discovering evidence in respect of which the power is available by virtue of subsection (4).
- (6) A constable may seize and retain anything for which he or she may search by virtue of subsection (4).
- (7) A constable who has entered premises in exercise of the power that is conferred by subsection (2) may seize and retain anything that is on the premises if he or she has reasonable grounds for believing —
- (a) that it has been obtained in consequence of the commission of an offence or it is evidence in relation to an offence; and
  - (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.
- (8) An offence includes an offence committed outside the Island.
- (9) If the premises contain 2 or more separate dwellings, the power that is conferred by subsection (2) is exercisable only in respect of —
- (a) any dwelling that is comprised in the premises and is a dwelling in which the arrest took place or the person was present immediately before his or her arrest; and
  - (b) parts of the premises which the occupier of any such dwelling uses in common with the occupier of any other dwelling comprised in the premises.



**102 Search of person on arrest**

- (1) This section applies if a person has been arrested under an extradition arrest warrant at a place other than a police station.
- (2) A constable may search the person if the constable has reasonable grounds for believing that the person may present a danger to himself or herself or others.
- (3) A constable may search the person if the constable has reasonable grounds for believing that the person may have concealed on him or her anything —
  - (a) that the person might use to assist him or her to escape from lawful custody; or
  - (b) that might be evidence relating to an offence or the identity of the person.
- (4) The power to search conferred by subsection (3) —
  - (a) is a power to search for anything falling within either of paragraphs (a) and (b) of that subsection; and
  - (b) is exercisable only to the extent that is reasonably required for the purpose of discovering such a thing.
- (5) The powers conferred by subsections (2) and (3) do not authorize a constable to require a person to remove any clothing in public, other than an outer coat, jacket or gloves.
- (6) The powers conferred by subsections (2) and (3) authorise a search of a person's mouth.
- (7) A constable who is searching a person in exercise of the power that is conferred by subsection (2) may seize and retain anything that the constable finds, if he or she has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or herself or any other person.
- (8) A constable searching a person in exercise of the power conferred by subsection (3) may seize and retain anything the constable finds, if the constable has reasonable grounds for believing —
  - (a) that the person might use it to assist him or her to escape from lawful custody; or
  - (b) that it is evidence of an offence or of the identity of the person or has been obtained in consequence of the commission of an offence.
- (9) An offence includes an offence committed outside the Island.
- (10) Nothing in this section affects the powers conferred by section 32 of the *Anti-Terrorism and Crime Act 2003* (stopping and searching of suspected terrorists and seizure and retention of suspected evidence).

### 103 Entry and search of premises after arrest

- (1) This section applies if a person has been arrested under an extradition arrest warrant.
- (2) A constable may enter and search any premises occupied or controlled by the person, if the constable has reasonable grounds for believing —
  - (a) where the person has not been convicted of the offence to which subsection (3) refers, that there is on the premises evidence (other than items subject to legal privilege) relating to the offence; or
  - (b) where in any case, there is on the premises evidence (other than items subject to legal privilege) relating to the identity of the person.
- (3) The offence to which this subsection refers is —
  - (a) the offence in respect of which extradition is requested, if the arrest was under a warrant issued under section 14; and
  - (b) the offence of which the person is accused, if the arrest was under a provisional warrant.
- (4) The power to search that is conferred by subsection (2) —
  - (a) is, if the person has not been convicted of the offence, a power to search for evidence (other than items subject to legal privilege) relating to the offence; and
  - (b) is, in any case, a power to search for evidence (other than items relating to legal privilege) relating to the identity of the person.
- (5) The power to search that is conferred by subsection (2) is exercisable only to the extent that is reasonably required for the purpose of discovering evidence in respect of which the power is available by virtue of subsection (4).
- (6) A constable may seize and retain anything for which the constable may search by virtue of subsections (4) and (5).
- (7) A constable who has entered premises in exercise of the power conferred by subsection (2) may seize and retain anything that is on the premises if the constable has reasonable grounds for believing —
  - (a) that it has been obtained in consequence of the commission of an offence, or it is evidence in relation to an offence; and
  - (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.
- (8) An offence includes an offence committed outside the Island.
- (9) The powers conferred by subsections (2) and (6) may be exercised only if a police officer of a rank not lower than that of inspector has given written authorisation for its exercise.

- (10) However, the power conferred by subsection (2) may be exercised without the authorisation under subsection (9) if —
- (a) the power is exercised before the person arrested is taken to a police station; and
  - (b) the presence of the person at a place other than a police station is necessary for the effective exercise of the power to search.

### DIVISION 3 — TREATMENT FOLLOWING ARREST

#### 104 Fingerprints and samples

If a person has been arrested under an extradition arrest warrant and is detained at a police station, fingerprints or a non-intimate sample may be taken from the person only if taken by a constable and —

- (a) the appropriate consent is given in writing; or
- (b) a police officer of a rank not lower than that of inspector authorises the fingerprints or sample to be taken.

#### 105 Searches and examinations

- (1) If a person —
- (a) has been arrested under an extradition arrest warrant; and
  - (b) is detained at a police station,
- the person may on the authorisation of a police officer of a rank not lower than that of inspector be searched or examined, or both, for the purpose of facilitating the ascertainment of the person's identity.
- (2) An identifying mark found on a search or examination under this section may be photographed —
- (a) with the appropriate consent; or
  - (b) without the appropriate consent, if that consent is withheld or it is not practicable to obtain it.
- (3) The only persons who may carry out searches or examinations, or take photographs, under this section are —
- (a) constables; and
  - (b) persons designated for the purposes of this section by the Chief Constable.
- (4) A person may not under this section —
- (a) carry out a search or examination of a person of the opposite sex; or
  - (b) take a photograph of any part of the body of a person of the opposite sex.

- (5) An intimate search may not be carried out under this section.
- (6) For the purposes of this section —
  - (a) ascertaining a person's identity includes ascertaining that he or she is not a particular person;
  - (b) taking a photograph includes using a process by means of which a visual image may be produced, and photographing a person is to be construed accordingly; and
  - (c) marks include features and injuries, and a mark is an identifying mark if its existence in a person's case facilitates the ascertainment of the person's identity.

## 106 Photographs

- (1) If a person has been arrested under an extradition arrest warrant and is detained at a police station, the person may be photographed —
  - (a) with the appropriate consent; or
  - (b) without the appropriate consent, if that consent is withheld or it is not practicable to obtain it.
- (2) A person proposing to take a photograph of a person under this section —
  - (a) may, for the purpose of doing so, require the removal of any item or substance worn on or over the whole or any part of the head or face of the person to be photographed; and
  - (b) may, if the requirement is not complied with, remove the item or substance.
- (3) The only persons who may take photographs under this section are —
  - (a) constables; and
  - (b) persons designated for the purposes of this section by the Chief Constable.
- (4) Taking a photograph includes using a process by means of which a visual image may be produced; and photographing a person is to be construed accordingly.

## 107 Other treatment and rights

- (1) The Department may by order apply the provisions to which subsection (2) refers to persons to whom subsection (3) refers, with such modifications as are specified in the order.  
Tynwald procedure – approval required.
- (2) This subsection refers to the following provisions of PPPA —
  - (a) section 57 (searches of detained persons);
  - (b) section 58 (intimate searches);

- (c) section 59 (right, when arrested, to have someone informed); and
  - (d) section 61 (access to legal advice).
- (3) This subsection refers to any persons who —
- (a) are arrested under extradition arrest warrants at police stations;
  - (b) are taken to police stations after being arrested elsewhere under extradition arrest warrants; or
  - (c) are detained at police stations after being arrested under extradition arrest warrants.

#### DIVISION 4 — GENERAL

### 108 Delivery of seized property

- (1) This section applies to anything that has been seized or produced under this Part.
- (2) A constable may deliver any such thing to a person who is or is acting on behalf of an authority if the constable has reasonable grounds for believing that the authority —
- (a) is an authority of the designated territory concerned; and
  - (b) has functions such that it is appropriate for the thing to be delivered to it.
- (3) If the seizure power was a warrant issued under this Part or the thing was produced under an order made under this Part, the designated territory concerned is the one specified in the application for the warrant or the order.
- (4) If the seizure power was section 100(3), section 101(6) or (7), section 102(7) or (8) or section 103(6) or (7), the designated territory concerned is —
- (a) the designated territory to which a person's extradition is requested, where the applicable arrest power is a warrant issued under section 14; or
  - (b) the designated territory in which a person is accused of the commission of an offence or has been convicted of an offence, where the applicable arrest power is a provisional warrant.
- (5) The applicable extradition arrest power is —
- (a) the extradition arrest power under which a constable had power of arrest, where the seizure power was section 100(3); or
  - (b) the extradition arrest power under which a person was arrested, where the seizure power was section 101(6) or (7), section 102(7) or (8) or section 103(6) or (7).

### 109 Codes of practice

- (1) The Department may make codes of practice in connection with —
  - (a) the exercise of the powers that are conferred by this Part;
  - (b) the retention, use and return of anything seized or produced under a power that is conferred by this Part;
  - (c) access to anything so seized or produced;
  - (d) the taking of photographs and copies of anything so seized or produced; and
  - (e) the retention, use, disclosure and destruction of any fingerprint, sample or photograph taken under a power conferred by this Part.Tynwald procedure – negative.
- (2) When proposing to make a code of practice under this section, the Department must —
  - (a) publish a draft of the code;
  - (b) consider any representations made to the Department about the draft within a reasonable time after it is published; and
  - (c) if the Department thinks it appropriate, modify the draft in the light of any such representations.
- (3) A failure by a constable to comply with a provision of a code issued under this section does not of itself make the constable liable to criminal or civil proceedings.
- (4) A code issued under this section is admissible in evidence in proceedings under this Act, and must be taken into account by a court in determining any question to which it appears to the court to be relevant.

### 110 Reasonable force

A person may use reasonable force, if necessary, in the exercise of a power conferred by this Part.

## PART 6 — NON-ISLAND EXTRADITION: TRANSIT THROUGH THE ISLAND

### 111 Facilitating transit through the Island

- (1) The Attorney General may issue a transit certificate in relation to the non-Island extradition of a person if the Attorney General has been requested to facilitate the transit of the person through the Island for the purposes of the extradition.

- (2) If the Attorney General issues a transit certificate in relation to the non-Island extradition of a person, an authorised officer may do any or all of the following —
- (a) escort the person from, or to, any means of transport used for the purposes of the extradition;
  - (b) take the person into custody to facilitate the transit of the person through the Island for the purposes of the extradition;
  - (c) search the person, and any item in the possession of the person, for any item which the person might use to cause physical injury to that person or any other person;
  - (d) in a case where the person has been taken into custody under paragraph (b), search the person, and any item in the possession of the person, for any item which the person might use to escape from custody.
- (3) An authorised officer searching a person in the exercise of a power conferred by subsection (2)(c) or (d) may seize any item found if the officer has reasonable grounds for believing that the person searched might use the item —
- (a) to cause physical injury to that person or any other person; or
  - (b) in a case where the person has been taken into custody, to escape from custody.
- (4) If no request is made under subsection (1) in relation to the non-Island extradition of a person, or if such a request is made but a transit certificate is not issued, that does not —
- (a) prevent the transit of the person through the Island for the purposes of the extradition; or
  - (b) affect the powers which an authorised officer has (otherwise than under this section) in relation to the person while in the Island.

## **112 Unscheduled arrival in the Island**

- (1) This section applies in a case where —
- (a) a person is being extradited;
  - (b) the extradition is a non-Island extradition; and
  - (c) the person makes an unscheduled arrival in the Island.
- (2) An authorised officer may do any or all of the following —
- (a) take the person into custody to facilitate the transit of the person through the Island for the purposes of the extradition;
  - (b) search the person, and any item in the possession of the person, for any item which the person might use to cause physical injury to that person or any other person;

- (c) in a case where the person has been taken into custody under paragraph (a), search the person, and any item in the possession of the person, for any item which the person might use to escape from custody.
- (3) Any power conferred by subsection (2) may be exercised —
  - (a) upon the unscheduled arrival; or
  - (b) at any later time when the person is still in the Island after the unscheduled arrival.
- (4) A person taken into custody under this section may be kept in custody until the expiry of the period of 72 hours beginning with the time when the person is taken (or first taken) into custody under this section.
- (5) But if a transit certificate is issued under section 111 in respect of the non-Island extradition of the person, the person must not be kept in custody under this section after the issue of the certificate.
- (6) Subsection (5) does not prevent the person from being taken into custody under section 111.
- (7) An authorised officer searching a person in the exercise of a power conferred by subsection (2)(b) or (c) may seize any item found if the officer has reasonable grounds for believing that the person searched might use the item —
  - (a) to cause physical injury to that person or any other person; or
  - (b) in a case where the person has been taken into custody, to escape from custody.

### **113 Exercise of the extradition transit powers**

- (1) The extradition transit powers include power to use reasonable force when necessary.
- (2) An authorised officer may not, when exercising a relevant search power, require a person to remove any clothing other than an outer coat, jacket, headgear or gloves.
- (3) Any item seized from a person in the exercise of a relevant search power may be retained while the person is in transit through the Island.

### **114 Codes of practice**

- (1) The Department may issue a code of practice in connection with —
    - (a) the exercise of extradition transit powers;
    - (b) the retention, use and return of anything seized under a relevant search power.
- Tynwald procedure – laying only.



- (2) A failure by an authorised officer to comply with a provision of a code issued under this section does not of itself make the authorised officer liable to criminal or civil proceedings.
- (3) A code issued under this section is admissible in evidence in any proceedings and must be taken into account by a court in determining any question to which it appears to the court to be relevant.

## 115 Sections 111 to 114: interpretation

- (1) An “authorised officer” is —
  - (a) a constable; or
  - (b) a prescribed person.
- (2) These expressions have the meanings given —

“extradition transit powers” means the powers under —

  - (a) section 111 (except the power to issue transit certificates); and
  - (b) section 112;

“foreign territory” means a territory outside the Island;

“non-Island extradition” means extradition from one foreign territory to another foreign territory;

“relevant search power” means a power of search under —

  - (a) section 111(2)(c) or (d), or
  - (b) section 112(2)(b) or (c).
- (3) A reference to the transit of a person through the Island is a reference to the person arriving in, being in, and departing from the Island.
- (4) This section applies for the purposes of section 111 to 114 (and this section).

## PART 7 — OTHER PROVISIONS

### 116 Time limit for extradition following deferral for competing claim

- (1) This section applies if —
  - (a) an order is made under this Act for a person to be extradited to a designated territory in pursuance of a request for the person’s extradition;
  - (b) before the person is extradited to the designated territory, an order is made under section 76(3) for the person’s extradition in pursuance of the request to be deferred; and
  - (c) the High Bailiff makes an order under section 118 for the person’s extradition in pursuance of the request to cease to be deferred.

- (2) In a case where section 65 applies, the period of 28 days to which section 65(2) refers starts with the day on which the order under section 118(1) is made.
- (3) In a case where section 66 applies, the period of 28 days to which section 66(2) refers starts with the day on which the decision on the appeal becomes final (within the meaning of that section) or (if later) the day on which the order under section 118(1) is made.

### **117 Proceedings on deferred extradition request**

- (1) If —
  - (a) an order is made under this Act deferring proceedings on an extradition request (“the deferred request”) until another extradition request in respect of the person has been disposed of; and
  - (b) the other extradition request is disposed of in the person’s favour, the High Bailiff may make an order for proceedings on the deferred request to be resumed.
- (2) No order under subsection (1) may be made after the end of the period of 21 days starting with the day on which the other extradition request is disposed of.
- (3) If the person applies to the High Bailiff to be discharged, the High Bailiff may order his or her discharge and must do so if —
  - (a) the period of 21 days to which subsection (2) refers has ended; and
  - (b) the High Bailiff has not made an order under subsection (1) and has not ordered that the person be discharged.
- (4) An extradition claim made in respect of a person is disposed of in a person's favour if either of the conditions referred to in section 9(1)(a) or (b) is met in respect of the person.

### **118 Proceedings where extradition deferred**

- (1) If —
  - (a) an order is made under this Act deferring a person’s extradition in pursuance of an extradition request (“the deferred request”) until another extradition request in respect of the person has been disposed of; and
  - (b) the other extradition request is disposed of in the person’s favour, the High Bailiff may make an order for the person’s extradition in pursuance of the deferred request to cease to be deferred.

- (2) No order under subsection (1) may be made after the end of the period of 21 days starting with the day on which the other extradition request is disposed of.
- (3) If the person applies to the High Bailiff to be discharged, the High Bailiff may order that the person be discharged and must do so if —
  - (a) the period of 21 days to which subsection (2) refers has ended; and
  - (b) the High Bailiff has not made an order under subsection (1) and has not ordered that the person be discharged.
- (4) An extradition claim made in respect of a person is disposed of in a person's favour if either of the conditions referred to in section 9(1)(a) or (b) is met in respect of the person.

### **119 Special extradition arrangements**

- (1) This section applies if the Attorney General believes —
  - (a) that arrangements have been made between the United Kingdom (in respect of the Island) and another territory, for the extradition of a person from the Island to the territory; and
  - (b) the territory is not a designated territory.
- (2) The Attorney General may certify that the conditions in subsection (1) are satisfied in relation to the extradition of the person.
- (3) If the Attorney General issues a certificate under subsection (2), this Act applies in respect of the person's extradition to the territory as if it were a Part 2 designated territory.
- (4) As applied by subsection (3), this Act has effect —
  - (a) as if sections 14(4), 16(5), 17(10)(b), 34(8) and 36(7) were omitted; and
  - (b) with any other modifications specified in the certificate.
- (5) A certificate under subsection (2) in relation to a person is conclusive evidence that the conditions in subsection (1) are satisfied in relation to the person's extradition from the Island to the territory.

### **120 Genocide, crimes against humanity and war crimes**

- (1) If a valid request for a person's extradition is made in respect of an offence specified in subsection (2), it is not an objection to extradition under this Act that the person could not have been punished for the offence under the law in force at the time when and in the place where he or she is alleged to have committed the act of which the person is accused or of which he or she has been convicted.
- (2) The offences to which this subsection refers are —

- (a) any offence that, if committed in the Island, would be punishable as a war crime; and
- (b) any offence that is punishable in the Island as an offence under section 1 of the Geneva Conventions Act 1957 (of Parliament) as it applies to the Island<sup>2</sup> (relating to grave breaches of scheduled conventions).

## 121 Young persons

In any proceedings before the High Bailiff under this Act relating to the extradition of a person who is under the age of 18 years, section 39(3) of the *Summary Jurisdiction Act 1989* (restriction on persons present at sitting of a juvenile court) applies as it applies to proceedings in a juvenile court unless the High Bailiff orders otherwise.

## 122 Custody

- (1) If a court remands a person in custody under this Act, the person must be committed to the institution to which he or she would have been committed if charged with an offence before that court.
- (2) Despite subsection (1), the *Children and Young Persons Act 2001* applies to a child or young person (within the meaning of that Act) who is to be remanded under this Act, as if the person were to be remanded in respect of an offence committed or alleged to have been committed by the person in the Island.
- (3) Subject to subsection (2) but despite any other enactment or rule of law to the contrary, where a person under the age of 21 years is to be remanded in custody under this Act, and it appears to the High Bailiff that, having regard to —
  - (a) the nature and seriousness of any offence in respect of which a person's extradition under this Act has been requested; and
  - (b) the person's apparent character, maturity and other circumstances,it is not appropriate to remand him or her in custody in a place to which the High Bailiff would otherwise be required in law to remand the person, the High Bailiff may instead remand the person in custody in any other place that the High Bailiff considers appropriate.
- (4) A person in custody following arrest under this Act who escapes from custody may be retaken in the same way as if the person had been in custody following arrest or apprehension in respect of an offence committed in the Island.
- (5) An order for a person's extradition under this Act is sufficient authority for a person to whom the order is directed or a constable —

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<sup>2</sup> See SI 2010/2964

- (a) to receive the person;
- (b) to keep the person in custody until extradited under this Act; and
- (c) to convey the person to the designated territory to which the person is to be extradited under this Act.

### **123 Extradition of serving prisoner**

If an order is made under Part 2 for the extradition of a person who is serving a sentence of custody in the Island, the order is sufficient authority for the person to be removed from custody.

### **124 Extradition for more than one offence**

- (1) Subsections (2) to (5) have effect subject to contrary provision in an order made under subsection (6).
- (2) A reference in this Act to an offence or to an extradition offence is to be construed as a reference to offences or extradition offences, as the case may be.
- (3) A power or function conferred or exercisable under this Act, including a power or function of the Attorney General and any court, is exercisable separately and severally in respect of each and every offence for which extradition is requested.
- (4) If —
  - (a) an order for extradition is not made under this Act in respect of an offence specified in the extradition request; and
  - (b) another offence is specified in the request,it is not necessary for the requesting territory to issue another extradition request in respect of the other offence.
- (5) The request is treated as if it had not been made in respect of the offence for which an order for extradition was not made.
- (6) The Department may by order provide for this Act to have effect with specified modifications in relation to a case where a request for extradition is made in respect of more than one offence.

Tynwald procedure – approval required.

### **125 Parties to international conventions**

- (1) The Council of Ministers may by order —
  - (a) designate an international convention to which the United Kingdom is a party and which extends to the Island; and
  - (b) specify conduct to which the convention applies.

Tynwald procedure – approval required.

- (2) If the Attorney General believes, in respect of a request for a person's extradition, that —
- (a) the request is for extradition to a territory that is a party to a convention designated under subsection (1)(a);
  - (b) the territory is not a designated territory; and
  - (c) the conduct specified in the request is conduct specified under subsection (1)(b),
- the Attorney General may certify that the conditions in paragraphs (a) to (c) are satisfied in relation to the extradition of the person.
- (3) If the Attorney General issues a certificate under subsection (2), this Act applies in respect of the person's extradition to the territory as if the territory were a designated territory.
- (4) As applied by subsection (3), this Act has effect as if —
- (a) sections 5, 6, 14(4), 16(5), 17(10)(b), 34(8) and 36(8) were omitted; and
  - (b) the conduct that constituted an extradition offence for the purposes of Part 2 were the conduct specified under subsection (1)(b).
- (5) A certificate under subsection (3) in relation to a person is conclusive evidence that the conditions in paragraphs (a) to (c) of subsection (2) are satisfied in relation to the person's extradition.

## **126 Use of live links in court hearings**

- (1) This section applies in relation to a hearing in proceedings under this Act.
- (2) If satisfied that it is in the interests of justice to do so, the court may give a live link direction.
- (3) A live link direction is a direction requiring a person to take part in the hearing (in whatever capacity) through a live link.
- (4) Such a direction —
- (a) may be given on the court's own motion or on the application of a party to the proceedings; and
  - (b) may be given in relation to all subsequent hearings to which this section applies, or to such hearing or hearings to which this section applies as may be specified or described in the direction.
- (5) A person who takes part in the hearing through a live link is to be treated as present in court for the purposes of the hearing.

## **127 Live links: supplementary**

- (1) The court may rescind a live link direction at any time before or during a hearing to which it relates.

- (2) The court must not give a live link direction or rescind such a direction unless the parties to the proceedings have been given the opportunity to make representations.
- (3) If a hearing takes place in relation to the giving or rescinding of a live link direction, the court may require or permit any party to the proceedings who wishes to make representations to do so through a live link.
- (4) In a case where the court has power to give a live link direction but decides not to do so, the reasons for not doing so must be stated in open court.
- (5) For the purposes of this section and section 126 —
  - (a) a person is affected by an extradition claim if —
    - (i) a request for the person’s extradition is made; or
    - (ii) an extradition arrest warrant is issued in respect of the person, and
  - (b) references to being in custody include references to being in police detention within the meaning of section 81(2) of the *Police Powers and Procedures Act 1998*.

### 128 Live links: interpretation

- (1) This section applies for the purposes of sections 126 and 127.
- (2) “Live link” means an arrangement by which a person (P) is able —
  - (a) to see or hear (or see and hear) all other persons taking part in the hearing who are not in the same location as P; and
  - (b) to be seen or heard (or be seen and heard) by all other persons taking part in the hearing who are not in the same location as P.
- (3) For the purposes of subsection (2) the following matters are to be disregarded —
  - (a) the extent (if any) to which a person is unable to see or hear by reason of any impairment of eyesight or hearing;
  - (b) the effect of any direction or order which provides for one person taking part in a hearing to be prevented by means of a screen or other arrangement from seeing another person taking part in the hearing.

### 129 National security

- (1) This section applies if the Attorney General believes that the conditions in subsections (2), (3) and (4) are satisfied in relation to a person.
- (2) The first condition is that the person’s extradition is sought or will be sought under Part 2 or Part 3 in respect of an offence.
- (3) The second condition is —

- (a) that in engaging in the conduct constituting or alleged to constitute the offence, the person was acting in the exercise of a function conferred or imposed by or under an enactment; or
  - (b) that as a result of an authorisation given by the Attorney General, the person is not liable under the criminal law of the Island for the conduct constituting or alleged to constitute the offence.
- (4) The third condition is that the person's extradition in respect of the offence would be against the interests of national security.
- (5) If this section applies, the Attorney General may certify that the conditions in subsections (2), (3) and (4) are satisfied in relation to the person.
- (6) If the Attorney General issues a certificate under subsection (5), he or she may direct that a request for the person's extradition in respect of the offence is not to be proceeded with.
- (7) If the Attorney General issues a certificate under subsection (5), he or she may order the person's discharge instead of or in addition to giving a direction under subsection (6).
- (8) In exercising his or her functions under any one or more of subsections (5), (6) and (7), the Attorney General may consult the Secretary of State.
- (9) If the Attorney General gives a direction under subsection (6) in respect of a request for extradition, then —
- (a) if the Attorney General has not issued a certificate under section 13 that the request is made in the approved way, the Attorney General is no longer required to do so;
  - (b) if the person is arrested under a warrant issued by the High Bailiff under section 14 or under a provisional warrant, there is no requirement for the person to appear or be brought before the High Bailiff and he or she must be discharged;
  - (c) the High Bailiff is no longer required to proceed or continue proceeding under sections 15, 17, 18 and 19 if the person appears or is brought before the High Bailiff;
  - (d) if the extradition hearing has begun, the High Bailiff is no longer required to proceed or to continue proceeding under sections 23 to 41 (relating to the extradition hearing);
  - (e) if the person has given to the High Bailiff the person's consent to being extradited, the High Bailiff is no longer required to send the case to the Attorney General for his or her decision whether the person is to be extradited;
  - (f) if an appeal has been brought to the High Court or the Privy Council, the High Court or the Privy Council (as the case may be) is no longer required to hear or to continue hearing the appeal; and
  - (g) if the person's extradition has been ordered, there is no requirement for the person to be extradited.



- (10) In subsection (9)(f), “appeal” includes an application for leave to appeal.
- (11) Any —
  - (a) certificate under subsection (5);
  - (b) direction under subsection (6); or
  - (c) order under subsection (7),must be in writing, and signed by the Attorney General.

### **130 Documents sent by facsimile and email**

- (1) This section applies if a document to be sent in connection with proceedings under this Act is sent by facsimile transmission or email.
- (2) This Act has effect as if the document received by facsimile transmission or email were the document used to make the transmission.
- (3) The document received by facsimile transmission or email may be received in evidence accordingly.
- (4) This section is without prejudice to the *Electronic Transactions Act 2000*.

### **131 Receivable documents**

- (1) A duly authenticated document issued in a designated territory may be received in evidence in proceedings under this Act.
- (2) A document issued in a designated territory is duly authenticated if (but only if) —
  - (a) it purports to be signed by a judge, magistrate or other judicial authority of the designated territory;
  - (b) it purports to be certified, whether by seal or otherwise, by the Ministry or Department of the territory responsible for justice or for foreign affairs; or
  - (c) it purports to be authenticated by the oath or affirmation of a witness.
- (3) Nothing in this section prevents a document that is not duly authenticated from being received in evidence in proceedings under this Act.

### **132 Written statements and admissions**

Schedule 4 to the *Criminal Law Act 1981* (proof by written statement and formal admission) applies in relation to proceedings under this Act as it applies in relation to criminal proceedings.

### **133 Burden and standard of proof**

- (1) This section applies if, in proceedings under this Act, a question arises as to the burden or standard of proof.

- (2) The question must be decided by applying any enactment or rule of law that would apply if the proceedings were criminal proceedings.
- (3) An enactment or rule of law that is to be applied under subsection (2) must be applied as if —
  - (a) the person whose extradition is sought (or who has been extradited) were accused of an offence; and
  - (b) the designated territory concerned were the prosecution.
- (4) Subsections (2) and (3) are subject to any express provision of this Act.

#### **134 Customs officers**

The Treasury may make an order providing that any provision of this Act that applies in relation to constables or to persons arrested by constables are to apply (with such modifications, if any, as may be specified in the order) to customs officers or to persons arrested by customs officers.

Tynwald procedure – approval required.

#### **135 Implementation of international obligations**

The Council of Ministers may by order modify this Act to give effect to any international agreement, other international instrument or international obligation, that relates to extradition, and is applicable to or binding on the Island.

Tynwald procedure – approval required.

#### **136 Subordinate legislation**

- (1) The Department may make orders relating to any of the following matters —
  - (a) prescribing the form of any document required for the purposes of this Act (other than a form that is to be or may be prescribed by rules of court);
  - (b) providing for any other matters that are to be or may be prescribed under any other provisions of this Act (other than matters that are to be or may be prescribed by rules of court);
  - (c) providing for such other matters as are reasonably necessary for or incidental to the purpose of carrying this Act into effect.

Tynwald procedure – approval required.

- (2) An order under subsection (1) may make —
  - (a) any supplementary, incidental or consequential provision; and
  - (b) any transitory, transitional or saving provision,for the purposes of, or in consequence of or for giving full effect to, any provisions of this Act.

- (3) An order under subsection (1)(c) may, in addition to any other power given by this Act, modify, amend, repeal or revoke any enactment.
- (4) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings under this Act.
- (5) Until rules of court have been made the court may adopt such practice and procedure as it thinks fit.

### **137 Amendment of enactments**

Schedule 3 contains miscellaneous and consequential amendments.

Consultation draft



**SCHEDULE 1**

[Section 12(1)]

**DESIGNATED TERRITORIES****PART 1 DESIGNATED TERRITORIES**

Albania  
Andorra  
Armenia  
Aruba  
Australia  
Austria  
Azerbaijan  
Belgium  
Bonaire  
Bosnia & Herzegovina  
Bulgaria  
Canada  
Croatia  
Curacao  
Cyprus  
Czech Republic  
Denmark  
Estonia  
Faroe Islands  
Finland  
France  
Georgia  
Germany  
Gibraltar  
Greece  
Greenland  
Hong Kong SAR  
Hungary  
Iceland

Ireland  
Israel  
Italy  
Republic of Korea  
Latvia  
Liechtenstein  
Lithuania  
Luxembourg  
North Macedonia  
Malta  
Moldova  
Monaco  
Montenegro  
Netherlands  
New Zealand  
Norway  
Poland  
Portugal  
Romania  
Russian Federation  
Saba  
San Marino  
Serbia  
Sint Eustatius  
Sint Maarten  
Slovakia  
Slovenia  
South Africa  
Spain  
Sweden  
Switzerland  
Türkiye  
Ukraine  
United States of America

**PART 2 DESIGNATED TERRITORIES**

Algeria  
Anguilla  
Antigua & Barbuda  
Argentina  
Bahamas  
Bangladesh  
Barbados  
Belize  
Bermuda  
Bolivia  
Botswana  
Brazil  
British Antarctic Territory  
British Indian Ocean Territory  
British Virgin Islands  
Brunei  
Cayman Islands  
Chile  
Colombia  
Cook Islands  
Cuba  
Dominica  
Ecuador  
El Salvador  
Eswatini  
Falkland Islands  
Fiji  
Gambia  
Ghana  
Grenada  
Guatemala  
Guyana  
Haiti  
India

Iraq  
Jamaica  
Kenya  
Kiribati  
Kosovo  
Kuwait  
Lesotho  
Liberia  
Libya  
Malawi  
Malaysia  
Maldives  
Mauritius  
Mexico  
Montserrat  
Morocco  
Nauru  
Nicaragua  
Nigeria  
Panama  
Papua New Guinea  
Paraguay  
Peru  
Philippines  
Pitcairn, Henderson, Ducie and Oeno Islands  
St Christopher and Nevis  
St Helena, Ascension & Tristan de Cunha  
St Lucia  
St Vincent & the Grenadines  
Seychelles  
Sierra Leone  
Singapore  
Solomon Islands  
South Georgia & the South Sandwich Islands  
Sovereign Base Areas of Akrotiri & Dhekelia



Sri Lanka  
Tanzania  
Thailand  
Tonga  
Trinidad & Tobago  
Turks & Caicos Islands  
Tuvalu  
Uganda  
Uruguay  
United Arab Emirates  
Vanuatu  
(Western) Samoa  
Zambia  
Zimbabwe

Consultation draft

**SCHEDULE 2**

[Section 85(2)]

**RE-EXTRADITION PROCEEDINGS – MODIFICATIONS FOR THE PURPOSES  
OF THE APPLICATION OF PART 2****1 Section 23 modified**

- (1) Omit subsections (1), (2) and (4).
- (2) For subsection (3) substitute —
  - «(3) The High Bailiff must decide whether the offence specified in the request is an extradition offence.».
- (3) In subsection (5), for “any of the questions” substitute «the question».
- (4) In subsection (6), for “each of those questions” substitute «that question».

**2 Section 24 modified**

In subsection (1), omit paragraph (c).

**3 Section 27 modified**

Omit section 27.

**4 Section 37 modified**

- (1) In subsection (3), for the words from “must send the case” to “extradited” substitute «may order the person to be extradited to the designated territory».
- (2) After subsection (3) insert —
  - «(4) If the High Bailiff makes an order under subsection (3) the High Bailiff must remand the person in custody or on bail to wait for his or her extradition to the territory.
  - (5) If the High Bailiff remands the person in custody the High Bailiff may later grant bail.».

**5 Section 52 modified**

- (1) For subsection (1) substitute —
  - «(1) A person may appeal to the High Court against an order that the person be extradited.».
- (2) In subsection (2), for the words from “the person consented” to “Attorney General” substitute «the order is made under section 74».

- (3) Omit subsections (4), (5) and (6).
- (4) In subsection (7), for the words from “the Attorney General informs” to “extradition” substitute «the order is made».

## 6 Section 53 modified

Omit subsections (1)(b), (6) and (7).

## 7 Section 55 modified

Omit subsections (1)(b), (7) and 8(b).

## 8 Section 65 modified

- (1) In subsection (1)(a), for “Attorney General” substitute «High Bailiff».
- (2) In subsection (1)(b), for the words from “the period” to “extradition” substitute «the period permitted under that section».
- (3) In subsection (1), in the words after paragraph (b), for “Attorney General” substitute «High Bailiff».
- (4) After subsection (1) insert —  
| «(1A) However, this section does not apply if the order is made under  
| section 74.».
- (5) In subsection (2)(a) for “Attorney General” substitute «High Bailiff».

## 9 Section 69 modified

In subsections (1)(a) and (2) to (7), for “Attorney General” substitute «High Bailiff».

## 10 Section 73 modified

- (1) In subsection (1), for the words from “arrested” to “request” substitute «brought before the High Bailiff under section 84(1) may consent to his or her extradition to the territory in which the overseas sentence was imposed».
- (2) In subsection (3), after “in writing,” insert «must be given before the High Bailiff.».

## 11 Section 74 modified

- (1) After subsection (1) insert —  
| «(1A) The High Bailiff must remand the person in custody or on bail.

- (1B) If the High Bailiff remands the person in custody the High Bailiff may later grant bail.».
- (2) In subsection (5), for the words from “send the case” to “extradited” substitute «within the period of 10 days starting with the day on which consent is given order the person's extradition to the designated territory».
- (3) After subsection (5) insert —
- «(5A) If subsection (5) is not complied with and the person applies to the High Bailiff to be discharged the High Bailiff must order the person's discharge.».
- (4) After section 74 insert —

**«74A Extradition to designated territory following consent**

- (1) This section applies if the High Bailiff makes an order under section 74(5) for a person's extradition to a designated territory.
- (2) The person must be extradited to the designated territory before the end of the required period, which is 28 days starting with the day on which the order is made.
- (3) If subsection (2) is not complied with and the person applies to the High Bailiff to be discharged the High Bailiff must order the person's discharge, unless reasonable cause is shown for the delay.

**74B Extradition claim following consent**

- (1) This section applies if —
- (a) a person consents under section 73 to his or her extradition to a designated territory; and
- (b) before the High Bailiff orders his or her extradition under section 74(5), the High Bailiff is informed that the conditions in subsection (2) are met.
- (2) The conditions are that —
- (a) the Attorney General has received another valid request for the person's extradition to a designated territory; and
- (b) the other request has not been disposed of.
- (3) The High Bailiff must not make an order under section 74(5) until the High Bailiff is informed what order has been made under section 76(2).
- (4) If the order under section 76(2) is for further proceedings on the request under consideration to be deferred until the other request has been disposed of, the High Bailiff must remand the person in custody or on bail.

- (5) If the High Bailiff remands the person in custody the High Bailiff may later grant bail.
- (6) If —
- (a) the order under section 76(2) is for further proceedings on the request under consideration to be deferred until the other request has been disposed of; and
  - (b) an order is made under section 117 for proceedings on the request under consideration to be resumed,
- the period specified in section 74(5) must be taken to be 10 days starting with the day on which the order under section 118 is made.
- (7) If the order under section 76(2) is for further proceedings on the other request to be deferred until the request under consideration has been disposed of, the period specified in section 74(5) must be taken to be 10 days starting with the day on which the High Bailiff is informed of the order.

#### **74C Extradition following deferral for competing claim**

- (1) This section applies if —
- (a) an order is made under section 74(5) for a person to be extradited to a designated territory in pursuance of a request for his or her extradition;
  - (b) before the person is extradited to the territory an order is made under section 76(2) for the person's extradition in pursuance of the request to be deferred; and
  - (c) the High Bailiff makes an order under section 118(1) for the person's extradition in pursuance of the request to cease to be deferred.
- (2) The required period for the purposes of section 74A(2) is 28 days starting with the day on which the order under section 118(2) is made.».

#### **12 Section 116 modified**

After subsection (1) insert —

- «(1A) However, this section does not apply if the order for the person's extradition is made under section 74.».

## SCHEDULE 3

[Section 137]

## AMENDMENT OF ENACTMENTS

**1 Bail Act 1952**

- (1) The *Bail Act 1952* is amended as follows.
- (2) After section 3 insert —

«3ZA **Bail in extradition proceedings**

Whenever a person in custody in respect of whom a request for extradition has been made appears before a court under the *Extradition Act 2025*, the court if it sees fit, may, at any time, admit the person to bail by recognizance, with or without a surety or sureties, conditioned that the person will appear in court as required, and that he or she will surrender and will not depart the court without leave.».

- (3) In section 13 after “information” insert «or any person in respect of whom a request for extradition has been made».

**2 Legal Aid Act 1986**

In Schedule 3 to the *Legal Aid Act 1986* add the following row at the end of the table —

«16. Proceedings for dealing with an individual under the <i>Extradition Act 2025</i>	The court hearing the application	The person»
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**3 Police Powers and Procedures Act 1998**

- (1) The PPPA is amended as follows.
- (2) After section 57A(10) insert —
- «(10A) Nothing in this section applies to a person arrested under an extradition arrest warrant.».
- (3) At the end of both section 64(9)(b) and section 66(14) insert «or to a person arrested under an extradition arrest warrant.».
- (4) In section 64 after subsection (11) insert —
- «(12) Nothing in this section applies to a person arrested under an extradition arrest warrant.».

- (5) In section 66 after subsection (14) insert —
- «(15) Nothing in this section applies to a person arrested under an extradition arrest warrant.».
- (6) After section 68A(5) insert —
- «(5A) Nothing in this section applies to a person arrested under an extradition arrest warrant.».
- (7) In section 69(1) after the definition of “drug trafficking” and “drug trafficking offence” insert —
- « “extradition arrest warrant” has the same meaning as it has in section 4(1) of the *Extradition Act 2025*;».
- (8) In Part 1 of Schedule 1A, after paragraph 13 insert —
- «13A Extradition Act 2025**
- The powers of seizure conferred by sections 95(4), 99(5), 100(3), 101(6) and (7) and 103(6) and (7) of the *Extradition Act 2025* (seizure in connection with extradition).».
- (9) In Part 2 of Schedule 1A, after paragraph 16 insert —
- «16A Extradition Act 2025**
- The powers of seizure conferred by sections 102(7) and (8) of the *Extradition Act 2025* (seizure in connection with extradition).».

#### 4 Children and Young Persons Act 2001

- (1) The *Children and Young Persons Act 2001* is amended as follows.
- (2) In section 72 —
- (a) in subsection (4) for “charged” substitute «to whom this section applies»;
- (b) in subsection (6), after the definition of “guardian” add —
- « “hearing of the charge” includes an extradition hearing under the *Extradition Act 2025*.»;
- (3) In section 76 —
- (a) after subsection (1) insert —
- «(1A) However, if a court remands a child or young person in connection with proceedings under the *Extradition Act 2025* and he or she is not released on bail, the remand must be to accommodation provided by the Department.»;

(b) in subsection (6) for “subsection (7)” substitute «subsections (7) and (7A)»;

(c) after subsection (7) insert —

«(7A) A court must not impose a security requirement in relation to a person remanded in accordance with subsection (1A) above unless—

(a) the person has attained the age of 12 and is of a description prescribed by references to age or sex or both by an order made by the Department;

(b) one or both of the conditions set out in subsection (7B) is satisfied;

and (in either case) the court is of the opinion that only such a requirement would be adequate to protect the public from harm from him or her.

(7B) The conditions mentioned in subsection (7A)(b) are—

(a) that the conduct constituting the offence to which the extradition proceedings relate would if committed in the Island constitute an offence punishable in the case of an adult with custody for a term of 14 years or more;

(b) that the person has previously absconded from the extradition proceedings, or from proceedings in the Island or the territory to which the person’s extradition is sought, that relate to the conduct constituting the offence to which the extradition proceedings relate.

(7C) For the purposes of subsection (7B) a person has absconded from proceedings if in relation to those proceedings—

(a) he or she has been released subject to a requirement to surrender to custody at a particular time and has failed to surrender to custody at that time; or

(b) he or she has surrendered into the custody of a court and has at any time absented himself or herself from the court without its leave.».

## 5 International Criminal Court Act 2003

In Schedule 2 to the *International Criminal Court Act 2003* —

(a) for paragraph 5 substitute —



**«5. Meaning of “extradition proceedings”**

In this Part, “extradition proceedings” means proceedings before any court in the Island under the *Extradition Act 2025* and includes an appeal to the Privy Council under that Act.»;

(b) for paragraph 7 substitute —

**«7. Power to suspend or revoke warrant or order**

(1) Where a court makes a delivery order in respect of a person whose extradition has been ordered under the *Extradition Act 2025*, the court may make any such order as is necessary to enable the delivery order to be executed.

(2) The court may, in particular, suspend or revoke any warrant or other order made in respect of the person.».

Consultation draft