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Second Session Eighth Parliament Republic of  
Trinidad and Tobago

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REPUBLIC OF TRINIDAD AND TOBAGO

**Act No. 12 of 2004**

[L.S.]

AN ACT to amend the Extradition (Commonwealth and  
Foreign Territories) Act, 1985

*[Assented to 2nd April, 2004]*

ENACTED by the Parliament of Trinidad and Tobago as Enactment  
follows:—

**1.** This Act may be cited as the Short title Extradition  
(Commonwealth and Foreign Territories) (Amendment)  
Act, 2004.

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- Interpretation Act  
No. 36 of 1985
- 2.** In this Act, “the Act” means the Extradition (Commonwealth and Foreign Territories) Act, 1985.
- Section 2 amended
- 3.** Section 2 of the Act is amended in the definition of “extraditable offence” by deleting the words “or section 7, as the case may be”.
- Section 5 amended
- 4.** Section 5 of the Act is amended as follows:
- (a) by renumbering section 5 as section 5(1); and
  - (b) by inserting the following new subsection:
    - “ (2) For greater certainty, a person may be returned under this Act whether or not the conduct on which the declared Commonwealth or foreign territory bases its request occurred in territory over which it has jurisdiction.”.
- Section 6 repealed and substituted
- 5.** Section 6 of the Act is repealed and the following section is substituted:
- <sup>“Extraditable offences</sup> **6.** (1) For the purpose of this Act, an offence in respect of which a person is accused or has been convicted in a declared Commonwealth territory, or a declared foreign territory, is an extraditable offence if—
- (a) it is an offence against the law of that territory which is punishable under the law with death or imprisonment for a term of not less than twelve months;
  - (b) the conduct of the person would constitute an offence against the law of Trinidad and Tobago if it took place in Trinidad and Tobago, or in the case of an extra-territorial offence, if it took place in corresponding circumstances outside Trinidad and Tobago, and

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would be punishable under the law of Trinidad and Tobago with death or imprisonment for a term of not less than twelve months; and

- (c) in the case of a declared foreign territory, extradition for that offence is provided for by a treaty between Trinidad and Tobago and that territory.

(2) For the purpose of this section, in determining whether an offence against the law of a declared Commonwealth territory, or a declared foreign territory, is an offence against the law of Trinidad and Tobago, any special intent, state of mind or special circumstances of aggravation which may be necessary to constitute that offence under the law of Trinidad and Tobago shall be disregarded.

(3) For greater certainty, it is not relevant whether the conduct referred to in subsection (1) is named, defined or characterized by the declared Commonwealth territory, or the declared foreign territory, in the same way as it is in Trinidad and Tobago.

(4) An offence constituted by conduct, whether in Trinidad and Tobago or not, that is of a kind over which Contracting States to an international Convention to which Trinidad and Tobago is a party are required by that Convention to establish jurisdiction, and which jurisdiction Trinidad and Tobago has so established, is an extraditable offence for the purpose of this Act.”.

Section 7 repealed  
and substituted

**6.** Section 7 of the Act is repealed and the following section is substituted:

<sup>"Further  
proceedings</sup>

7. For greater certainty, the discharge of a person under this Act does not preclude further proceedings, whether or not they are based on the same conduct, with a view to the return of the person under this Act unless the High Court is of the opinion that those further proceedings would be an abuse of process.”.

Section 8 amended

**7.** Section 8 of the Act is amended as follows:

(a) in subsection (1), by inserting after the words “religion,” occurring in paragraphs (b) and (c) the words “gender, sexual preference,”;

(b) in subsection (7)(a), by inserting after the words “State,” the words “Head of Government or Minister of Government;”.

Section 9 amended

**8.** The Act is amended in section 9 as follows:

(a) by deleting subsection (2) and inserting the following:

“ (2) There shall be furnished with any request made for the purposes of this section on behalf of any territory a record of the case which shall include—

(a) in the case of a person accused of an extraditable offence, a warrant for his arrest issued in that territory and a document summarizing the evidence available to that territory for use in the prosecution of the person;

(b) in the case of a person unlawfully at large after conviction of an extraditable offence, a certificate of the conviction and sentence in that territory, and a statement of the amount, if any, of that sentence which has been served,

together in each case with—

- (c) particulars of the person whose return is requested;
- (d) particulars of the facts upon which and the law under which he is accused or was convicted;
- (e) evidence that provision is made by the law of that territory for the specialty rule provided for by section 8(3), where the specialty rule is not made by an arrangement with that territory; and
- (f) evidence sufficient to justify the issue of a warrant for his arrest under section 10.”; and

(b) by deleting subsection (4) and inserting the following subsections:

“ (4) The Attorney General may receive supplementary evidence to the record of the case and re-issue an authority to proceed to replace one issued under subsection (3) or this subsection at any time before proceedings under section 12 begin, and all previous documents issued and

orders made by the Magistrate apply in respect of a re-issued authority to proceed, unless the Magistrate, on application of the person or the Attorney General, orders otherwise.

(5) Where the Attorney General re-issues an authority to proceed under subsection (4) and the person applies for another date to be set for the beginning of proceedings under section 12, in order to give the person an opportunity to examine the re-issued authority to proceed, the Magistrate may set another date for the hearing.

(6) The Attorney General may amend the authority to proceed after the hearing has begun in accordance with the evidence that is produced during the hearing.

(7) The Attorney General may not issue an authority to proceed or may withdraw one already issued if it appears to him that an order for the return of the person concerned could not lawfully be made, or would not in fact be made, in accordance with the provisions of this Act.

(8) Where the Attorney General withdraws an authority to proceed after proceedings under section 12 have begun, the Magistrate shall discharge the person and set aside any order made with respect to the remand of the person in custody or on bail.”.

**9.** Section 12 of the Act is amended in subsection (4) Section 12 amended by deleting paragraphs (a) and (b) and substituting the following paragraphs:

“(a) where the person is accused of the offence, that—

(i) there is evidence admissible under this Act of conduct that, had it occurred in Trinidad and Tobago, would justify committal for trial in Trinidad and Tobago for the offence set out in the authority to proceed; and

(ii) the person is the person sought by the declared Commonwealth or foreign territory; or

(b) where the person is alleged to be unlawfully at large after conviction of the offence, that—

(i) the conviction was in respect of conduct that corresponds to the offence set out in the authority to proceed;

(ii) the person is the person who was convicted; and

(iii) the person appears to be unlawfully at large.”.

**10.** Section 13 of the Act is amended in subsection (2) Section 13 amended by deleting paragraph (a) and substituting the following:

“(a) until the expiration of the period of fifteen days beginning with the day on which the order for his committal is made, unless he waives, in writing, the entire period or any part thereof;”.

Section 14 amended **11.** Section 14 of the Act is amended by inserting after subsection (6), the following subsection:

“ (7) An application for judicial review or *habeas corpus* under this section shall be listed for hearing by the High Court at an early date whether that date is in or out of the sessions of that Court.”.

Section 15 amended **12.** Section 15 of the Act is amended by inserting after subsection (6), the following subsection:

“ (7) An appeal under this section shall be listed for hearing by the Court of Appeal at an early date whether that date is in or out of the sessions of that Court.”.

Section 16 amended **13.** Section 16 of the Act is amended by repealing subsection (2) and substituting the following:

“ (2) Where the Attorney General makes an order under this section in the case of a person who is serving a sentence of imprisonment, or is charged with an offence, in Trinidad and Tobago, the order shall be subject to such conditions for the return of the person to Trinidad and Tobago as the Attorney General shall stipulate.”.

Section 19 repealed and substituted **14.** Section 19 of the Act is repealed and the following sections are substituted:

“Definition of documents **19.** For the purposes of sections 19A and 19B, “document” means data recorded in any form, and includes photographs and copies of documents.

Admissibility of evidence **19A.** (1) Subject to subsection (2), evidence that would otherwise be admissible under the laws of Trinidad and Tobago shall be admitted as evidence at an extradition hearing.



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(2) The following evidence is admissible in proceedings under this Act, even if the evidence would not otherwise be admissible under the laws of Trinidad and Tobago:

- (a) the contents of the documents contained in the record of the case or in supplementary evidence, certified under subsection (5);
- (b) the contents of the documents that are submitted in conformity with the terms of a treaty with a declared foreign territory; and
- (c) evidence adduced by the person whose return is sought that is relevant to the tests set out in section 12(4) if the Magistrate considers it reliable.

(3) A document purporting to have been signed by a judicial, prosecuting or penal authority, or other officer administering a Government Department, of the declared Commonwealth or foreign territory shall be admitted without proof of the signature or official character of the person appearing to have signed it.

(4) A translation of a document into English shall be admitted into evidence only where it is certified by a judicial, prosecuting or penal authority, or other officer administering a Government Department, of the declared Commonwealth or foreign territory and purports to be an accurate translation of the original document.

(5) A record of the case or supplementary evidence shall not be admitted unless—

(a) in the case of a person who is accused of an extraditable offence, a judicial or prosecuting authority of the declared Commonwealth or foreign territory certifies that the evidence summarized or contained in the record of the case or in the supplementary evidence is in a form that would be admissible at the trial and—

(i) was gathered according to the law of that territory; or

(ii) is sufficient under the law of that territory to justify prosecution; or

(b) in the case of a person who is alleged to be unlawfully at large after conviction of an extraditable offence, a judicial, prosecuting or penal authority of the declared Commonwealth or foreign territory certifies that the documents in the record of the case or in the supplementary evidence are accurate; and

(c) each document contained in the record of the case or in supplementary evidence bears the signature of the certifying official.

Evidence of  
identity

19B. The following means of identification constitute evidence that the person before the court is the person referred to in the warrant or the

document that records the conviction or any other document that is presented to support the request for the return of the person:

- (a) the fact that the name of the person before the court is similar to the name that is in the document submitted by the declared Commonwealth or foreign territory; and
- (b) the fact that the physical characteristics of the person before the court are similar to those evidenced in a photograph, fingerprint or other description of the person.”.

**15.** The First Schedule to the Act is repealed.

First Schedule  
repealed

**16.** This Act applies to extraditable offences committed before as well as after the commencement of the Act.

Application

Passed in the House of Representatives this 9th day of January, 2004.

J. SAMPSON-JACENT

*Clerk of the House*

Passed in the Senate this 31st day of March, 2004.

D. DOLLY

*Clerk of the Senate*

Senate Amendments agreed to by the House of Representatives this 2nd day of April, 2004.

J. SAMPSON-JACENT

*Clerk of the House*