



Treaty Series No. 30 (1998)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the Hong Kong
Special Administrative Region of the
People's Republic of China

for the Surrender of Fugitive Offenders

Hong Kong, 5 November 1997

[The Agreement entered into force on 19 March 1998]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty*

August 1998

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE SURRENDER OF FUGITIVE OFFENDERS

The Government of the United Kingdom of Great Britain and Northern Ireland ("United Kingdom") and the Government of the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong Special Administrative Region"), having been duly authorised to conclude this Agreement by the Central People's Government of the People's Republic of China, (hereinafter referred to as "the Parties");

Desiring to make arrangements for the reciprocal surrender of fugitive offenders;

Have agreed as follows:

ARTICLE 1

Obligation to Surrender

The Parties agree to surrender to each other, subject to the provisions laid down in this Agreement and in accordance with the law of the requested Party, any person who is found in the jurisdiction of the requested Party and who is wanted by the requesting Party for prosecution or for the imposition or enforcement of a sentence in respect of an offence under Article 2. Such persons shall, for the purposes of this Agreement, be referred to as "fugitive offenders".

ARTICLE 2

Offences

(1) Surrender shall be granted for an offence coming within any of the following descriptions of offences in so far as it is according to the laws of both Parties punishable by imprisonment or other form of detention of twelve months or more, or by a more severe penalty:

- (i) Murder; manslaughter or culpable homicide
- (ii) Aiding, abetting, counselling or procuring suicide
- (iii) Maliciously wounding; inflicting grievous bodily harm; assault occasioning actual bodily harm or injury; assault
- (iv) Rape
- (v) Indecent assault
- (vi) Gross indecency with a child
- (vii) Kidnapping, abduction; child theft (plagium); child abduction; false imprisonment
- (viii) Offences against the law relating to dangerous drugs
- (ix) Obtaining property or pecuniary advantage by deception; fraud; theft; robbery; burglary; blackmail; handling stolen goods and reset; embezzlement
- (x) Offences against bankruptcy law
- (xi) False statements by company directors and other officers
- (xii) Any offence against the law of counterfeiting of coins; counterfeiting of currency; any offence against the law relating to forgery; fraudulent and false accounting
- (xiii) Bribery or corruption
- (xiv) Offences relating to fiscal matters, taxes or duties, notwithstanding that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty or customs regulation of the same kind as the law of the requesting Party

- (xv) Perjury and subornation of perjury; attempting to pervert the course of justice
- (xvi) Criminal damage, including arson and fire raising
- (xvii) An offence against the law relating to firearms
- (xviii) An offence against the law relating to explosives
- (xix) Sinking or destroying a vessel at sea; assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm; revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master
- (xx) Piracy, involving ships or aircraft, according to international law
- (xxi) Dealing in slaves
- (xxii) Genocide or conspiracy or direct and public incitement to commit genocide
- (xxiii) Unlawful seizure or exercise of control of an aircraft
- (xxiv) Impeding the arrest or prosecution of a person who has or is believed to have committed an offence for which surrender may be granted under this Agreement and which is punishable according to the laws of both Parties by imprisonment or other form of detention of a period of five years or more
- (xxv) Conspiracy to commit fraud or to defraud
- (xxvi) Smuggling
- (xxvii) Offences for which fugitive offenders may be surrendered under International Conventions binding on the Parties
- (xxviii) An attempt or conspiracy to commit, or inciting, participating in, any offence for which surrender may be granted under this Agreement
- (xxix) Any other offences for which surrender may be granted in accordance with the laws of both Parties

(2) Where surrender of a fugitive offender is requested for the purpose of carrying out a sentence, a further requirement shall be that in the case of a period of imprisonment or detention at least six months remain to be served.

(3) For the purpose of paragraph (1) of this Article, in determining whether an offence is an offence punishable under the laws of both Parties the totality of the acts or omissions alleged against the fugitive offender shall be taken into account without reference to the elements of the offence prescribed by the law of the requesting Party.

(4) For the purposes of paragraph (1) of this Article, an offence shall be an offence according to the laws of both Parties if the acts or omissions alleged against the fugitive offender were an offence against the law of the requesting Party at the time it was committed and an offence against the law of the requested Party at the time the request for surrender is received.

(5) Conduct in a vessel, aircraft or hovercraft registered by a Party shall be treated as if it were conducted in the area of that Party.

ARTICLE 3

Surrender of Nationals

(1) Except as provided in paragraphs (2) and (3) of this Article, surrender shall not be refused on grounds relating to the nationality of the person sought.

(2) The executive authority of the Government of the United Kingdom reserves the right to refuse the surrender of nationals of the United Kingdom in cases in which the requested surrender relates to the defence, foreign affairs or essential public interest or policy of the United Kingdom.

(3) The executive authority of the Government of the Hong Kong Special Administrative Region reserves the right to refuse the surrender of nationals of the People's Republic of China in cases in which:

- (a) the requested surrender relates to the defence, foreign affairs or essential public interest or policy of the People's Republic of China, or
- (b) the person sought neither has the right of abode in the Hong Kong Special Administrative Region nor has entered the Hong Kong Special Administrative Region for the purpose of settlement, and the People's Republic of China has jurisdiction over the offence relating to the requested surrender and has commenced or completed proceedings for the prosecution of that person.

(4) In cases in which the person sought by the United Kingdom neither has the right of abode in the Hong Kong Special Administrative Region nor has entered the Hong Kong Special Administrative Region for the purpose of settlement and the People's Republic of China has jurisdiction over the offence and is investigating the offence, action on the request may be deferred until such time as the investigation has been expeditiously concluded.

(5) Where the right to refuse surrender is exercised in accordance with paragraph (2) or paragraph (3)(a) of this Article, the requesting Party may request that the case be submitted to the competent authorities of the requested Party in order that proceedings for prosecution may be considered.

ARTICLE 4

Death Penalty

If the offence for which surrender of a fugitive offender is requested under this Agreement is punishable according to the law of the requesting Party with the death penalty, and if in respect of such an offence the death penalty is not provided for by the law of the requested Party or is not normally carried out, surrender may be refused unless the requesting Party gives such assurances as the requested Party considers sufficient that this penalty will not be imposed or, if imposed, will not be carried out.

ARTICLE 5

Refusal of Surrender

- (1) A person shall not be surrendered if it appears to the requested Party:
 - (a) that the offence of which that person is accused or was convicted is an offence of a political character;
 - (b) that the offence of which that person is accused or was convicted is an offence under military law which is not also an offence under the general criminal law;
 - (c) that the request for his return (though purporting to be made on account of an offence for which surrender may be granted) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or
 - (d) that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.
- (2) Surrender of the person sought shall be refused if it appears to the requested Party that:
 - (a) by reason of the trivial nature of the offence of which he is accused or convicted; or
 - (b) by reason of the passage or time since he is alleged to have committed the offence or to have become unlawfully at large as the case may be; or
 - (c) because the accusation against him is not made in good faith in the interests of justice; or

- (d) because such a surrender is likely to entail exceptionally serious consequences related to age or health

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

(3) A person shall not be surrendered for any offence which has been committed outside the area of the requesting Party unless

(a) the requested Party would in corresponding circumstances have jurisdiction over such an offence; or

(b) when the Government of the United Kingdom is the requesting Party jurisdiction over the offence is based on the fugitive offender's nationality.

(4) Surrender for an offence shall be refused if the person whose surrender is sought cannot under the law of either Party be prosecuted or punished for that offence.

(5) The requested Party may refuse to surrender a fugitive offender for an offence which is regarded by its law as having been committed within the jurisdiction of its courts.

ARTICLE 6

Deferred Surrender

If the person is being proceeded against or under punishment in the jurisdiction of the requested Party for any other offence, his surrender may be deferred until the conclusion of the proceedings and the execution of any punishment awarded to him.

ARTICLE 7

Liability to Surrender

A fugitive offender shall be surrendered only if:

(a) for an accused person

(i) in the case of a request to the Hong Kong Special Administrative Region, there is sufficient evidence provided, according to the law of the requested Party, to justify the committal for trial of the person sought if the offence of which he is accused were committed in the territory of the requested Party; or

(ii) in the case of a request to the United Kingdom, there is sufficient evidence provided, according to the law of the requested Party, to make a case requiring an answer by that person if the offence had been committed within the jurisdiction of the requested Party and if the proceedings were a summary trial of an information against him;

(b) in the case of a person already convicted there is sufficient information provided showing that the sentence is enforceable and that he is the person convicted.

ARTICLE 8

The Request and Supporting Documents

(1) Requests for the surrender of a fugitive offender shall be made in writing by and to the appropriate authorities as may be notified from time to time.

(2) The request shall be accompanied by:

(a) as accurate a description as possible of the person sought, together with any other information which would help to establish his identity and nationality including, if known, his place of residence;

- (b) a statement and particulars of the offence for which surrender is requested;
 - (c) the text of the legal provisions, if any, creating the offence, and a statement of the punishment which can be imposed therefore and whether any time limit is imposed on the institution of proceedings, or on the execution of any punishment imposed, for that offence.
- (3) If the request relates to an accused person, it shall also be accompanied by an authenticated copy of the warrant of arrest issued by a judge, magistrate, or competent authority of the requesting Party and by sufficient evidence as specified in Article 7(a).
- (4) If the request relates to a person already convicted or sentenced, it shall also be accompanied by:
- (a) an authenticated copy of the certificate of the conviction or sentence; and
 - (b) a statement that the sentence is enforceable and indicating how much of the sentence remains to be served; and
 - (c) in the case of a person convicted but not sentenced, a statement to that effect by the appropriate court and an authenticated copy of the warrant of arrest.

ARTICLE 9

Provisional Arrest

- (1) In urgent cases the person sought may, in accordance with the law of the requested Party, be provisionally arrested on the application of the competent authorities of the requesting Party. The application for provisional arrest shall contain an indication of intention to request the surrender of the person sought and a statement of the existence of a warrant of arrest or a judgment of conviction against that person, and such further information, including details identifying that person, as would be necessary to justify the issue of a warrant of arrest had the offence been committed, or the person sought been convicted, within the jurisdiction of the requested Party.
- (2) An application for provisional arrest may be forwarded through the same channels as a request for surrender or through the International Criminal Police Organisation (Interpol).
- (3) The provisional arrest of the person sought shall not normally extend beyond sixty days from the date of his arrest if the request for his surrender shall not have been received. Where a person is released, this provision shall not prevent the re-arrest or surrender of the person sought if the request for his surrender is received subsequently.

ARTICLE 10

Additional Information

- (1) If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision in pursuance of this Agreement, the latter Party shall request the necessary supplementary information and may fix a time-limit for receipt thereof.
- (2) If the person whose surrender is sought is under arrest and the additional information furnished is not sufficient in accordance with this Agreement or is not received within the time specified, the person may be discharged. Such discharge shall not preclude the requesting Party from making a fresh request for the surrender of the person.

ARTICLE 11

Authentication

(1) Any document that, in accordance with Article 8 or 10, supports a request for surrender shall be admitted in evidence, if authenticated, in any proceedings in the jurisdiction of the requested Party.

(2) A document is authenticated for the purposes of this Agreement if:

- (a) it purports to be signed by a Judge, Magistrate or other officer of a competent authority in the jurisdiction where they were issued; and
- (b) it purports to be certified by being sealed with an official or public seal of the competent authority of the requesting Party or of an officer of the requesting Party

or if it is authenticated in any other such manner as may be permitted by the law of the requested Party.

ARTICLE 12

Concurrent Requests

If the surrender of a fugitive offender is requested concurrently by one of the Parties and a Government or Governments with whom the United Kingdom or the Hong Kong Special Administrative Region, whichever is being requested, has arrangements for the surrender of fugitive offenders, the requested Party shall make its decision in so far as its law allows having regard to all the circumstances including the provisions in this regard in any agreements in force between the requested Party and other requesting Governments, the relative seriousness and places of commission of the offences, the respective dates of the requests, the nationality or citizenship and ordinary residence of the person sought and the possibility of subsequent surrender to another State, and shall furnish the other Party with information justifying its decision in the event of surrender of the fugitive to another jurisdiction.

ARTICLE 13

Language of Documentation

In any particular case the requested Party may require documents submitted in accordance with this Agreement to be translated into, an official language of the requested Party. Any such translation shall be certified in the manner specified by the law of the requested Party.

ARTICLE 14

Representation and Costs

(1) The requested Party shall make all necessary arrangements for and meet the costs of any proceedings arising out of a request for surrender and shall otherwise represent the interests of the requesting Party.

(2) If it becomes apparent that exceptional expenses may be incurred as a result of a request for surrender, the Parties shall consult with a view to deciding how these expenses will be met.

(3) In the event that the requesting Party arranges its own legal representation and assistance, it shall bear any costs incurred.

(4) The requested Party shall bear the expenses arising out of the arrest and detention of the person whose surrender is sought until that person has been surrendered. The requesting Party shall bear all subsequent expenses.

ARTICLE 15

Arrangements for Surrender

- (1) The requested Party shall promptly communicate its decision on the request for surrender to the requesting Party. Reasons shall be given for any complete or partial refusal of the request.
- (2) If a fugitive offender is to be surrendered, he shall be taken by the authorities of the requested Party on a date agreed with the requesting Party to a mutually convenient place of departure within the jurisdiction of the requested Party. The requested Party shall inform the requesting Party of the length of time for which the fugitive offender was detained in connection with the request for his surrender.
- (3) If the requesting Party does not take custody of the fugitive offender on the date agreed by the two Parties, he may, in accordance with the law of the requested Party, apply for discharge and unless sufficient cause is shown to the contrary, he may be released.
- (4) Where a fugitive offender is released in accordance with paragraph (3) of this Article the requested Party may subsequently refuse to surrender him for the same offence.

ARTICLE 16

Surrender of Property

- (1) When a request for surrender of a fugitive offender is granted the requested Party shall, at the request of the requesting Party and in accordance with its law, hand over to the requesting Party all articles, including sums of money,
 - (a) which may serve as proof of the offence; or
 - (b) which have been acquired by the fugitive offender as a result of the offence and are in his possession or discovered subsequently.
- (2) If the articles in question are liable to seizure or confiscation within the jurisdiction of the requested Party the latter may, in connection with pending proceedings, temporarily retain them or hand them over on condition they are returned.
- (3) These provisions shall not prejudice the rights of the requested Party or of any person other than the fugitive offender. When such rights exist the articles shall on request be returned to the requested Party without charge as soon as possible after the end of the proceedings.

ARTICLE 17

Speciality

- (1) A fugitive offender who has been surrendered shall not be proceeded against, sentenced, detained or subjected to any other restriction of personal liberty by the requesting Party for any offence committed prior to his surrender other than:
 - (a) the offence in respect of which his return is ordered;
 - (b) any lesser offence however described disclosed by the facts in respect of which his return was ordered, provided such an offence is an offence for which he can be returned under this Agreement;
 - (c) any other offence being an offence for which surrender may be granted under this Agreement in respect of which the requested Party may consent his being dealt with;unless he has first had an opportunity to leave the jurisdiction of the requesting Party and has not done so within forty days of his having been free to do so or has returned voluntarily to that jurisdiction having left it.

(2) Consent shall not be given by a requested Party under paragraph (1)(c) above in respect of an offence in relation to which an order for the return of the fugitive offender could not lawfully be made, or would not in fact be made.

ARTICLE 18

Re-Surrender

(1) Where a fugitive offender has been surrendered to the requesting Party, that Party shall not surrender him to any other jurisdiction for an offence committed before his surrender unless:

- (a) the requested Party consents; or
- (b) he has first had an opportunity to leave the jurisdiction of the requesting Party and has not done so within forty days of having been free to do so or has returned voluntarily to that jurisdiction having left it.

(2) The Party whose consent is requested may require the production of the documents submitted by the other jurisdiction in support of its request for surrender.

ARTICLE 19

Application of the Agreement

This Agreement shall apply:

- (1) In relation to the United Kingdom:
 - (a) to England and Wales, Scotland, and Northern Ireland; and
 - (b) to the Isle of Man and the Channel Islands and to any other territory for whose international relations the United Kingdom is responsible and to which this Agreement shall have been extended, subject to any modification, by an exchange of notes through the diplomatic channel;
- (2) In relation to the Hong Kong Special Administrative Region of the People's Republic of China, to such Region.

ARTICLE 20

Entry into force, Suspension and Termination

(1) Each of the Parties shall notify the other in writing of the completion of those procedures necessary to enable this Agreement to enter into force. The Agreement shall enter into force thirty days after the date of the later of the notifications.¹

(2) Either Party may suspend or terminate this Agreement at any time by giving notice to the other through the same channels as a request for the surrender of a fugitive offender. Suspension shall take effect on receipt of a notice to suspend. In the case of termination the Agreement shall cease to have effect six months after the receipt of a notice to terminate.

¹ The Agreement entered into force on 19 March 1998

In witness hereof the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

Done at Hong Kong, this fifth day of November one thousand nine hundred and ninety seven, in the English and Chinese languages, each text being equally authentic.

For the Government of the United
Kingdom of Great Britain and
Northern Ireland

For the Government of the Hong Kong
Special Administrative Region of the
People's Republic of China

FRANCIS CORNISH

PETER LAI

大不列顛及北愛爾蘭聯合王國政府
和中華人民共和國香港特別行政區政府
關於移交逃犯的協定

大不列顛及北愛爾蘭聯合王國(“聯合王國”)政府與經中華人民共和國中央人民政府正式授權締結本協定的中華人民共和國香港特別行政區(“香港特別行政區”)政府，(下文稱為“締約雙方”)，

願訂立相互移交逃犯的安排；

協議如下：

第一條
移交的義務

締約雙方同意按照本協定所訂立的條文，並根據被要求方的法律，把任何在被要求方管轄區內發現的並遭要求方通緝以便就第二條所描述的罪行提出檢控、判刑或執行判刑的人移交給對方。就本協定而言，該等人士稱為“逃犯”。

第二條
罪行

(1) 凡觸犯以下所描述的任何罪行，而該罪行依照締約雙方的法律屬可判處監禁或以其他形式拘留十二個月或以上，或可判處更嚴厲刑罰者，須准予移交：

- (i) 謀殺；誤殺或應受懲處的殺人罪
- (ii) 協助、教唆、慫使或促致他人自殺
- (iii) 惡意傷人；造成他人身體嚴重傷害；侵犯他人致造成實際身體傷害或損害；侵犯
- (iv) 強姦
- (v) 猥褻侵犯
- (vi) 對兒童作嚴重猥褻行為

- (vii) 綁架，拐帶；盜竊兒童(拐取)；拐帶兒童；非法拘禁
- (viii) 犯有關危險藥物的法律的罪行
- (ix) 藉欺騙取得財物或金錢利益；欺詐；盜竊；搶劫；入屋行竊；勒索；處理及接受贓物；盜用公款
- (x) 犯破產法律的罪行
- (xi) 公司董事及其他職員作虛假陳述
- (xii) 犯有關贗製錢幣的法律的罪行；製造偽鈔；犯與偽造有關的法律的罪行；製造欺詐性帳目及偽造帳目
- (xiii) 賄賂或貪污
- (xiv) 犯與財政事項、稅項或關稅有關的罪行，儘管被要求方的法律並沒有徵收同樣的稅項或關稅或沒有如要求方法律般訂定同樣的稅項、關稅或海關規例
- (xv) 偽證和唆使他人作偽證；企圖妨礙司法公正
- (xvi) 刑事損壞，包括縱火及放火
- (xvii) 犯有關火器的法律的罪行
- (xviii) 犯有關爆炸品的法律的罪行
- (xix) 弄沉或摧毀在海上的船舶；在公海的船舶上侵犯他人，意圖毀滅生命或造成嚴重身體傷害；兩個或以上的人在公海的船舶上反抗或串謀反抗船長的權力
- (xx) 國際法中涉及船舶或航空器的海盜行為
- (xxi) 買賣奴隸

- (xxii) 種族滅絕或串謀或直接及公開煽惑他人進行種族滅絕
- (xxiii) 非法扣押或控制航空器
- (xxiv) 妨礙逮捕或檢控下述人士：已犯或相信已犯根據本協定屬可准予移交的罪行的人士，而根據締約雙方的法律，該罪行屬可判處監禁或以其他形式拘留五年或以上者
- (xxv) 串謀犯欺詐或行騙罪
- (xxvi) 走私
- (xxvii) 根據對締約雙方有約束力的國際公約可將逃犯移交的罪行
- (xxviii) 企圖或串謀觸犯、或煽惑他人觸犯、或參與任何根據本協定可准予移交的罪行
- (xxix) 根據締約雙方的法律可准予移交的任何其他罪行

(2) 倘若要求移交逃犯的目的是為了執行判刑，則亦須符合另一項規定，即餘下未服滿的監禁或拘留期必須最少還有六個月。

(3) 就本條第(1)款而言，在確定一項罪行是否根據締約雙方的法律屬可判罰的罪行時，須考慮該逃犯被指稱的作為或不作為的全部，而不須顧及要求方法律所規定的有關的罪行構成因素。

(4) 就本條第(1)款而言，如該逃犯被指稱的作為或不作為在犯罪時候觸犯要求方的法律，而在接獲移交要求時在被要求方亦屬觸犯法律的罪行，則該罪行根據締約雙方的法律均屬罪行。

(5) 在由締約任何一方所註冊的船舶、航空器或氣墊航行器內作出的行為，將被視為在該締約方的地區內作出。

第三條 國民的移交

(1) 除本條第(2)款及第(3)款另有規定外，不得以關於被要求移交者的國籍的問題為理由拒絕移交。

(2) 聯合王國政府行政當局保留權利，若所要求的移交涉及聯合王國的國防、外交或重大公眾利益或政策，可拒絕移交聯合王國國民。

(3) 香港特別行政區政府行政當局保留權利，在下述情況，可拒絕移交中華人民共和國的國民：

(a) 所要求的移交涉及中華人民共和國的國防、外交或重大公眾利益或政策；或

(b) 被要求移交者無香港特別行政區居留權，亦非為定居目的而進入香港特別行政區，而中華人民共和國對所要求的移交涉及的罪行具有管轄權，並且已經展開或完成起訴該人的法律程序。

(4) 若聯合王國要求移交的人無香港特別行政區居留權，亦非為定居目的而進入香港特別行政區，而中華人民共和國對有關的罪行具有管轄權，並且正在調查該罪行，則可押後至其迅速完成調查工作後，有關方面才就移交的要求採取行動。

(5) 假如根據本條第(2)款或(3)(a)款行使拒絕移交的權利，要求方可要求把案件提交被要求方主管當局，以考慮進行起訴。

第四條 死刑

倘根據本協定提出移交逃犯要求所涉的罪行，按照要求方的法律可判處死刑，但按照被要求方的法律並無判處死刑的規定或通常不會執行死刑，則除非要求方作出被要求方認為充分的保證，即被移交者將不會被判死刑或即使被判死刑亦不會執行，否則被要求方可拒絕移交。

第五條 拒絕移交

(1) 如被要求方認為 —

- (a) 某人被控告或被裁定的罪行屬政治性質的罪行；
- (b) 某人被控告或裁定的罪行是軍事法律上的罪行而非普通刑事法上的罪行；
- (c) 提出移交某人的要求(雖然聲稱是因為一項可予以移交的罪行)，目的實際上是因為他的種族、宗教、國籍或政治意見而檢控他或懲罰他；或
- (d) 某人一經交回，可能因其種族、宗教、國籍或政治意見而在審判時受到不公平對待、被懲罰、被拘留或使其人身自由受限制，

則不得移交該人。

(2) 如被要求方認為基於下列原因，在考慮到所有情況後，把被要求移交者交回是不公平或壓迫性的，則應拒絕移交：

- (a) 該人被控告或判定的罪行性質輕微；或
- (b) 該人被指稱觸犯罪行已有相當時間，或該人已非法逃匿相當時間；或
- (c) 對該人的控告並非真誠地為司法公正而作出；或
- (d) 移交該人可能引起與年齡或健康有關的極嚴重後果。

(3) 如有關罪行是在要求方的地區外觸犯，則被要求方不得移交該人，惟下述情況則屬例外：

- (a) 被要求方在對應情況下對該罪行具管轄權；或
- (b) 如要求方為聯合王國政府，則對該罪行的管轄權是以該名逃犯的國籍為依據。

(4) 如根據任何一方的法律，被要求移交者不能因其罪行而被檢控或懲罰，則應拒絕移交該人。

(5) 如被要求方的法律把有關罪行視作在其法院的管轄範圍內觸犯，則被要求方可拒絕移交有關逃犯。

第六條 押後移交

如有關人士因任何其他罪行正在被要求方的管轄區內被起訴或受懲罰，則可押後至訴訟結束及其所被判處的懲罰執行後才將其移交。

第七條 移交責任

只在下述情況下始須把逃犯移交：

(a) 就被控告者而言，

(i) 如移交要求是向香港特別行政區提出，則根據被要求方的法律，須有足夠證據證明假如被要求移交者所被控告的罪行是發生在被要求方的境內，被要求方有理由把被要求移交者交付審訊；或

(ii) 如移交要求是向聯合王國提出，則根據被要求方的法律，假如有關罪行是發生在被要求方的管轄區內，以及假如有關起訴是對該人所被告發事項循簡易程序審訊，即有足夠證據構成須由該人答辯的指控。

(b) 如該人已被定罪，則須有足夠資料顯示有關判刑可強制執行，而該人即為該已被定罪者。

第八條
移交要求及證明文件

- (1) 移交逃犯的要求須以書面通過有關當局提出。締約雙方會不時知會對方向何謂有關當局。
- (2) 移交要求須連同下列資料一併提出：
- (a) 有關被要求移交者的盡可能準確的描述，以及其他可助確定該人身分和國籍的資料，包括其居留地（如知道的話）；
 - (b) 要求移交所根據的罪行的說明及詳細資料；及
 - (c) 如有關罪行乃根據法律條文而訂立，須提供法律條文文本，並說明該罪行可判處的懲罰，以及有否就該罪行提出訴訟或執行所判懲罰定下任何時限。
- (3) 如該項移交要求涉及一名被控告的人，則該項要求亦須連同一份由要求方的法官、裁判官或主管當局發出的逮捕令確認副本及足夠證據（見第七(a)條所指定）一併提交。
- (4) 如該項移交要求涉及被定罪或被判刑的人，則該項要求亦須連同下列資料一併提交：
- (a) 定罪或判刑證明書的確認副本；及
 - (b) 顯示該項判刑可強制執行和尚有多少未服刑期的說明；及
 - (c) 如該人已被定罪但未被判刑，由有關法院就此發出的說明及逮捕令確認副本。

第九條 暫時逮捕

(1) 在緊急情況下，經要求方的主管當局提出申請，被要求方可以根據本身的法律，暫時逮捕被要求移交者。暫時逮捕的申請書須載有要求移交該人的意向的表示並已具備逮捕令或定罪判決書的說明，以及其他必需資料，包括用以識別該人身分的詳情，以證明假如該罪行是發生在被要求方的管轄區內，或假如被要求移交者是在被要求方的管轄區內被定罪，亦有理由發出逮捕令。

(2) 要求暫時逮捕的申請可通過提出要求移交逃犯的相同途徑提出，或通過國際刑警組織提出。

(3) 如被要求方收不到移交要求，則該被要求移交者的暫時逮捕由逮捕日期起計滿六十天便通常不會予以延長。該人獲釋後，如被要求方其後接獲把他移交的要求，則本條文並不妨礙被要求方再度逮捕或移交該人。

第十條 補充資料

(1) 如要求方提供的資料不足，以致被要求方不能根據本協定作出決定，則被要求方須要求提供所需的補充資料，並可指定提交上述資料的期限。

(2) 如被要求移交者已被逮捕，而所提供的補充資料根據本協定並不足夠或沒有在指定時間內取得，則該人可被釋放。按此釋放被捕的人，並不妨礙要求方重新提出把該人移交的要求。

第十一條 確認

(1) 任何根據本協定第八條或第十條支持移交要求的文件如經確認，在被要求方的管轄區內進行的訴訟中將被接納作為證據。

(2) 就本協定而言，假如文件是經下述方式處理，即屬經已確認：

(a) 看來經發出該文件的管轄區的法官、裁判官或主管當局的其他官員簽署；及

(b) 看來經蓋上要求方的主管當局或要求方的官員的官方印章或公印作為證明，

或經被要求方法律認可的任何其他方式確認。

第十二條 同時要求

如締約一方和一個或多個與聯合王國或香港特別行政區（即被要求的一方）有移交逃犯安排的政府同時要求移交某逃犯，被要求方須在本身法律容許的範圍內考慮所有情況後才作出決定，須考慮的情況包括被要求方與各要求政府之間所有現行協定中的有關條文規定、所涉及罪行的相對嚴重性及犯罪地點、各方提出移交要求的日期、被要求移交者的國籍或公民身分和通常居住的地方，以及其後將其移交往另一個國家的可能性。被要求方如把該逃犯移交另一管轄區，須將其作出有關決定的原因通知締約另一方。

第十三條 文件的語文

在任何個案中，被要求方可要求按照本協定提交的文件須翻譯成其所使用的一種法定語文。該等翻譯文件須經被要求方的法律所指定的形式證明。

第十四條 代表和開支

- (1) 被要求方須為因移交要求而引起的任何訴訟程序作出一切必要的安排和負擔開支，並須在其他方面代表要求方的利益。
- (2) 如移交要求明顯地會引起特別性質的開支，締約雙方須進行磋商，以決定如何支付該等開支。
- (3) 如要求方自行安排法律代表和援助，則須負擔因此而引致的任何開支。
- (4) 被要求方須負擔因逮捕和拘留被要求移交者所引致的開支直至該人被移交為止。其後的一切開支由要求方負擔。

第十五條 移交安排

- (1) 被要求方須把就移交要求作出的決定迅速知會要求方。如被要求方拒絕全部或部分移交要求，便須解釋理由。
- (2) 如要移交逃犯，被要求方當局須在一個經與要求方商定的日期，把該人送往被要求方的管轄區內一處對締約雙方都方便的離境地點。被要求方須知會要求方該逃犯因其被要求移交而遭拘留的時間長短。
- (3) 要求方如在經雙方商定的日期並無接收其要求移交的逃犯，則該逃犯可根據被要求方的法律申請釋放，除非有足夠理由證明不能釋放，否則該逃犯可獲釋放。
- (4) 如逃犯是根據本條第(3)款獲得釋放，被要求方其後可拒絕因同一罪行把該逃犯移交。

第十六條 移交財產

(1) 在批准移交逃犯的要求後，被要求方須應要求方的要求並按照本身的法律把以下所有物件，包括金錢，交予要求方 —

(a) 可作為有關罪行的證據的物件；或

(b) 該逃犯因其所犯罪行而取得並由其管有或其後被發現的物件。

(2) 如有關物件可能會在被要求方的管轄區內被充公或沒收，被要求方可就即將進行的訴訟，暫時保留或在要求方保證歸還的條件下把物件移交給要求方。

(3) 此等規定不得損害被要求方的權利或該逃犯以外的其他人士的權利。如該等權利存在，要求方須應被要求方的要求在訴訟程序結束後盡快把有關物件歸還被要求方，不收取任何費用。

第十七條 特定罪行

(1) 已被移交的逃犯，除因下述罪行外，不得因其在被移交前所犯的任何其他罪行而被要求方起訴、判刑、拘留或以任何其他形式限制其人身自由：

(a) 下令交回該逃犯所根據的罪行；

(b) 任何由該項下令移交的有關資料所揭露的，不論類別而性質較輕微的罪行，但該項罪行須是根據本協定能把該逃犯交回的罪行；

(c) 該逃犯所犯的任何其他在本協定下可批准移交的罪行，而被要求方亦同意該人接受處置；

但如該逃犯曾有機會離開要求方的管轄區，但在其可自由離開的四十天內仍未離開，或在離開該管轄區後自願重返該地，則屬例外。

(2) 如涉及某項罪行的移交逃犯令不能合法地發出，或事實上不會發出，則被要求方不得根據上文第(1)(c)款表示同意。

第十八條

轉移交

(1) 凡已被移交往要求方的逃犯，要求方不得由於該逃犯在移交前所犯罪行而把他移交給另一管轄區，除非有以下情況，則屬例外：

(a) 被要求方表示同意；或

(b) 該逃犯曾有機會離開要求方的管轄區，但在其可自由離開的四十天內仍未離開，或在離開該管轄區後自願重返該地。

(2) 被要求表示同意的一方，可要求對方出示由另一管轄區為支持其移交要求而提交的文件。

第十九條

協定的適用

本協定適用範圍如下：

(1) 就聯合王國而言，適用於：

(a) 英格蘭及威爾斯、蘇格蘭以及北愛爾蘭；及

(b) 馬因島及海峽群島，以及由聯合王國負責管理其國際關係而本協定經修訂後通過外交渠道交換照會所延伸至的任何其他地區；

(2) 就中華人民共和國香港特別行政區而言，適用於該特別行政區。

第二十條
生效、暫時中止及終止

(1) 締約雙方須以書面通知對方已成為使本協定生效的必需程序。本協定由較後發出的通知的發出日期起計三十天後生效。

(2) 締約一方可隨時通過提出移交逃犯要求的相同渠道，通知締約另一方暫時中止或終止本協定。本協定於締約另一方接獲有關通知時即告暫時中止。如終止本協定，則本協定於締約另一方接獲有關通知六個月後失效。

下列簽署人，經其各自政府正式授權，已在本協定上簽字為證。

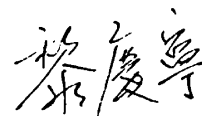
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大不列顛及北愛爾蘭
聯合王國政府代表

中華人民共和國
香港特別行政區政府代表



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