

Hong Kong, China: *Fugitive Offenders Ordinance*

Chapter: 503

An Ordinance to make provision for the surrender to certain places outside Hong Kong of persons wanted for prosecution, or for the imposition or enforcement of a sentence, in respect of certain offences against the laws of those places; for the treatment of persons wanted for prosecution, or for the imposition or enforcement of a sentence, in respect of certain offences against the law of Hong Kong who are surrendered from such places; and for matters incidental thereto or connected therewith.

[25 April 1997] L.N. 179 of 1997 (Originally 23 of 1997)

PART I PRELIMINARY

Section 1

- (1) This Ordinance may be cited as the Fugitive Offenders Ordinance.
- (2) (Omitted as spent)

Section 2

Remarks: Adaptation amendments retroactively made - see 71 of 1999 s. 3

- (1) In this Ordinance, unless the context otherwise requires-
"arrangements for the surrender of fugitive offenders" (移交逃犯安排) means arrangements-
 - (a) which are applicable to-
 - (i) the Government and the government of a place outside Hong Kong (other than the Central People's Government or the government of any other part of the People's Republic of China); or
 - (ii) Hong Kong and a place outside Hong Kong (other than any other part of the People's Republic of China; and (Amended 71 of 1999 s. 3)
 - (b) for the purposes of the surrender of a person or persons wanted for prosecution, or for the imposition or enforcement of a sentence, in respect of an offence against the law of Hong Kong or that place;

"authority to proceed" (授權進行書) means an order of the Chief Executive authorizing a person to be dealt with under Part II; (Amended 71 of 1999 s. 3)

"authorized officer" (獲授權人員) means-

- (a) any police officer;
- (b) any member of the Customs and Excise Service established by section 3 of the Customs and Excise Service Ordinance (Cap 342);
- (c) any officer within the meaning of section 2 of the Independent Commission Against Corruption Ordinance (Cap 204);

“court of committal” (負責交付拘押的法院) means any magistrate before whom is brought a person arrested pursuant to a warrant under section 7 (1), whether in the first instance or subsequently;

“imprisonment” (監禁) includes any form of detention;

“order of surrender” (移交令) means an order under section 13(1) for the surrender of a person to a prescribed place;

“order of committal” (拘押令) means an order under section 10(6);

“prescribed arrangements” (訂明安排) means arrangements for the surrender of fugitive offenders which are the subject of an order under section 3(1) which is in force;

“prescribed place” (訂明地方) means a place outside Hong Kong to or from which a person may be surrendered pursuant to prescribed arrangements;

“provisional warrant” (臨時手令) means a warrant under section 7(1)(b);

“request for surrender” (移交要求) means a request for the surrender of a person to a prescribed place;

“supporting documents” (支持文件) means-

- (a) in relation to an offence in respect of which a person is wanted for prosecution-
 - (i) a warrant of arrest (or a copy thereof) issued in the prescribed place which has made the request for surrender concerned; and
 - (ii) other documents which provide evidence of-
 - (A) the offence;
 - (B) the penalty which may be imposed in respect of the offence; and
 - (C) the conduct constituting the offence;
- (b) in relation to an offence in respect of which a person is wanted for the imposition or enforcement of a sentence, documents which provide evidence of-
 - (i) the offence;
 - (ii) the penalty which may be imposed in respect of the offence;
 - (iii) the conduct constituting the offence;
 - (iv) the conviction;
 - (v) the sentence imposed or the intention to impose a sentence; and
 - (vi) the extent to which a sentence imposed has not been carried out;

“warrant” (手令), in relation to a prescribed place, includes any judicial document authorizing the arrest of a person wanted for prosecution in respect of an offence. (Amended 71 of 1999 s. 3)

- (2) For the purposes of this Ordinance, an offence by a person against the law of a prescribed place is a relevant offence against that law if-
 - (a) the offence is punishable under that law with imprisonment for more than 12 months, or any greater punishment; and
 - (b) the acts or omissions constituting the conduct in respect of which the person's surrender to that place is sought amount to conduct which, if the conduct had occurred in Hong Kong, would constitute an offence-
 - (i) coming within any of the descriptions specified in Schedule 1; and

- (ii) punishable in Hong Kong with imprisonment for more than 12 months, or any greater punishment.
- (3) For the purposes of subsection (2)-
 - (a) the law of a prescribed place includes the law of any part of that place; and
 - (b) conduct in-
 - (i) a colony or dependency; or
 - (ii) a vessel, aircraft or hovercraft,of a prescribed place shall be treated as if the conduct were conduct in the territory of that place.
- (4) For the avoidance of doubt, it is hereby declared that any one set of arrangements for the surrender of fugitive offenders may be made with any number (including any combination) of-
 - (a) governments of places outside Hong Kong;
 - (b) places outside Hong Kong,and the other provisions of this Ordinance (including the definition of "arrangements for the surrender of fugitive offenders") which relate, whether directly or indirectly, to arrangements for the surrender of fugitive offenders shall be construed accordingly.
- (5) Where arrangements applicable to-
 - (a) the Government and the government of a place outside Hong Kong; or
 - (b) Hong Kong and a place outside Hong Kong, are partly for the purposes specified in paragraph (b) of the definition of "arrangements for the surrender of fugitive offenders" and partly for other purposes, the arrangements are in this Ordinance arrangements for the surrender of fugitive offenders to the extent that they relate to those specified purposes.
- (6) Where, but for this subsection, any arrangements are not arrangements for the surrender of fugitive offenders only because they are for the purposes of the surrender of persons accused or convicted of an offence against the law of Hong Kong or a place outside Hong Kong (or words to the like effect), then, by virtue of this subsection and for the purposes of this Ordinance, such arrangements shall be deemed to be arrangements for the surrender of fugitive offenders as if-
 - (a) any reference in such arrangements to the surrender of persons accused of an offence (or words to the like effect) were a reference to the surrender of persons wanted for prosecution in respect of an offence; and
 - (b) any reference in such arrangements to the surrender of persons convicted of an offence (or words to the like effect) were a reference to the surrender of persons wanted for the imposition or enforcement of a sentence in respect of an offence,and the provisions of this Ordinance shall apply to any such arrangements accordingly.
- (7) Where under this Ordinance any act is required to be, or may be, done by a prescribed place, that act may be done by a person on behalf of that place, and the provisions of this Ordinance shall be construed accordingly.

Section 3

Chief Executive in Council may apply Ordinance

- (1) Subject to subsection (9), the Chief Executive in Council may, in relation to any arrangements for the surrender of fugitive offenders, by order- (Amended 71 of 1999 s. 3)
 - (a) reciting or embodying the terms of the arrangements;

- (b) specifying the extent, if any, to which any relevant enactment specified in the order is to be repealed or amended,
- direct that the procedures in this Ordinance shall apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the order.
- (2) An order under subsection (1) shall be published in the Gazette and shall be laid on the table of the Legislative Council at the next sitting day after it is published.
- (3) The Legislative Council may, within the period of 28 days beginning on the date it is laid, by resolution, repeal an order under subsection (1).
- (4) If the period referred to in subsection (3) would but for this subsection expire-
- (a) after the last sitting before the end of a session or dissolution of the Legislative Council; but
- (b) on or before the day of the second sitting of the Legislative Council in the next session, that period shall be deemed to extend to and expire on the day after that second sitting.
- * (5) Before the expiry of the period referred to in subsection (3) or that period as extended by virtue of subsection (4), the Legislative Council may by resolution in relation to an order specified therein-
- (a) in the case of the period referred to in subsection (3), extend that period to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of its expiry;
- (b) in the case where the period referred to in subsection (3) has been extended by virtue of subsection (4), extend that period as so extended to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of the second sitting in that next session.
(Replaced 8 of 2002 s. 24)
- (6) A resolution under subsection (3) or (5) shall be published in the Gazette within 14 days after it is passed or such further period as the Chief Executive may allow. (Amended 71 of 1999 s. 3)
- (7) An order under subsection (1) shall not come into operation before the expiry of the period within which the Legislative Council may under this section repeal the order.
- (8) Without prejudice to the operation of subsection (7), an order under subsection (1) may specify that it shall come into operation on a day-
- (a) specified in the order; or
- (b) to be appointed by the Secretary for Security by notice in the Gazette.
- (9) The Chief Executive in Council shall not make an order under subsection (1) unless the arrangements for the surrender of fugitive offenders to which the order relates are substantially in conformity with the provisions of this Ordinance. (Amended 71 of 1999 s. 3)
- (10) Any relevant enactment specified in an order under subsection (1) is hereby repealed or amended-
- (a) to the extent specified in the order; and
- (b) with effect on the day on which the order comes into operation.
- (11) (Repealed 25 of 1998 s. 2)
- (12) A copy of an order under subsection (1) shall be conclusive evidence that-
- (a) the arrangements for the surrender of fugitive offenders to which the order relates are substantially in conformity with the provisions of this Ordinance; and
- (b) the procedures in this Ordinance apply in the case of any place outside Hong Kong to which the order relates.

- (13) Where a provision of any enactment makes any reference to any relevant enactment which has been repealed or amended under subsection (10), that provision shall be read and have effect with such modifications as may be necessary to take account of such repeal or amendment and, accordingly, that reference may, where appropriate, be read and have effect as if it were a reference to this Ordinance or to the arrangements for the surrender of fugitive offenders to which the order under subsection (1) which gave rise to such repeal or amendment relates. (Amended 25 of 1998 s. 2)
- (14) Where any arrangements for the surrender of fugitive offenders cease to relate to, or become related to, a place outside Hong Kong, the Chief Executive may, by notice in the Gazette, amend the order under subsection (1) which relates to those arrangements to specify-
- (a) that those arrangements have ceased to relate to, or have become related to, as the case may be, that place; and
 - (b) the date on which the event referred to in paragraph (a) occurred.
- (15) Sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap 1) shall not apply to a notice under subsection (14).
- (16) In this section-
- “relevant enactment” (有關成文法則) means-
- (a) any Ordinance relating to the surrender of fugitive offenders;
 - (b) any imperial enactment,

and, without prejudice to the definition of "Ordinance" in section 3 of the Interpretation and General Clauses Ordinance (Cap 1), includes any part or provision of any such Ordinance; (Replaced 25 of 1998 s. 2)

“sitting” (會議), when used to calculate time, means the day on which the sitting commences and only includes a sitting at which subsidiary legislation is included on the order paper.

Note:

* For the transitional provision relating to this subsection as amended by section 24 of the Extension of Vetting Period (Legislative Council) Ordinance 2002 (8 of 2002), see section 25 of that Ordinance.

Section 4

Persons liable to be surrendered

A person in Hong Kong who is wanted in a prescribed place for prosecution, or for the imposition or enforcement of a sentence, in respect of a relevant offence against the law of that place may be arrested and surrendered to that place in accordance with the provisions of this Ordinance.

Section 5

General restrictions on surrender

Remarks: Adaptation amendments retroactively made - see 25 of 1998 s. 2; 71 of 1999 s. 3

- (1) A person shall not be surrendered to a prescribed place, or committed to or kept in custody for the purposes of such surrender, if it appears to an appropriate authority-
- (a) that the offence in respect of which such surrender is sought is an offence of a political character (and irrespective of how that offence is described in the prescribed arrangements concerned);
 - (b) that-
 - (i) the offence in respect of which such surrender is sought was prosecuted in his absence and a conviction obtained; and

- (ii) the person-
 - (A) has not had an opportunity of being tried in his presence for that offence; and
 - (B) if surrendered, would not have an opportunity of being re-tried in his presence for that offence;
 - (C) that the request for surrender concerned (though purporting to be made on account of a relevant offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions;
 - (D) that he might, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions; or
 - (E) that if the offence had occurred in Hong Kong, the law of Hong Kong relating to previous acquittal or conviction would preclude the prosecution, or the imposition or enforcement of a sentence, in respect of that offence.
- (2) A person shall not be surrendered to a prescribed place, or committed to or kept in custody for the purposes of such surrender, unless provision is made by the law of the place, or by the prescribed arrangements concerned, for securing that he will not, unless he has first had an opportunity to leave that place, be dealt with in that place for or in respect of any offence committed before his surrender to it other than-
 - (a) the offence in respect of which his surrender is ordered;
 - (b) any equivalent or lesser relevant offence which is disclosed by the particulars contained in the supporting documents in relation to the offence referred to in paragraph (a); or
 - (c) subject to subsections (3) and (4), any other offence being a relevant offence in respect of which the Chief Executive may consent to his being dealt with.
- (3) The Chief Executive shall not give consent under subsection (2)(c) in respect of an offence in relation to which it appears to him that an order for surrender in relation to the person concerned could not lawfully be made under the provisions of this Ordinance, or would not in fact be made.
- (4) Without prejudice to the generality of subsection (3), the Chief Executive shall, before making a decision whether or not to give consent under subsection (2)(c) in respect of an offence referred to in that subsection-
 - (a) give notice in writing to the person referred to in that subsection (or his representative)-
 - (i) stating particulars of the offence; and
 - (ii) advising that person (or his representative) that he has 21 days following receipt of the notice to make representations to the Chief Executive concerning whether or not the Chief Executive should give such consent; and
 - (b) take into account the representations, if any, so made.
- (5) A person shall not be surrendered to a prescribed place, or committed to or kept in custody for the purposes of such surrender, unless provision is made by the law of the place, or by the prescribed arrangements concerned, for securing that he will not be re-surrendered by that place to any other place outside Hong Kong for any offence committed before his surrender unless-
 - (a) he has first had an opportunity to leave that first-mentioned place; or
 - (b) subject to subsection (6), the Chief Executive consents to that re-surrender.
- (6) The Chief Executive shall, before making a decision whether or not to give consent under subsection (5)(b) in respect of the re-surrender of the person referred to in that subsection for an offence referred to in that subsection-

- (a) give notice in writing to that person (or his representative)-
 - (i) stating particulars of the offence; and
 - (ii) advising that person (or his representative) that he has 21 days following receipt of the notice to make representations to the Chief Executive concerning whether or not the Chief Executive should give such consent; and
 - (b) take into account the representations, if any, so made.
- (7) In this section, "appropriate authority" (主管當局) means-
- (a) the Chief Executive;
 - (b) the court of committal; or
 - (c) the Court of First Instance on an application for habeas corpus or for judicial review of the order of committal. (Amended 25 of 1998 s. 2)

(Amended 71 of 1999 s. 3)

PART II PROCEDURE

Section 6

Request for surrender and authority to proceed

Remarks: Adaptation amendments retroactively made - see 71 of 1999 s. 3

- (1) Subject to the provisions of this Ordinance relating to provisional warrants, a person shall not be dealt with under this Part except pursuant to an authority to proceed issued pursuant to a request for surrender-
 - (a) made by-
 - (i) a person recognized by the Central People's Government as a diplomatic or consular representative of the prescribed place which made the request; or
 - (ii) any other person approved by the Central People's Government as a person who may make such a request in respect of that place; and
 - (b) transmitted through-
 - (i) the diplomatic channel; or
 - (ii) any other channel approved by the Central People's Government as a channel through which such a request may be transmitted.
- (2) On receipt of a request for surrender, the Chief Executive may issue an authority to proceed unless it appears to him that an order for surrender in relation to the person concerned could not lawfully be made under the provisions of this Ordinance, or would not in fact be made.
- (3) A certificate purporting to be signed by or on behalf of the Central People's Government stating that-
 - (a) a person specified in the certificate is recognized by the Central People's Government as a diplomatic or consular representative of a prescribed place specified in the certificate;
 - (b) a person specified in the certificate is approved by the Central People's Government as a person who may make a request for surrender in respect of a prescribed place specified in the certificate; or
 - (c) a channel specified in the certificate is approved by the Central People's Government as a channel through which a request for surrender may be transmitted, shall be conclusive evidence of that fact.

(Amended 71 of 1999 s. 3)

Section 7

Arrest for purposes of committal

Remarks Adaptation amendments retroactively made - see 71 of 1999 s. 3

- (1) For the purposes of this Ordinance, a warrant for the arrest of a person may be issued by a magistrate-
 - (a) on the receipt of an authority to proceed and, if the person is liable to serve a sentence of imprisonment in Hong Kong, where the magistrate is satisfied that section 15 would not be contravened if the person were brought before the court of committal;
 - (b) without such an authority, where, on application made by an authorized officer, the magistrate is satisfied by information given on oath (whether or not by that authorized officer) that-
 - (i) the person-
 - (A) is or is believed to be in or on his way to Hong Kong; and
 - (B) is wanted in a prescribed place for prosecution, or for the imposition or enforcement of a sentence, in respect of a relevant offence; or
 - (ii) if the person is liable to serve a sentence of imprisonment in Hong Kong-
 - (A) that the person is wanted in a prescribed place for prosecution, or for the imposition or enforcement of a sentence, in respect of a relevant offence; and
 - (B) that section 15 would not be contravened if the person were brought before the court of committal.
- (2) Where a provisional warrant is issued-
 - (a) the magistrate by whom the warrant is issued shall forthwith give notice to the Chief Executive that he has done so;
 - (b) the Chief Executive-
 - (i) may in any case;
 - (ii) shall if-
 - (A) he decides not to issue an authority to proceed in respect of the person to whom the warrant relates; and
 - (B) that person has not consented to his surrender pursuant to section 10(6)(a), by order cancel the warrant and, if that person has been arrested pursuant to the warrant and is not liable to serve a sentence of imprisonment in Hong Kong, discharge that person from custody. (Amended 71 of 1999 s. 3)
- (3) A warrant issued under this section may be executed by any authorized officer.

Section 8

Power of search and seizure

- (1) Where an authorized officer who arrests a person pursuant to this Ordinance has reasonable grounds for suspecting that there is property on or under the apparent control of the arrested person that-
 - (a) may be material as evidence in proving an offence to which the warrant (including a provisional warrant) under section 7(1) concerned relates; or

- (b) has been acquired as a result of such an offence, that authorized officer may, with such assistants as may be necessary, search for and seize any such property.
- (2) A magistrate may, if satisfied by information on oath that there are reasonable grounds for suspecting that there is likely to be found in any place any property that-
 - (a) may be material as evidence in proving an offence to which a request for surrender which has been received, or in respect of which the magistrate is satisfied will be received within the period provided for its receipt under the prescribed arrangements concerned, relates; or
 - (b) has been acquired as the result of such an offence, issue a warrant authorizing any authorized officer, with such assistants as may be necessary, at any time to enter such place, by force if necessary, and there search for and seize any such property.
- (3) This section shall be without prejudice to any powers conferred on authorized officers by any other law.
- (4) In this section, "place" (地方) includes any vessel, aircraft, hovercraft, vehicle and domestic premises.

Section 9

Disposal of property seized under section 8

- (1) Any property seized under section 8 by an authorized officer shall be retained until the property is disposed of pursuant to an order under subsection (2).
- (2) Where any property has been seized under section 8, a magistrate may by order direct the property to be disposed of-
 - (a) if the magistrate is satisfied that the property-
 - (i) is material as evidence in proving an offence to which the request for surrender concerned relates; or
 - (ii) has been acquired as the result of such an offence, by being sent to the prescribed place which made the request (and whether or not the person to whom the request relates is surrendered under this Ordinance to that place) or in such other manner as may be specified in the order;
 - (b) in any other case, by being delivered to-
 - (i) the person to whom the request relates; or
 - (ii) another person specified in the order, being, in each case, the person who the magistrate is satisfied is entitled to possession of the property.

Section 10

Proceedings for committal

- (1) A person arrested pursuant to a warrant under section 7 shall (unless previously discharged under subsection (2)(b) of that section) be brought as soon as practicable before a magistrate.
- (2) For the purposes of proceedings under this section, the court of committal shall-
 - (a) hear the case in the like manner, and have the like jurisdiction and powers, as nearly as may be, including, subject to subsection (5) and section 11(2), power to remand in custody or on bail, as if the person brought before it is charged with an indictable offence committed in Hong Kong;
 - (b) receive any evidence relevant to the exercise of its jurisdiction under section 5.
- (3) Where the person arrested is in custody by virtue of a provisional warrant and-

- (a) he has not consented to his surrender pursuant to subsection (6)(a);
 - (b) he is not liable to serve a sentence of imprisonment in Hong Kong; and
 - (c) no authority to proceed has been received in respect of him,
- the court of committal may, subject to subsection (4), fix a reasonable period (of which the court shall give notice to the Chief Executive) after which he will be discharged from custody unless such an authority has been received. (Amended 71 of 1999 s. 3)
- (4) In exercising the power conferred by subsection (3) in respect of the person arrested, the court of committal shall have regard to the period, if any, specified for the purpose in the terms of the prescribed arrangements-
- (a) recited or embodied in the order under section 3(1) which relates to the arrangements; and
 - (b) pursuant to which the request for surrender in respect of that person was made.
- (5) Notwithstanding any other law of Hong Kong, neither the court of committal nor any other court shall remand on bail the person arrested unless it is satisfied that there are special circumstances justifying such remand. (Amended 23 of 2002 s. 12)
- (6) Where-
- (a) subject to subsection (7), at any time the person arrested informs the court of committal, and whether or not-
 - (i) an authority to proceed has been issued in respect of him; or
 - (ii) the court is proceeding under paragraph (b), that he consents to his surrender to the prescribed place by which the request for surrender concerned was made; or
 - (b) an authority to proceed has been issued in respect of the person arrested and the court of committal is satisfied-
 - (i) that the offence to which the authority relates is a relevant offence;
 - (ii) that the supporting documents in relation to the offence-
 - (A) have been produced; and
 - (B) are duly authenticated;
 - (iii) where the person is wanted for prosecution in respect of the offence, that the evidence in relation to the offence would be sufficient to warrant the person's committal for trial according to the law of Hong Kong if the offence had been committed within the jurisdiction of that court or any other court; and
 - (iv) where the person has been prosecuted for the offence, a conviction obtained and-
 - (A) no sentence has been imposed, that there is an intention to impose a sentence;
 - (B) a sentence of imprisonment has been imposed, that either-
 - (I) the sentence has not been carried out; or
 - (II) in the case of a term of imprisonment, not less than 6 months of the term remain to be served,
- the court shall (unless the person's committal is prohibited by any other provision of this Ordinance) by order commit him to custody-
- (I) to await the Chief Executive's decision as to his surrender to the prescribed place by which the request for surrender concerned was made; and (Amended 71 of 1999 s. 3)

- (II) if the Chief Executive decides that he shall be surrendered to that place, to await such surrender. (Amended 71 of 1999 s. 3)
- (7) Where pursuant to subsection (6)(a) a person informs the court of committal of his consent to surrender, the court shall-
- (a) if it has reason to believe that the consent was not given voluntarily, reject that consent and proceed, or continue to proceed, as the case may be, under subsection (6)(b);
 - (b) in any other case-
 - (i) inform the person in ordinary language-
 - (A) that the effect of that consent is that, without any further proceedings, an order will be made committing him to custody; and
 - (B) of the effect of that order by stating the substance of subsection (6)(i) and (ii); and
 - (ii) after so informing that person, reject that consent and proceed, or continue to proceed, as the case may be, under subsection (6)(b) unless that person informs it that he still so consents.
- (8) For the purposes of this section, a person in respect of whom a conviction has been obtained in his absence in a prescribed place shall be treated as a person wanted for prosecution in respect of the offence of which he is convicted.
- (9) If-
- (a) the court of committal is not satisfied as referred to in subsection (6)(b) in relation to the person arrested; or
 - (b) the committal of the person arrested is prohibited by a provision of this Ordinance, the court shall discharge him.

Section 11

Statement of case by court of committal

Remarks: Adaptation amendments retroactively made - see 25 of 1998 s. 2; 71 of 1999 s. 3

- (1) If the court of committal refuses to make an order of committal in relation to a person in respect of the offence or, as the case may be, any of the offences, to which the authority to proceed concerned relates, the prescribed place seeking the surrender of that person to it may question by way of appeal the proceeding on the ground that it is wrong in law by making an application to the court, not later than 15 days after such refusal, to state a case for the opinion of the Court of First Instance on the question of law involved.
- (2) If, immediately upon a refusal referred to in subsection (1), the prescribed place seeking the surrender of the person to whom the refusal relates informs the court of committal that it intends to make an appeal under that subsection, the court shall make an order providing for that person's detention.
- (3) On an appeal under subsection (1), the Court of First Instance shall have power-
- (a) to remit the case to the court of committal to decide it according to the opinion of the Court of First Instance on the question of law involved; or
 - (b) to dismiss the appeal.
- (4) Where the Court of First Instance dismisses an appeal under subsection (1) relating to an offence, it shall by order declare that that offence is not an offence in respect of which the Chief Executive has power to make an order for surrender in respect of the person whose surrender was requested. (Amended 71 of 1999 s. 3)

- (5) An appeal shall lie as of right to the Court of Appeal from any decision of the Court of First Instance under-
- (a) subsection (3)(a); or
 - (b) subsection (3)(b).
- (6) An order under subsection (2) shall cease to have effect if-
- (a) the Court of First Instance dismisses the appeal under subsection (1) in respect of the offence or all the offences to which the order relates and-
 - (i) immediately upon that dismissal, the prescribed place seeking surrender does not inform the Court of First Instance that it intends to appeal to the Court of Appeal; or
 - (ii) that place does so inform the Court of First Instance but, immediately thereafter, the Court of First Instance does not declare that the order shall continue to have effect;
 - (b) where there is an appeal by the prescribed place to the Court of Appeal, the Court of Appeal dismisses the appeal in respect of that offence or all those offences and-
 - (i) immediately upon that dismissal, that place does not-
 - (A) apply for leave to appeal to the Court of Final Appeal; or
 - (B) inform the Court of Appeal that it intends to apply for such leave; or
 - (ii) that place does so apply or inform the Court of Appeal but, immediately thereafter, the Court of Appeal does not declare that the order shall continue to have effect;
 - (C) leave to appeal to the Court of Final Appeal is refused; or
 - (D) where there is an appeal by the prescribed place to the Court of Final Appeal, the Court of Final Appeal dismisses the appeal in respect of that offence or all those offences, whichever first occurs.
- (7) Notwithstanding any other law of Hong Kong-
- (a) the period within which proceedings may be instituted for an appeal to the Court of Appeal referred to in subsection (5)(b), or for an appeal to the Court of Final Appeal referred to in subsection (6)(b)(i)(A), is 14 days after the decision or dismissal, as the case may be, referred to in that subsection;
 - (b) if that period expires without any such proceedings having been instituted, the order concerned under subsection (2) shall cease to have effect.
- (8) The Court of First Instance and the Court of Appeal may each-
- (a) from time to time by order vary an order under subsection (2) (including vary by releasing on bail the person the subject of the second-mentioned order)-
 - (i) which has not ceased to have effect (including any case where it does not cease to have effect by virtue of subsection (6)(a)(ii) or (b)(ii)); and
 - (ii) in the case of-
 - (A) the Court of First Instance, at any time before the Court of Appeal;
 - (B) the Court of Appeal, at any time on or after it begins to hear an appeal, if any, in respect of the decision concerned referred to in subsection (5)(b);
 - (b) declare an order under subsection (2) to cease to have effect-
 - (i) if it is satisfied that the case is no longer pending; and
 - (ii) in the case of-

- (A) the Court of First Instance, at any time before the Court of Appeal;
 - (B) the Court of Appeal, at any time on or after it, begins to hear an appeal, if any, in respect of the decision concerned referred to in subsection (5)(b).
- (9) The Court of Appeal may, in relation to an appeal to it referred to in subsection (5)(b), exercise any power of the Court of First Instance under subsection (3) and, accordingly, subsection (4) shall apply to the Court of Appeal as it applies to the Court of First Instance.
- (10) An order under subsection (2) shall not cease to have effect except pursuant to subsection (6), (7) or (8)(b).
- (11) For the purposes of this section, a case is pending (unless proceedings are discontinued) until (disregarding any power of a court to grant leave to take any step out of time) there is no step that the prescribed place that applied for the case to be stated can take. (Amended 25 of 1998 s. 2)

Section 12

Application for habeas corpus, etc.

Remarks: Adaptation amendments retroactively made - see 25 of 1998 s. 2; 71 of 1999 s. 3

- (1) Where the court of committal makes an order of committal in relation to a person, it shall-
- (a) inform him in ordinary language of his right to make an application for habeas corpus; and
 - (b) forthwith give notice of the order to the Chief Executive. (Amended 71 of 1999 s. 3)
- (2) A person in relation to whom an order of committal has been made shall not be surrendered under this Ordinance-
- (a) subject to subsection (3), in any case, until the expiration of 15 days beginning with the day on which the order was made;
 - (b) if an application for habeas corpus is made in his case, so long as proceedings on that application are pending.
- (3) Subsection (2)(a) shall not apply in the case of an order of committal made in relation to a person by virtue of that person's consent to surrender pursuant to section 10(6)(a).
- (4) On an application for habeas corpus made in the case of a person in relation to whom an order of committal has been made, the Court of First Instance may receive additional evidence relevant to the exercise of its jurisdiction under section 5.
- (5) Where-
- (a) an application for habeas corpus is made in the case of a person in relation to whom an order of committal has been made;
 - (b) the Court of First Instance decides that application by ordering the release of that person; and
 - (c) immediately upon the Court of First Instance making that decision, the prescribed place seeking surrender informs the Court of First Instance that it intends to appeal to the Court of Appeal against that decision, then the Court of First Instance shall make an order providing for the continued detention or release on bail of that person (and notwithstanding that decision).
- (6) An order under subsection (5) providing for the continued detention or release on bail of a person shall cease to have effect if-
- (a) the Court of Appeal dismisses the appeal against the decision concerned referred to in subsection (5)(b) and-
 - (i) immediately upon that dismissal, the prescribed place seeking surrender does not
 - (A) apply for leave to appeal to the Court of Final Appeal; or

- (B) inform the Court of Appeal that it intends to apply for such leave; or
 - (ii) that place does so apply or inform the Court of Appeal but, immediately thereafter, the Court of Appeal does not declare that the order shall continue to have effect;
 - (b) leave to appeal to the Court of Final Appeal is refused; or
 - (c) the Court of Final Appeal dismisses the appeal concerned, whichever first occurs.
- (7) Notwithstanding any other law of Hong Kong-
- (a) the period within which proceedings may be instituted for an appeal to the Court of Appeal referred to in subsection (5)(c), or for an appeal to the Court of Final Appeal referred to in subsection (6)(a)(i)(A), is 14 days after the decision or dismissal, as the case may be, referred to in that subsection;
 - (b) if that period expires without any such proceedings having been instituted, the order concerned under subsection (5) shall cease to have effect.
- (8) The Court of First Instance and the Court of Appeal may each-
- (a) from time to time by order vary an order under subsection (5) (including vary by releasing on bail the person the subject of that second-mentioned order where such order is for the detention of that person)-
 - (i) which has not ceased to have effect (including any case where it does not cease to have effect by virtue of subsection (6)(a)(ii)); and
 - (ii) in the case of-
 - (A) the Court of First Instance, at any time before the Court of Appeal;
 - (B) the Court of Appeal, at any time on or after it, begins to hear an appeal, if any, against the decision concerned referred to in subsection (5)(b);
 - (b) declare an order under subsection (5) to cease to have effect-
 - (i) if it is satisfied that proceedings on the application for habeas corpus concerned are no longer pending; and
 - (ii) in the case of-
 - (A) the Court of First Instance, at any time before the Court of Appeal;
 - (B) the Court of Appeal, at any time on or after it, begins to hear an appeal, if any, against the decision concerned referred to in subsection (5)(b).
- (9) An order under subsection (5) shall not cease to have effect except pursuant to subsection (6), (7) or (8)(b).
- (10) For the purposes of this section, proceedings on an application for habeas corpus shall be treated as pending (unless they are discontinued) until-
- (a) a court has finally dealt with any such proceedings before it; and
 - (b) no appeal has been instituted to have any such proceedings brought before any other court.

(Amended 25 of 1998 s. 2)

Section 13

Order for surrender

Remarks: Adaptation amendments retroactively made - see 23 of 1998 s. 2; 71 of 1999 s. 3

- (1) Where a person who has been committed pursuant to an order of committal is not discharged under section 14, the Chief Executive may order him to be surrendered to the prescribed place by which the request for surrender concerned was made and shall specify in the order the offence or, as the case may be, offences in respect of which the person's surrender is so ordered, unless-
 - (a) the person's surrender is prohibited, or prohibited for the time being, by this Ordinance; or
 - (b) the Chief Executive decides under this section to make no such order in that person's case.
- (2) An order for surrender shall not be made in the case of a person who is charged with an offence in Hong Kong until the charge is disposed of or withdrawn or unless an order is made for it to lie on the file.
- (3) The Chief Executive may decide to make no order for surrender in the case of a person committed in consequence of a request for surrender if-
 - (a) another request for surrender has been made in respect of the person; and
 - (b) it appears to the Chief Executive, having regard to all the circumstances of the case and in particular the prescribed arrangements pursuant to which either request is made, that preference should be given to that other request.
- (4) The Chief Executive may decide to make no order for surrender in the case of a person who is a national of the People's Republic of China. (Amended 23 of 1998 s. 2)
- (5) Where-
 - (a) a person is wanted in a prescribed place for prosecution, or for the imposition or enforcement of a sentence, in respect of a relevant offence against the law of that place; and
 - (b) that offence is punishable with death, then an order for surrender may only be made in the case of that person if that place gives an assurance which satisfies the Chief Executive that that punishment will not be imposed on that person or, if so imposed, not carried out.

(Amended 71 of 1999 s. 3)

Section 14

Discharge in case of delay

Remarks: Adaptation amendments retroactively made - see 25 of 1998 s. 2; 71 of 1999 s. 3

- (1) If a person who has been committed pursuant to an order of committal is still in Hong Kong after the expiration of the relevant period, he may make an application to the Court of First Instance for his discharge. (Amended 25 of 1998 s. 2)
- (2) The relevant period for the purpose of making an application referred to in subsection (1) is-
 - (a) in the case of a person to whom paragraph (b) does not apply-
 - (i) where no order for surrender has been made in relation to him, the period of 2 months beginning with the first day on which he could have been surrendered, and having regard to section 12(2);
 - (ii) where an order for surrender has been made in relation to him, the period of 1 month beginning with the day on which the order was made;
 - (b) in the case of a person who has instituted proceedings for judicial review of the Chief Executive's decision under section 13 to make an order for surrender in relation to him, the period expiring 1 month after the proceedings end. (Amended 71 of 1999 s. 3)
- (3) Proceedings for judicial review end for the purposes of this section if they are discontinued or-
 - (a) a court has finally dealt with any such proceedings before it; and

- (b) disregarding any power of a court to grant leave to appeal out of time, there is no further possibility of an appeal.
- (4) If upon an application under this section the Court of First Instance is satisfied that reasonable notice of the proposed application has been given to the Chief Executive, the Court of First Instance may, unless sufficient cause is shown to the contrary, by order direct the applicant to be discharged and, if an order for his surrender has been made in relation to him, quash that order. (Amended 25 of 1998 s. 2; 71 of 1999 s. 3)
- (5) For the avoidance of doubt, it is hereby declared that a person referred to in subsection (1) who is discharged under this section shall not under the provisions of this Ordinance be subsequently arrested and surrendered to the prescribed place concerned in respect of the relevant offence or, as the case may be, relevant offences to which the order of committal referred to that subsection relates.

Section 15

Surrender of persons liable to serve sentences of imprisonment

Remarks: Adaptation amendments retroactively made - see 71 of 1999 s. 3

- (1) Notwithstanding any other provision of this Ordinance, no person liable to serve a sentence of imprisonment in Hong Kong shall be brought before the court of committal in consequence of a request for surrender made by a prescribed place-
 - (a) if he is only wanted in that place for the enforcement of a sentence in respect of the offence to which the request relates;
 - (b) in any other case, unless and until that place gives an undertaking that, if that person is surrendered to it-
 - (i) he will be kept in custody whilst in that place; and
 - (ii) he will be returned to Hong Kong immediately after there are no proceedings pending in that place in respect of the offence to which the request relates, and whether or not he is liable to serve any sentence of imprisonment in that place in respect of that or any other offence.
- (2) Notwithstanding any other provision of this Ordinance or any other law of Hong Kong, where a person who is liable to serve a sentence of imprisonment in Hong Kong is brought before the court of committal, neither that court nor any other court shall remand or release him on bail.
- (3) Notwithstanding any other law of Hong Kong, it is hereby declared that the period for which a person is liable to serve a sentence of imprisonment in Hong Kong continues to run whilst he is in custody in consequence of a request for surrender, and whether or not he is in custody in or outside Hong Kong.
- (4) Where a person who is the subject of an undertaking referred to in subsection (1)(b)-
 - (a) has been surrendered to the prescribed place which gave the undertaking; and
 - (b) ceases to be liable to serve a sentence of imprisonment in Hong Kong, the Chief Executive shall by notice in writing inform that place that the undertaking no longer binds that place. (Amended 71 of 1999 s. 3)
- (5) Where-
 - (a) a person who has been surrendered to a prescribed place which has given an undertaking referred to in subsection (1)(b) is liable to serve a sentence of imprisonment in that place in respect of any offence for which he was so surrendered;
 - (b) the person is returned to Hong Kong pursuant to that undertaking;

- (c) on or before that person ceases to be liable to serve a sentence of imprisonment in Hong Kong, a request for surrender is made by that place in respect of that person; and
- (d) the request referred to in paragraph (c) is only made for the purposes of enforcing the sentence referred to in paragraph (a), then the Chief Executive may, on or before that person ceases to be liable to serve a sentence of imprisonment in Hong Kong, make an order for surrender in relation to that person to that place for the purposes referred to in paragraph (d)- (Amended 71 of 1999 s. 3)
 - (i) as if the order of committal referred to in section 13(1) were the order of committal made in consequence of the request for surrender which gave rise to the surrender referred to in paragraph (a);
 - (ii) as if the request for surrender referred to in that section were the request for surrender referred to in paragraph (c).
- (6) Where an order for surrender made in relation to a person has been made pursuant to subsection (5), that order shall, notwithstanding any other provision of this Ordinance, be sufficient authority for continuing to keep that person in custody to await his surrender to the prescribed place concerned and, accordingly, section 14(1) shall in the case of that person be construed as if the reference therein to an order of committal were a reference to that order for surrender.
- (7) For the avoidance of doubt, it is hereby declared that-
 - (a) an order for surrender made in relation to a person pursuant to subsection (5) shall not authorize the surrender of that person to the prescribed place concerned before he has finished serving any sentence of imprisonment he is liable to serve in Hong Kong;
 - (b) subsection (5) shall not operate to prejudice the operation of section 5.
- (8) For the purposes of this section, proceedings in a prescribed place in respect of the relevant offence for which a person was surrendered to that place shall be treated as pending (unless they are discontinued) until-
 - (a) a court (howsoever described) in that place has finally dealt with any such proceedings before it; and
 - (b) disregarding any power of a court (howsoever described) in that place to grant leave to appeal out of time, there is no further possibility of an appeal.

Section 16

Custody in relation to orders for surrender

Remarks: Amendments retroactively made-see 23 of 1998 s. 2

An order for surrender made in relation to a person shall be sufficient authority for-

- (a) any person who holds the person in custody to release that person into the custody of an authorized officer;
- (b) the authorized officer to transport the person in custody so as to enable the person to be placed in the custody of an escort officer of the prescribed place concerned for the purpose of the person's surrender to the prescribed place. (Amended 23 of 1998 s. 2)

PART III TREATMENT OF PERSONS SURRENDERED FROM PRESCRIBED PLACE**Section 17****Restrictions upon proceedings for other offences**

- (1) Where any person is surrendered to Hong Kong by a prescribed place pursuant to prescribed arrangements, he shall not, unless he has-
 - (a) had an opportunity of leaving Hong Kong and has not done so within-
 - (i) subject to subparagraph (ii), 40 days of having been free to do so; or
 - (ii) such longer period, if any, as is specified in the arrangements; or
 - (b) returned voluntarily to Hong Kong after having left Hong Kong, be triable or tried for any offence committed in Hong Kong before such surrender, other than-
 - (i) an offence in respect of which he was surrendered;
 - (ii) any equivalent or lesser offence-
 - (A) disclosed by the particulars furnished to that place on which his surrender is grounded; and
 - (B) in respect of which the surrender of a person to Hong Kong by that place pursuant to the arrangements is permitted;
 - (iii) any other offence in respect of which-
 - (A) that place consents to his being tried; and
 - (B) the surrender of a person to Hong Kong by that place pursuant to the arrangements is permitted.
- (2) Where any person is surrendered to Hong Kong by a prescribed place pursuant to prescribed arrangements, he shall not be surrendered under this Ordinance to any other prescribed place for or in respect of an offence committed before such surrender unless-
 - (a) that first-mentioned place consents thereto; or
 - (b) the person has-
 - (i) had an opportunity of leaving Hong Kong and has not done so within-
 - (A) subject to sub-subparagraph (B), 40 days of having been free to do so; or
 - (B) such longer period, if any, as is specified in the arrangements; or
 - (ii) returned voluntarily to Hong Kong after having left Hong Kong.
- (3) A person who is surrendered to Hong Kong shall be given a copy of this section (in both the English and Chinese languages) as soon as practicable after he is so surrendered but, in any case, before the completion of the proceedings relating to the offence or offences in respect of which he was so surrendered.

Section 18**Restoration of persons not tried or acquitted**

Remarks: Adaptation amendments retroactively made - see 71 of 1999 s. 3

- (1) This section applies to any person wanted for prosecution in respect of an offence against the law of Hong Kong who is surrendered to Hong Kong by a prescribed place pursuant to prescribed arrangements.

- (2) If in the case of a person to whom this section applies either-
- (a) proceedings against him for the offence for which he was surrendered are not begun within the period of 6 months beginning with the day of his arrival in Hong Kong on being surrendered; or
 - (b) on his trial for that offence, he is acquitted or discharged under-
 - (i) section 107(1) of the Criminal Procedure Ordinance (Cap 221); or
 - (ii) section 36(1) of the Magistrates Ordinance (Cap 227), the Chief Executive shall, on the request of that person, arrange for him to be sent back free of charge and with as little delay as possible to the prescribed place from which he was surrendered. (Amended 71 of 1999 s. 3)

Section 19

Persons kept in custody pursuant to undertakings given to prescribed places

Remarks: Adaptation amendments retroactively made - see 23 of 1998 s. 2; 71 of 1999 s. 3

- (1) Where-
- (a) a person is surrendered to Hong Kong by a prescribed place pursuant to prescribed arrangements;
 - (b) the Chief Executive has given an undertaking to that place that the person will be kept in custody whilst in Hong Kong; and (Amended 71 of 1999 s. 3)
 - (c) but for that undertaking, that person is not required by any other provision of this Ordinance or any other law of Hong Kong to be kept in such custody,
- then-
- (i) notwithstanding any other provision of this Ordinance or any other law of Hong Kong but subject to paragraph (ii), that person shall-
 - (A) continue to be kept in such custody for a period of 30 days (or such shorter period as the Chief Executive may by order specify) commencing on the day on which, but for that undertaking, he is not required to be kept in such custody; and (Amended 71 of 1999 s. 3)
 - (B) immediately upon the expiration of that period, be discharged from such custody;
 - (ii) paragraph (i) shall cease to apply to that person if, on or before the expiration of the period referred to in that paragraph, that person is required to be kept in such custody pursuant to another provision of this Ordinance or any other law of Hong Kong.
- (2) Notwithstanding any other provision of this Ordinance or any other law of Hong Kong but without prejudice to the operation of subsection (1)(i)(B), no magistrate or court shall remand or release on bail a person who is the subject of an undertaking referred to in subsection (1) which has not ceased to be binding.
- (3) An undertaking referred to in subsection (1) which has not ceased to be binding shall be sufficient authority for-
- (a) any person who holds in custody the person who is the subject of the undertaking to release that person into the custody of an authorized officer upon the occurrence of an event specified in the undertaking as an event the occurrence of which requires the return of the person to the prescribed place concerned;
 - (b) the authorized officer to transport the person in custody so as to enable the person to be placed in the custody of an escort officer of the prescribed place for the purpose of the person's return to the prescribed place. (Amended 23 of 1998 s. 2)

PART IV MISCELLANEOUS

Section 20 Transit

Remarks: Adaptation amendments retroactively made - see 71 of 1999 s. 3

- (1) Where a prescribed place wishes to transport in custody through Hong Kong a person who is being surrendered to that place by another place outside Hong Kong (and whether or not that other place is a prescribed place)-
 - (a) that person may be transported in custody through Hong Kong for the purposes of being so surrendered;
 - (b) an authorized officer may, for the purposes of such transport, hold that person in custody for not more than-
 - (i) 48 hours; or
 - (ii) such further period as is permitted by an order under subsection (2).
- (2) The Chief Executive may, if satisfied that it is reasonable and necessary for a person referred to in subsection (1) to be held in custody by an authorized officer for more than 48 hours for the purposes of facilitating the transport referred to in that subsection, by order authorize any authorized officer to hold that person in custody for such further period-
 - (a) as is specified in the order; and
 - (b) that the Chief Executive is satisfied is reasonable and necessary for those purposes. (Amended 71 of 1999 s. 3)

Section 21 Escapes from custody

If any person who is in custody by virtue of this Ordinance (including in custody by virtue of an order for surrender) escapes out of custody, he may be retaken in Hong Kong in like manner as a person escaping from any custody under which he may be held in respect of an offence committed in Hong Kong.

Section 22 Form of orders, etc.

Remarks: Adaptation amendments retroactively made - see 71 of 1999 s. 3

- (1) Any order, warrant or document to which this section applies shall be in the prescribed form.
- (2) This section applies to-
 - (a) an authority to proceed;
 - (b) a warrant (including a provisional warrant) under section 7(1);
 - (c) an order under section 7(2)(b);
 - (d) a warrant under section 8(2);
 - (e) an order of committal;
 - (f) an order for surrender;
 - (g) an order under section 19(1)(i);
 - (h) an order under section 20(2).

- (3) The Chief Executive in Council may, by order, amend subsection (2). (Amended 71 of 1999 s. 3)

Section 23

Admissibility of evidence, etc.

- (1) Any supporting document or other document which is duly authenticated is admissible in evidence in any proceedings under this Ordinance without further proof.
- (2) Any supporting document or other document shall be deemed to be duly authenticated if it-
- (a) purports to be signed or certified by a judge, magistrate or officer of the prescribed place concerned; and
 - (b) purports to be sealed with the official or public seal of a competent authority of that place.
- (3) Subject to subsection (4), in any proceedings under this Ordinance, nothing in this Ordinance shall prejudice either-
- (a) the admission in evidence of any document which is admissible in evidence; or
 - (b) the proof of any matter,
- under any other law of Hong Kong.
- (4) Without prejudice to the generality of section 10(2)(b) or 12(4), in any proceedings under this Ordinance, any evidence which contradicts an allegation that a person sought to be surrendered under this Ordinance to a prescribed place has engaged in conduct which constitutes a relevant offence for which such surrender is sought is inadmissible and, accordingly-
- (a) that person is not entitled to adduce such evidence; and
 - (b) any court is not entitled to receive such evidence.
- (5) Without prejudice to the generality of subsection (4), in proceedings under this Ordinance evidence may be adduced for the purposes of showing that a person brought before the court of committal or any other court is not the person identified in the request for surrender to which the proceedings relate.
- (6) In this section, "document" (文件) includes a copy of a document.

Section 24

Chief Executive to give notice to Central People's Government in relation to certain matters, etc.

Remarks: Adaptation amendments retroactively made - see 71 of 1999 s. 3

- (1) Subject to subsection (2), the Chief Executive shall cause the Central People's Government to be given notice of- (Amended 71 of 1999 s. 3)
- (a) any proceedings that have been instituted for the surrender of a person to Hong Kong from a prescribed place pursuant to prescribed arrangements;
 - (b) any proceedings that have been instituted for the surrender of a person from Hong Kong to a prescribed place pursuant to prescribed arrangements where an order of committal has been made in relation to the person;
 - (c) where a person is to be surrendered to Hong Kong from a prescribed place pursuant to prescribed arrangements, the place or places, if any, between the prescribed place and Hong Kong through which it is proposed to transport the person for the purposes of so surrendering him;

- (d) where a person is to be surrendered from Hong Kong to a prescribed place, the place or places, if any, between Hong Kong and the prescribed place through which it is proposed to transport the person for the purposes of so surrendering him;
 - (e) any proposed transport through Hong Kong of a person who is being surrendered to a place outside Hong Kong by another place outside Hong Kong (and whether or not either such place is a prescribed place).
- (2) A notice under subsection (1) shall-
- (a) be accompanied by the prescribed documents and contain the prescribed particulars; and
 - (b) be given in the prescribed manner.
- (3) Where the Central People's Government issues an instruction to the Chief Executive to take, or not to take, an action-
- (a) in relation to any matter referred to in paragraph (a), (b), (c), (d) or (e) of subsection (1); and
 - (b) on the ground that if the instruction were not complied with the interests of the People's Republic of China in matters of defence or foreign affairs would be significantly affected, then the Chief Executive shall comply with that instruction, but no such instruction shall operate to affect the responsibilities that the Chief Executive shall discharge in accordance with law in dealing with any case to which this subsection applies. (Amended 71 of 1999 s. 3)
- (4) For the purposes of this section, proceedings have been instituted for the surrender of a person-
- (a) to Hong Kong from a prescribed place, where there has been issued to that place-
 - (i) an application for the issue of a warrant for the provisional arrest of the person in relation to the offence for which such surrender is sought; or
 - (ii) a request for the surrender of the person to Hong Kong in respect of the offence for which such surrender is sought;
 - (b) from Hong Kong to a prescribed place, where a warrant (whether provisional or otherwise) has been issued in Hong Kong for the arrest of the person in relation to the offence for which such surrender is sought.

Section 25

Amendment of Schedules

Remarks: Adaptation amendments retroactively made - see 71 of 1999 s. 3

The Chief Executive in Council may, by order, amend Schedule 1 or 2.

(Amended 71 of 1999 s. 3)

Section 26

Regulations

Remarks: Adaptation amendments retroactively made - see 71 of 1999 s. 3

The Chief Executive in Council may make regulations- (Amended 71 of 1999 s. 3)

- (a) prescribing anything that is required or permitted to be prescribed under this Ordinance;
- (b) prescribing the form of any order, warrant or certificate required by section 22 to be in the prescribed form (including prescribing 2 or more forms of any such order, warrant or certificate, whether as alternatives, or to provide for particular circumstances or particular cases);
- (c) generally for the better and more effectual carrying out of the provisions of this Ordinance, including incidental, consequential, evidential and supplemental provisions.

Section 27 Transitional

(1) Where-

- (a) proceedings have been instituted for the surrender of a person ("the relevant person") from Hong Kong to a place outside Hong Kong ("the relevant place") pursuant to arrangements for such surrender ("the relevant arrangements") which are not prescribed arrangements; and
- (b) before those proceedings have been concluded, the relevant arrangements cease, by whatever means (other than by virtue of an order under section 3(1) coming into operation in respect of the relevant place), to be arrangements pursuant to which any new proceedings may be instituted for the surrender of a person from Hong Kong to the relevant place, then, notwithstanding any other law of Hong Kong, for the purposes of continuing and concluding those proceedings-
 - (i) the provisions of-
 - (A) the relevant arrangements; and
 - (B) any relevant enactment which, but for the cesser referred to in paragraph (b), could apply in relation to those proceedings, as in force immediately before that cesser came into operation or otherwise took effect, shall continue to apply in relation to those proceedings as if that cesser had never come into operation or otherwise taken effect; and
 - (ii) without prejudice to the generality of paragraph (i), any act, matter or thing that has been done in relation to those proceedings which had any force or effect or was in operation immediately before that cesser came into operation or otherwise took effect shall continue to have force or effect or be in operation as if that cesser had never come into operation or otherwise taken effect.

(2) Where-

- (a) proceedings have been instituted for the surrender of a person ("the relevant person") from Hong Kong to a place outside Hong Kong ("the relevant place") pursuant to arrangements for such surrender ("the relevant arrangements") which are not prescribed arrangements; and
- (b) before those proceedings have been concluded, the relevant arrangements cease, by virtue of an order under section 3(1) coming into operation in respect of the relevant place, to be arrangements pursuant to which any new proceedings may be instituted for the surrender of a person from Hong Kong to the relevant place,
then, notwithstanding any other law of Hong Kong, for the purposes of continuing and concluding those proceedings-
 - (i) the provisions of the prescribed arrangements the subject of the order referred to in paragraph (b), and of this Ordinance, shall apply in relation to those proceedings as if those proceedings had been instituted under those prescribed arrangements and, accordingly, for those purposes those provisions shall be read and have effect with such modifications as may be necessary;
 - (ii) without prejudice to the generality of paragraph (i), any act, matter or thing that has been done in relation to those proceedings which had any force or effect or was in operation immediately before the cesser referred to in paragraph (b) came into operation or otherwise took effect shall continue to have force or effect or be in operation-
 - (A) as if that cesser had never come into operation or otherwise taken effect; and
 - (B) with such modifications as may be necessary to take into account the application in relation to those proceedings of the provisions referred to in paragraph (i).

(3) Where-

- (a) proceedings have been instituted for the surrender of a person ("the relevant person") to Hong Kong from a place outside Hong Kong ("the relevant place") pursuant to arrangements for such surrender ("the relevant arrangements") which are not prescribed arrangements; and
- (b) before or on the day, if any, on which the relevant person is so surrendered, the relevant arrangements cease, by whatever means (other than by virtue of an order under section 3(1) coming into operation in respect of the relevant place), to be arrangements pursuant to which any new proceedings may be instituted for the surrender of a person to Hong Kong from the relevant place,

then, notwithstanding any other law of Hong Kong, for the purposes of the treatment to be accorded the relevant person on and after the day, if any, on which he is so surrendered, the provisions of this Ordinance applicable to the surrender of a person to Hong Kong from a prescribed place pursuant to prescribed arrangements shall apply in relation to the relevant person and, accordingly, for those purposes-

- (i) those provisions shall be read and have effect with such modifications as may be necessary; and
- (ii) without prejudice to the generality of paragraph (i) the relevant place and the relevant arrangements shall be deemed to be a prescribed place and prescribed arrangements respectively.

(4) Where-

- (a) proceedings have been instituted for the surrender of a person ("the relevant person") to Hong Kong from a place outside Hong Kong ("the relevant place") pursuant to arrangements for such surrender ("the relevant arrangements") which are not prescribed arrangements; and
- (b) before or on the day, if any, on which the relevant person is so surrendered, the relevant arrangements cease, by virtue of an order under section 3(1) coming into operation in respect of the relevant place, to be arrangements pursuant to which any new proceedings may be instituted for the surrender of a person to Hong Kong from the relevant place, then, notwithstanding any other law of Hong Kong, for the purposes of the treatment to be accorded the relevant person on and after the day, if any, on which he is so surrendered, the provisions of the prescribed arrangements the subject of the order referred to in paragraph (b), and of this Ordinance, applicable to the surrender of a person to Hong Kong from the relevant place pursuant to those arrangements shall apply in relation to the relevant person and, accordingly, for those purposes those provisions shall be read and have effect with such modifications as may be necessary.

(5) Without prejudice to the operation of subsection (3), where-

- (a) a person ("the relevant person") has been surrendered to Hong Kong from a place outside Hong Kong ("the relevant place") pursuant to arrangements for such surrender ("the relevant arrangements") which are not prescribed arrangements; and
- (b) on or after the day on which the relevant person is so surrendered, the relevant arrangements cease, by whatever means (other than by virtue of an order under section 3(1) coming into operation in respect of the relevant place), to be arrangements pursuant to which any new proceedings may be instituted for the surrender of a person to Hong Kong from the relevant place,

then, notwithstanding any other law of Hong Kong, for the purposes of the treatment to be accorded the relevant person on and after the day on which the cesser referred to paragraph (b) comes into operation, the provisions of this Ordinance applicable to the surrender of a person to Hong Kong from a prescribed place pursuant to prescribed arrangements shall apply in relation to the relevant person and, accordingly, for those purposes-

- (i) those provisions shall be read and have effect with such modifications as may be necessary; and

- (ii) without prejudice to the generality of paragraph (i), the relevant place and the relevant arrangements shall be deemed to be a prescribed place and prescribed arrangements respectively.
- (6) Without prejudice to the operation of subsection (4), where-
- (a) a person ("the relevant person") has been surrendered to Hong Kong from a place outside Hong Kong ("the relevant place") pursuant to arrangements for such surrender ("the relevant arrangements") which are not prescribed arrangements; and
 - (b) on or after the day on which the relevant person is so surrendered, the relevant arrangements cease, by virtue of an order under section 3(1) coming into operation in respect of the relevant place, to be arrangements pursuant to which any new proceedings may be instituted for the surrender of a person to Hong Kong from the relevant place, then, notwithstanding any other law of Hong Kong, for the purposes of the treatment to be accorded the relevant person on and after the day on which the cesser referred to in paragraph (b) comes into operation, the provisions of the prescribed arrangements the subject of the order referred to in that paragraph, and of this Ordinance, applicable to the surrender of a person to Hong Kong from the relevant place pursuant to the prescribed arrangements shall apply in relation to the relevant person and, accordingly, for those purposes those provisions shall be read and have effect with such modifications as may be necessary.
- (7) For the purposes of this section, proceedings have been instituted for the surrender of a person-
- (a) from Hong Kong to a place outside Hong Kong, where-
 - (i) a warrant (whether provisional or otherwise) has been issued in Hong Kong for the arrest of the person in relation to the offence for which such surrender is sought; or
 - (ii) an authorization, howsoever described, has been given for the person to be dealt with under the provisions of a relevant enactment relating to such surrender in respect of the offence for which such surrender is sought;
 - (b) to Hong Kong from a place outside Hong Kong, where-
 - (i) a warrant (whether provisional or otherwise) has been issued in that place for the arrest of the person in relation to the offence for which such surrender is sought; or
 - (ii) an authorization, howsoever described, has been given for the person to be dealt with under the provisions of the law of that place relating to such surrender in respect of the offence for which such surrender is sought.
- (8) In this section, "relevant enactment" (有關成文法則) means an enactment which is, or was, a relevant enactment within the meaning of section 3(16).

Section 28

[Omitted as spent]

SCHEDULE 1 DESCRIPTION OF OFFENCES

[sections 2(2) & 25]

1. Murder or manslaughter, including criminal negligence causing death; culpable homicide; assault with intent to commit murder.
2. Aiding, abetting, counselling or procuring suicide.

3. Maliciously wounding; maiming; inflicting grievous or actual bodily harm; assault occasioning actual bodily harm; threats to kill; intentional or reckless endangering of life whether by means of a weapon, a dangerous substance or otherwise; offences relating to unlawful wounding or injuring.
4. Offences of a sexual nature including rape; sexual assault; indecent assault; unlawful sexual acts on children; statutory sexual offences.
5. Gross indecency with a child, a mental defective or an unconscious person.
6. Kidnapping; abduction; false imprisonment; unlawful confinement; dealing or trafficking in slaves or other persons; taking a hostage.
7. Criminal intimidation.
8. Offences against the law relating to dangerous drugs including narcotics, psychotropic substances, precursors and essential chemicals used in the illegal manufacture of narcotics and psychotropic substances; offences relating to the proceeds of drug trafficking.
9. Obtaining property or pecuniary advantage by deception; theft; robbery; burglary (including breaking and entering); embezzlement; blackmail; extortion; unlawful handling or receiving of property; false accounting; any other offence in respect of property or fiscal matters involving fraud; any offence against the law relating to unlawful deprivation of property.
10. Offences against bankruptcy law or insolvency law.
11. Offences against the law relating to companies including offences committed by officers, directors and promoters.
12. Offences relating to securities and futures trading.
13. Offences relating to counterfeiting; offences against the law relating to forgery or uttering what is forged.
14. Offences against the law relating to protection of intellectual property, copyrights, patents or trademarks.
15. Offences against the law relating to bribery, corruption, secret commissions and breach of trust.
16. Perjury and subornation of perjury.
17. Offence relating to the perversion or obstruction of the course of justice.
18. Arson; criminal damage or mischief including mischief in relation to computer data.
19. Offences against the law relating to firearms.
20. Offences against the law relating to explosives.
21. Offences against the law relating to environmental pollution or protection of public health.
22. Mutiny or any mutinous act committed on board a vessel at sea.
23. Piracy involving ships or aircraft.
24. Unlawful seizure or exercise of control of an aircraft or other means of transportation.
25. Genocide or direct and public incitement to commit genocide.
26. Facilitating or permitting the escape of a person from custody.
27. Offences against the law relating to the control of exportation or importation of goods of any type, or the international transfer of funds.
28. Smuggling; offences against the law relating to import and export of prohibited items, including historical and archaeological items.
29. Immigration offences including fraudulent acquisition or use of a passport or visa.

30. Arranging or facilitating for financial gain, the illegal entry of persons into a jurisdiction.
31. Offences relating to gambling or lotteries.
32. Offences relating to the unlawful termination of pregnancy.
33. Stealing, abandoning, exposing or unlawfully detaining a child; any other offences involving the exploitation of children.
34. Offences against the law relating to prostitution and premises kept for the purposes of prostitution.
35. Offences involving the unlawful use of computers.
36. Offences relating to fiscal matters, taxes or duties.
37. Offences relating to unlawful escape from custody; mutiny in prison.
38. Bigamy.
39. Offences relating to women and girls.
40. Offences against the law relating to false or misleading trade descriptions.
41. Offences relating to the possession or laundering of proceeds obtained from the commission of any offence described in this Schedule.
42. Impeding the arrest or prosecution of a person who has or is believed to have committed an offence described in this Schedule.
43. Offences for which persons may be surrendered under multi-lateral international conventions; offences created as a result of decisions of international organizations.
44. Conspiracy to commit fraud or to defraud.
45. Conspiracy to commit, or any type of association to commit, any offence described in this Schedule.
46. Aiding, abetting, counselling or procuring the commission of, inciting, being an accessory before or after the fact to, or attempting to commit an offence described in this Schedule.

SCHEDULE 2

Remarks: Amendments retroactively made-see 25 of 1998 s. 2

(Repealed 25 of 1998 s. 2)

SCHEDULE 3

[Omitted as spent]