STATUTORY INSTRUMENTS

1978 No. 1403

FUGITIVE CRIMINAL

The Federal Republic of Germany (Extradition) (Amendment) Order 1978

Made - - - -	*29th September* 1978
Laid before Parliament	*2nd October* 1978
Coming into Operation	*3rd October* 1978

At the Court at Balmoral, the 29th day of September 1978
Present,
The Queen's Most Excellent Majesty in Council

Whereas an Agreement(**a**) was concluded on 23rd February 1960 between Her Majesty's Government in the United Kingdom and the Government of the Federal Republic of Germany for the Extradition of Fugitive Criminals which reapplied, with amendments, the Treaty(**b**) between the United Kingdom and Germany for the Mutual Surrender of Fugitive Criminals signed at London on 14th May 1872:

And whereas it has been agreed by Notes exchanged on 25th and 27th September 1978, the terms of which are set out in the Schedule to this Order, that Articles I, II and III of the said Treaty, as amended, shall be further amended:

Now, therefore, Her Majesty, in exercise of the powers conferred on Her by sections 2 and 21 of the Extradition Act 1870(**c**), or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Federal Republic of Germany (Extradition) (Amendment) Order 1978 and shall come into operation on 3rd October 1978.

2. The Interpretation Act 1889(**d**) shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

3. The Extradition Acts 1870 to 1935(**e**), as amended or extended by any subsequent enactment, shall apply in the case of the Federal Republic of Germany and Land Berlin (West Berlin) in accordance with the said Treaty, as amended by the said Agreement and the said Exchange of Notes.

(**a**) Cmnd. 1002. (**b**) C. 564. (S.R. & O. Rev. IX p. 148). (**c**) 1870 c. 52.
(**d**) 1889 c. 63. (**e**) 1870 c. 52; 1932 c 39; 1935 c. 25.

4. The operation of this Order is limited to the United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man.

N. E. Leigh,
Clerk of the Privy Council.

SCHEDULE

EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY AMENDING THE TREATY BETWEEN THE UNITED KINGDOM AND GERMANY FOR THE MUTUAL SURRENDER OF FUGITIVE CRIMINALS SIGNED AT LONDON ON 14 MAY 1872, AS REAPPLIED, WITH AMENDMENTS, BY THE AGREEMENT OF 23 FEBRUARY 1960 FOR THE EXTRADITION OF FUGITIVE CRIMINALS

No. 1

The Ambassador of the Federal Republic of Germany to Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs

London, den 25. Sept. 1978

Exzellenz,

ich beehre mich unter Bezugnahme auf den Vertrag zwischen Deutschland und dem Vereinigten Königreich über die Auslieferung flüchtiger Verbrecher, unterzeichnet in London am 14. Mai 1872, in der Fassung der Vereinbarung, unterzeichnet in Bonn am 23. Februar 1960, die im Laufe der Gespräche im Juni und Juli 1978 grundsätzlich vereinbarten Änderungen wie folgt festzuhalten:

1. Artikel I des Vertrags von 1872 wird durch folgende Bestimmung ersetzt:

"Die hohen vertragenden Teile verpflichten sich, einander diejenigen Personen auszuliefern, welche wegen einer im Bereich der Gerichtsbarkeit des einen Teils begangenen strafbaren Handlung beschuldigt oder verurteilt sind und in dem Gebiet des anderen Teils aufgefunden werden, sofern die in dem gegenwärtigen Vertrag angegebenen Fälle und Voraussetzungen vorhanden sind."

2. Die Liste der auslieferungsfähigen Straftaten in Artikel II des Vertrags von 1872 in der Fassung von Artikel III der Vereinbarung von 1960 wird durch eine Nummer 28 wie folgt ergänzt:

"28. Die Auslieferung wird auch wegen jeder anderen Straftat bewilligt, derentwegen die Auslieferung nach dem Recht beider Parteien gewährt werden kann."

3. Artikel III des Vertrags von 1872 in der Fassung von Artikel IV der Vereinbarung von 1960 wird durch folgende Bestimmung ersetzt:

"Die Regierung des Vereinigten Königreichs Grossbritannien und Nordirland ist nicht verpflichtet, einen Staatsangehörigen des Vereinigten Königreichs und der Kolonien auszuliefern, und die Regierung der Bundesrepublik Deutschland ist nicht verpflichtet, einen deutschen Staatsangehörigen auszuliefern.

Keine Partei wird durch diesen Vertrag verpflichtet, einen Verfolgten auszuliefern, der Mitglied der im Gebiet des ersuchten Staates stationierten Streitkräfte eines dritten Staates ist. Das gleiche gilt fur eine Zivilperson, die solche Streitkräfte begleitet und in ihren Diensten steht, sowie für die Angehörigen eines solchen Mitgliedes oder einer solchen Zivilperson.

Liefert die ersuchte Partei eine Person aus einem der in den vorangehenden Absätzen genannten Gründe nicht aus, so unterbreitet sie auf Begehren der ersuchenden Partei die Angelegenheit ihren zuständigen Behörden, damit eine Strafverfolgung durchgeführt werden kann, falls diese Behörden es für angebracht halten. Die ersuchende Partei wird über das Ergebnis ihres Begehrens unterrichtet."

4. Diese Vereinbarung gilt einerseits für das Vereinigte Königreich Grossbritannien und Nordirland, die Kanalinseln und die Insel Man, andererseits für die Bundesrepublik Deutschland.

5. Diese Vereinbarung gilt auch für das Land Berlin, sofern nicht die Regierung der Bundesrepublik Deutschland gegenüber der Regierung des Vereinigten Königreichs und Nordirland innerhalb von drei Monaten nach Inkrafttreten dieser Vereinbarung eine gegenteilige Erklärung abgibt.

6. Diese Vereinbarung berührt nicht die weitere Anwendung des Vertrags von 1872 in der Fassung der Vereinbarung von 1960 auf Gebiete, die in Artikel II Buchstaben b bis g der Vereinbarung von 1960 aufgeführt sind.

Ich beehre mich Eurer Exzellenz mitzuteilen, dass die Regierung der Bundesrepublik Deutschland mit den vorstehenden Bestimmungen einverstanden ist. Falls diese auch für die Regierung des Vereinigten Königreichs Grossbritannien und Nordirland annehmbar sind, beehre ich mich vorzuschlagen, dass diese Note und die entsprechende Antwortnote Eurer Exzellenz eine diesbezügliche Vereinbarung zwischen beiden Regierungen bilden sollen, die mit dem Datum Ihrer Antwortnote in Kraft tritt.

Genehmigen Sie, Exzellenz, die Versicherung meiner ausgezeichnetsten Hochachtung.

H. RUETE

No. 2

Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs to the Ambassador of the Federal Republic of Germany

Foreign and Commonwealth Office
London

27 September 1978

Your Excellency,

I have the honour to acknowledge receipt of Your Excellency's Note of 25 September 1978, which in translation reads as follows:

"London, 25 September 1978

"I have the honour to refer to the Treaty between the United Kingdom and Germany for the Mutual Surrender of Fugitive Criminals, signed at London on 14 May 1872, as amended by the Agreement signed at Bonn on 23 February 1960, and to set out the amendments agreed in principle in the course of discussions during June and July 1978:

1. Article I of the Treaty of 1872 shall be replaced by the following:

"The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime committed in the jurisdiction of the one Party, shall be found within the territory of the other Party, under the circumstances and conditions stated in the present Treaty."

2. The list of extraditable crimes in Article II of the Treaty of 1872, as amended by Article III of the Agreement of 1960, shall be supplemented by the following addition:

"28. Extradition shall also be granted for any other crimes for which extradition can be granted according to the laws of both Parties."

3. Article III of the Treaty of 1872, as amended by Article IV of the Agreement of 1960, shall be replaced by the following:

"The Government of the United Kingdom of Great Britain and Northern Ireland shall not be obliged to extradite a citizen of the United Kingdom and Colonies, and the Government of the Federal Republic of Germany shall not be obliged to extradite a German national.

Neither Party shall be required by this Treaty to deliver up a fugitive criminal who is a member of the armed forces of a third State stationed in the territory of that Party. The same shall apply to a civilian accompanying and serving with those armed forces and to the dependants of any such member or civilian.

If the requested Party does not extradite a person for any of the reasons mentioned in the preceding paragraphs, it shall, at the request of the requesting Party, submit the case to its competent authorities in order that proceedings may be taken if those authorities consider it appropriate. The requesting Party shall be informed of the result of its request."

4. This Agreement shall apply, on the one hand, to the United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man, and, on the other hand, to the Federal Republic of Germany.

5. This Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the United Kingdom within three months of the date of entry into force of this Agreement.

6. Nothing in this Agreement shall affect such application as the Treaty of 1872, as amended by the Agreement of 1960, continues to have to territories listed in sub-paragraphs (b) to (g) of Article II of the Agreement of 1960.

I have the honour to inform Your Excellency that the foregoing provisions are acceptable to the Government of the Federal Republic of Germany. If they are equally acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland I have the honour to suggest that this Note and Your Excellency's reply in that sense shall constitute an Agreement between the two Governments in this matter which shall enter into force on the date of your reply."

In reply, I have the honour to inform Your Excellency that the foregoing provisions are acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, who therefore agree that your Note and this reply shall constitute an Agreement between our two Governments in this matter which shall enter into force on the date of this Note.

I have the honour to convey to Your Excellency the assurance of my highest consideration.

(for the Secretary of State)
GEORGE SMEDLEY

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order applies the Extradition Acts 1870 to 1935 in the case of the Federal Republic of Germany and Land Berlin (West Berlin) in accordance with the Treaty between the United Kingdom and Germany for the Mutual Surrender of Fugitive Criminals, signed at London on 14th May 1872, as reapplied, with amendments, by the Agreement for the Extradition of Fugitive Criminals concluded at Bonn on 23rd February 1960, and as further amended by Notes exchanged at London on 25th and 27th September 1978.

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