



STATUTORY INSTRUMENTS.

S.I. No. 392 of 2019



EXTRADITION (AUSTRALIA) ORDER 2019

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WHEREAS, by the Treaty on Extradition between the State and Australia (the terms of which are set out in the Schedule to the following Order), done at Dublin on 2 September 1985 (referred to subsequently in these recitals as “the Treaty”), an arrangement was made with Australia for the surrender of persons wanted for prosecution or punishment for an offence specified in Article II thereof;

AND WHEREAS the terms of the Treaty were approved by Dáil Éireann by resolution passed by it on 29 June 1988;

AND WHEREAS by notes exchanged at Canberra on 27 February 1989, the State and Australia have, in accordance with the Treaty, notified each other that their respective requirements for the entry into force of the Treaty have been complied with;

NOW I, SIMON COVENEY, Minister for Foreign Affairs and Trade, in exercise of the powers conferred on me by section 8 (amended by section 57(3) of the Criminal Justice (Terrorist Offences) Act 2005 (No. 2 of 2005)) of the Extradition Act 1965 (No. 17 of 1965) (as adapted by the Foreign Affairs (Alteration of Name of Department and Title of Minister) Order 2011 (S.I. No. 246 of 2011)), and after consultation with the Minister for Justice and Equality, hereby order as follows:

1. (1) This Order may be cited as the Extradition (Australia) Order 2019.
(2) This Order shall come into operation on 22 July 2019.
2. Part II of the Extradition Act 1965 (No. 17 of 1965) shall apply in relation to Australia.
(2)

SCHEDULE**TREATY ON EXTRADITION BETWEEN IRELAND AND
AUSTRALIA****done at Dublin on 2 September 1985**

IRELAND AND AUSTRALIA,

DESIRING to make more effective the co-operation of the two countries in the suppression of crime,

HAVE AGREED as follows:

**Article I
Obligation to extradite**

Each Contracting Party agrees to extradite to the other, in accordance with the provisions of this Treaty, but subject to the law of the requested State and to such exceptions as are therein provided, any persons, including its citizens or nationals, who are wanted for prosecution or for the imposition or enforcement of a sentence in the requesting State for an extraditable offence.

**Article II
Extraditable offences**

1. For the purposes of this Treaty, an extraditable offence is an offence however described which is punishable under the laws of both Contracting Parties by imprisonment for a period of at least one year or by a more severe penalty. Where the request for extradition relates to a person who has been convicted and sentenced to a term of imprisonment in respect of such an offence, extradition shall be granted only if imprisonment for a period of at least six months remains to be served.

2. For the purposes of this Article, it shall not matter whether or not the laws of the Contracting Parties place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology.

3. Where the offence has been committed outside the territory of the requesting State, extradition shall be granted where the law of the requested State provides for the punishment of an offence committed outside its territory in similar circumstances. Where the law of the requested State does not so provide, that State may, in its discretion, grant extradition.

4. Extradition shall be granted, subject to the provisions of this Treaty, whether the offence in relation to which extradition is sought was committed before or after this Treaty enters into force, provided that:

- (a) it was an offence under the law of the requesting State at the time of the acts or omissions constituting the offence; and

(b) the acts or omissions alleged would, if they had taken place in the requested State at the time of the making of the request for extradition, have constituted an offence under the law of that State.

Article III **Exceptions to extradition**

1. Extradition shall not be granted in any of the following circumstances:

(a) if the offence for which extradition is requested is a political offence or an offence connected with a political offence. Reference to a political offence shall not include the taking or attempted taking of the life of a Head of State or a member of his family or an offence against the law relating to genocide;

(b) if there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion or that his position may be prejudiced for any of these reasons;

(c) if the offence for which extradition is requested is an offence under military law which is not an offence under the ordinary criminal law of the Contracting Parties;

(d) if the offence for which extradition is requested is regarded under the law of the requested State as having been committed in that State;

(e) if a prosecution in respect of the offence for which extradition is requested is pending in the requested State against the person whose extradition is sought;

(f) if final judgment has been passed in the requested State or in a third State upon the person claimed in respect of the offence for which his extradition is sought; or

(g) if the person whose extradition is sought has, according to the law of either Contracting Party, become immune from prosecution or punishment by reason of lapse of time.

2. Extradition may be refused in any of the following circumstances:

(a) if the offence for which extradition is requested is a revenue offence. For the purpose of this exception, "revenue offence" means an offence in connection with taxes, duties or exchange control but does not include an offence involving the use or threat of force, or perjury or the forging of a document issued under statutory authority or an offence alleged to have been committed by an officer of the revenue of the requesting State in his capacity as such officer;

(b) if the competent authorities of the requested State have decided either not to institute, or to terminate, proceedings against the person claimed for the offence in respect of which extradition is sought; or

(c) if the offence for which extradition is requested is punishable by death under the law of the requesting State and in respect of the offence such penalty is not provided for in the law of the requested State or is not generally carried out, unless the requesting State gives such assurance as the requested State considers sufficient that the death penalty will not be carried out.

Article IV **Postponement of surrender**

The requested State may postpone the surrender of a person in order to proceed against him or so that he may serve a sentence, for an offence other than the offence for which his extradition is sought.

Article V **Extradition procedure and required documents**

1. The request for extradition shall be made in writing and shall be communicated through the diplomatic channel.

2. A request for extradition emanating from Ireland shall be supported:

(a) if the person is accused, or has been convicted in his absence, of an offence - by a warrant for the arrest or a copy of the warrant for the arrest of the person, a statement of each offence for which extradition is sought and a statement of the acts or omissions which are alleged against the person in respect of each offence;

(b) if the person has been convicted of an offence otherwise than in his absence - by such documents as provide evidence of the conviction and the sentence imposed, the fact that the sentence is immediately enforceable and the extent to which the sentence has not been carried out;

(c) if the person has been convicted of an offence otherwise than in his absence but no sentence has been imposed - by such documents as provide evidence of the conviction and a statement affirming that it is intended to impose a sentence;

(d) in all cases, by a copy of the relevant provisions of the statute, if any, creating the offence or a statement of the relevant law as to the offence, including any law relating to the limitation of proceedings, as the case may be, and in either case a statement of the punishment that can be imposed for the offence; and

(e) in all cases, by information or documents which will help to establish that the person whose surrender is sought is the person accused of or convicted of the offence.

3. A request for extradition emanating from Australia shall be supported by the following documents:

(a) the original or an authenticated copy of the conviction and sentence immediately enforceable or, as the case may be, of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting State;

(b) if a sentence of imprisonment has been imposed, a statement of the period of imprisonment which remains to be served;

(c) a statement of each offence for which extradition is requested specifying, as accurately as possible, the time and place of commission, its legal description and a reference to the relevant provisions of the law of the requesting State;

(d) a copy of the relevant enactments of the requesting State or, where this is not possible, a statement of the relevant law; and

(e) as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality.

Article VI

Authentication of supporting documents

1. All documents submitted in support of a request for extradition in accordance with Article V shall be duly authenticated. A document that supports a request for extradition shall be admitted in evidence, if duly authenticated, in any extradition proceedings in the requested State.

2. A document is duly authenticated for the purposes of this Treaty if:

(a) it purports to be signed or certified by a Judge, District Justice, Magistrate or officer of the requesting State; and

(b) it purports to be authenticated by the oath or affirmation of a witness or by being sealed with the official seal of a Minister of State of the requesting State.

Article VII

Additional information

1. If the requested State considers that the information furnished in support of the request for the extradition of a person is not sufficient to fulfil the requirements of its law with respect to extradition, that State may request that

additional information be furnished within such time and in such manner as it specifies.

2. If the person whose extradition is requested is in custody and the additional information requested is not received within the time or in the manner specified, or is not sufficient, the person may be released from custody, but such release shall not preclude the requesting State from making a fresh request for the extradition of the person.

3. Where the person is released from custody in accordance with paragraph 2, the requested State shall notify the requesting State forthwith.

Article VIII Provisional arrest

1. In case of urgency, a Contracting Party may apply for the provisional arrest of a person sought. The application for provisional arrest shall be made through the diplomatic channel or between the Department of Justice in Ireland and the Attorney General's Department of Australia, in which case the facilities of INTERPOL may be used. The application may be transmitted by post or telegraph or by any other means affording a record in writing.

2. The application shall contain:

(a) a statement of the nature of the offence and of the time and place of its commission;

(b) a description of the person whose arrest is sought;

(c) a statement of intention to request the extradition of that person;

(d) (i) in the case of an application emanating from Ireland - a statement that a warrant for the apprehension of the person has been issued and is in force; or

(ii) in the case of an application emanating from Australia - a statement that one of the documents mentioned in paragraph 3(a) of Article V exists in respect of that person; and

(e) a statement of the punishment that can be imposed for the offence, and, where a sentence has been imposed, a statement of that sentence and, in the case of a sentence of imprisonment, the period remaining to be served.

3. On receipt of such an application the requested State shall take the necessary steps to secure the arrest of the person claimed and the requesting State shall be promptly notified of the result of its application.

4. Unless the law of the requested State otherwise provides, a person arrested upon such an application shall be set at liberty upon the expiration of eighteen

days from the date of his arrest if a request for his extradition, supported by the documents specified in Article V, has not been received.

5. The release of a person pursuant to paragraph 4 of this Article shall not prevent the institution of proceedings with a view to extraditing the person sought if a request for his extradition is subsequently received.

6. The provisions of Article VII shall apply *mutatis mutandis* to an application for provisional arrest.

Article IX **Multiple requests**

1. If requests are received from two or more States for the extradition of the same person, whether for the same offence or for different offences, the requested State shall determine to which of those States the person is to be extradited and shall notify the requesting State of its decision.

2. In determining to which State a person is to be extradited, the requested State shall have regard to all relevant circumstances and, in particular, to:

- (a) the relative seriousness of the offences;
- (b) the time and place of commission of each offence;
- (c) the respective dates of the requests;
- (d) the nationality of the person;
- (e) the ordinary place of residence of the person; and
- (f) the possibility of the subsequent surrender of the person to another State.

Article X **Surrender of person**

1. The requested State shall, as soon as the decision on the request for extradition has been made pursuant to its law, communicate that decision to the requesting State through the diplomatic channel.

2. Where extradition of a person for an offence is granted, the person shall be removed from the requested State from a point of departure in that State convenient to the requesting State.

3. The requesting State shall remove the person from the requested State within such reasonable period as the last-mentioned State specifies and, if the person is not removed within that period, the requested State may refuse to extradite him for the same offence.

Article XI
Surrender of property

1. To the extent permitted under the law of the requested State all property found in the requested State that has been acquired as a result of the offence or may be required as evidence shall, if the requesting State so requests, be surrendered if extradition is granted.
2. Subject to paragraph 1 of this Article, the above-mentioned property shall, if the requesting State so requests, be surrendered to that State even if the extradition, having been consented to, cannot be carried out owing to the death or escape of the person sought.
3. The rights of the requested State or of third parties in the property shall be preserved. Where such rights exist, the property shall, without charge, be returned to the requested State at the end of the proceedings in the requesting State if the requested State so requests.
4. The requested State may temporarily retain the property referred to in this Article if it considers it necessary for the purpose of criminal or civil proceedings. In such a case the requesting State may request the temporary handing over of the property, undertaking to return it as soon as the proceedings conducted in its territory permit if the requested State so requests.

Article XII
Rule of speciality

1. A person extradited under this Treaty shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence, or be otherwise restricted in his personal freedom, in the requesting State for any offence committed before his surrender, other than the offence for which his extradition was granted, except:
 - (a) where the requested State consents; or
 - (b) where the person extradited, having had an opportunity to leave the requesting State, has not done so within 45 days of his final discharge in respect of the offence for which he was surrendered, or has returned to the requesting State after leaving it.
2. If the description of the offence charged in the requesting State is altered in the course of proceedings, the person extradited shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition.
3. A request for the consent of the requested State under this Article shall be accompanied by such information and documents as are required by that State.

Article XIII
Surrender to a third State

1. The person extradited may not be surrendered by the requesting State to a third State for an offence committed prior to his surrender to the first-mentioned State, except:

- (a) where the requested State consents; or
- (b) where the person extradited, having had an opportunity to leave the requesting State, has not done so within 45 days of his final discharge in respect of the offence for which he was surrendered, or has returned to the requesting State after leaving it.

2. Where the consent of the requested State is sought in accordance with this Article, that State may request that the request for the consent be supported by the relevant documents mentioned in Article V of this Treaty.

Article XIV
Transit

1. Where a person is to be extradited pursuant to an agreement in the nature of an extradition agreement to a Contracting Party from a third State through the territory of the other Contracting Party, the Contracting Party to which the person is to be extradited shall request the other Contracting Party to permit the transit of that person through its territory.

2. Upon receipt of such a request the requested Contracting Party shall grant the request unless it is satisfied that there are reasonable grounds for refusing to do so.

3. Permission for the transit of a person shall, subject to the law of the requested Contracting Party, include permission for the person to be held in custody during transit.

4. Where a person is being held in custody pursuant to paragraph 3, the Contracting Party in whose territory the person is being held may direct that the person be released if his transportation is not continued within a reasonable time.

5. The Contracting Party to which the person is being extradited shall reimburse the other Contracting Party for any expense incurred by that other Contracting Party in connection with the transit.

Article XV
Expenses

1. The requesting State shall not be liable for the costs of any proceedings in the requested State arising out of a request for extradition.
2. The requested State shall bear the expenses incurred in its territory in the arrest of the person whose extradition is requested, and in the maintenance in custody of the person until he is surrendered to a person nominated by the requesting State in order to be removed from the requested State in accordance with paragraph 2 of Article X.
3. The requesting State shall bear the expenses incurred in conveying the person from the territory of the requested State.

Article XVI
Entry into force and termination

1. This Treaty shall enter into force thirty days after the date on which the Contracting Parties have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.
2. Either Contracting Party may terminate this Treaty by notice in writing at any time and it shall cease to be in force six months after date of receipt of such notice.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Treaty.

DONE in duplicate at Dublin on the second day of September One Thousand, Nine Hundred and Eighty-Five.

FOR IRELAND:
JOHN ROGERS

FOR AUSTRALIA:
LIONEL BOWEN



GIVEN under my Official Seal,
18 July, 2019.

SIMON COVENEY,
Minister for Foreign Affairs and Trade.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The effect of this Order is to apply the provisions of Part II of the Extradition Act 1965 to Australia in respect of offences specified in Article II of the Treaty on Extradition between Ireland and Australia, done at Dublin on 2 September 1985.

BAILE ÁTHA CLIATH
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