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Statutory Rules 1988 No. *k* 1

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Extradition (Norway) Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and pursuant to section 4 of the *Acts Interpretation Act 1901*, hereby make the following Regulations under the *Extradition Act 1988*.

Dated *24* November 1988.

N. M. STEPHEN

Governor-General

By His Excellency's Command,

Lionel Bowen
Attorney-General

Citation

1. These Regulations may be cited as the Extradition (Norway) Regulations.

Interpretation

2. In these Regulations, unless the contrary intention appears: "the Act" means the *Extradition Act 1988*.

Declaration of Norway as extradition country

3. Norway is declared to be an extradition country.

Application of Act

4. The Act applies in relation to Norway subject to the Treaty between Australia and Norway concerning Extradition that came into force on 2 March 1987 (being the treaty a copy of the English text of which is set out in the Schedule).

SCHEDULE

Regulation 4

**TREATY BETWEEN AUSTRALIA AND NORWAY CONCERNING
EXTRADITION**

Australia and Norway,

DESIRING to make provision for the reciprocal extradition of persons charged with or convicted of criminal offences,

HAVE AGREED as follows:

Article 1 (Obligation to extradite)

1. Each Contracting Party undertakes to extradite to the other Contracting Party, subject to the provisions of this Treaty, any person found within its territory who is charged by a competent authority of the other Contracting Party, with, or has been convicted by such an authority of, an extraditable offence in respect of which the Contracting Party requesting extradition asserts jurisdiction.
2. Extradition may be refused where the offence in respect of which extradition is requested was committed outside the territory of the requesting State. If the offence for which extradition is requested was committed outside both the territory of the requesting State and the territory of the requested State, the requested State shall grant extradition if it does not itself exercise jurisdiction in the particular case but its law provides for the punishment of an offence committed outside its territory in similar circumstances.
3. If the request for extradition is refused only on the ground that the offence in respect of which it is requested was committed in the territory of the requested State, that State shall take all appropriate measures in accordance with its own law to prosecute the person claimed. All expenses incurred under such prosecution in the requested State shall be borne by that State. The requesting State shall be informed of the results of the prosecution.

Article 2 (Territory)

1. For the purposes of this Treaty, the territory of a Contracting Party means all territory, airspace and waters under its criminal jurisdiction, as well as any vessel or aircraft on the high seas or in the airspace above, if registered in the territory of, or owned by, that Party.
2. Where paragraph 1 does not apply, but the requesting State asserts jurisdiction in respect of an offence committed against or on board a vessel or an aircraft registered in the territory of, or owned by, the requesting State, extradition shall be granted subject to the exercise of any concurrent jurisdiction of the requested State.
3. An offence committed partly within the territory of a Contracting Party shall be deemed to have been committed entirely within its territory.

Article 3 (Installations on the continental shelf)

Where the requesting State asserts jurisdiction over an offence committed against or on board any temporary or permanent installation or facility, including drilling platforms, on or above the sea-bed of the continental shelf of the requesting State, extradition shall be granted to the same extent as if the offence had been committed in the territory of the requesting State.

Article 4 (Extraditable offences)

1. For the purposes of this Treaty, extraditable offences are offences however described which are punishable under the laws of both Contracting Parties by imprisonment or other deprivation of liberty for a period of more than one year or by a more severe

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penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty, extradition shall be granted only if a penalty of at least four months of such penalty remains to be served.

2. For the purpose of this Article it shall not matter whether 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 or similar terminology.

3. For the purpose of this Article in determining whether an offence is an offence against the law of both Contracting Parties the totality of the acts or omissions alleged against the person whose surrender is sought shall be taken into account without reference to the elements of the offence prescribed by the law of the requesting State.

4. Where a person has been convicted in his absence of an extraditable offence the person shall, for the purposes of this Treaty, be deemed not to have been convicted of that offence but shall be deemed to be charged with that offence.

Article 5 (Nationals)

1. No Contracting Party shall be obliged to extradite its own nationals.

2. If Australia requests extradition of a person who, at the time of the request for extradition, is a permanent resident of Norway and a national of Denmark, Finland, Iceland or Sweden, extradition may be refused, specifying reasons therefore, but the requested State may extradite the person claimed if, in its discretion, it deems it proper to do so.

3. If extradition is not granted in pursuance of paragraphs 1 or 2, the requested State, if asked to do so by the requesting State, shall submit the case to its competent authorities in order that proceedings, if considered appropriate, may be taken in accordance with the law of the requested State, and shall inform the requesting State of the result of the request.

Article 6 (Political offences, race, humanitarian considerations)

1. A person shall not be extradited if the offence for which his extradition is requested is regarded by the requested State as an offence of a political character. An offence against the law relating to genocide shall not be regarded as an offence of a political character.

2. A person shall not be extradited if the requested State has substantial grounds for believing that the request for extradition was made for the purpose of prosecuting or punishing the person by reason of his race, religion, nationality, political opinions or other political circumstances or that his position may be prejudiced for any of these reasons.

3. A person shall not be extradited if the requested State, while also taking into account the nature of the offence and the interests of the requesting State, considers that, in the circumstances of the case, including the age, health or other personal circumstances of the person claimed, the extradition of that person would be in conflict with fundamental humanitarian considerations.

Article 7 (Military offences, provisional courts, non bis in idem, lapse of time, etc.)

1. Extradition may be refused where the offence for which extradition is requested is considered by the requested State to constitute only a breach of military law. Where the offence for which extradition is requested is of a kind that, under the law of the requested State, constitutes both an offence against military law and another offence against the law of that State, the extradited person shall not be proceeded against for the offence against military law.

SCHEDULE—continued

2. Extradition may further be refused where:
- (a) the person claimed is liable to be tried by a Court or Tribunal that is only provisionally, or under exceptional circumstances, empowered to deal with the offence for which his extradition is requested, or if his extradition is requested for the purpose of his serving a sentence imposed by such a Court or Tribunal;
 - (b) the person claimed is under examination or trial in the requested State for the offence in respect of which extradition is requested;
 - (c) the person claimed has in the territory of the requested State, or in a third State, been acquitted or a penalty has been imposed for the offence for which extradition is requested;
 - (d) examination proceedings against the person claimed have been discontinued and that person has not been put on trial in the requested State in respect of the offence for which extradition is requested;
 - (e) the person claimed is exempt from prosecution or punishment by lapse of time according to the law of the requesting State or the requested State in respect of the offence for which extradition is requested.
3. Extradition may also be refused on any other grounds or for any other reason specified by the law of the requested State.

Article 8 (Evidence)

In the case of a person charged with an offence, but not yet convicted, extradition from Norway may be refused if the appropriate Norwegian authorities consider the evidence insufficient to establish a presumption that the person concerned is guilty of the offence he is charged with.

Article 9 (Capital punishment)

If, under the law of the requesting State, a person claimed is liable to the death penalty for an offence for which his extradition is requested or for any other offence for which he may be detained or tried in accordance with Article 10, the requested State may refuse his extradition unless the requesting State undertakes that the death penalty will not be imposed or, if imposed, will not be carried out.

Article 10 (Rule of speciality)

1. Subject to paragraph 3 of this Article, a person extradited under this Treaty shall not
- (a) be detained or tried, or be subjected to any other restriction of his personal liberty, in the requesting State for any offence committed before his extradition other than
 - (i) an offence for which he was extradited or any other offence referred to in Article 4 of which he could be convicted on proof of the facts upon which the request for his extradition was based; or
 - (ii) any other offence referred to in Article 4 in respect of which the requested State consents to his being so detained or tried, or subjected to any other restriction of his personal liberty; or
 - (b) be extradited to a third State unless the requested State consents to his being so extradited.
2. 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.
3. Paragraph 1 of this Article does not apply if the person has had an opportunity, throughout a period of forty-five days after the completion of legal proceedings and the serving of any sentence that may have been imposed upon him, for an offence referred to in paragraph 1, to leave the requesting State without hindrance but has failed to do so, or if he has returned to that State of his own free will after having left it.

Article 11 (Conflicting requests)

1. If the extradition of a person is requested concurrently by one of the Contracting

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Parties and by another State or States, whether for the same offence or for a different offence, the requested State shall decide whether the person is to be extradited to the requesting State or to the other State or one of the other States and shall notify the requesting State of its decision.

2. In making a decision the requested State shall have regard to all the circumstances and, in particular, to:
- (a) the relative seriousness of the offences, if the requests relate to different offences;
 - (b) the time and place of commission of each offence;
 - (c) the respective dates of the requests;
 - (d) the nationality and ordinary place of residence of the person; and
 - (e) the possibility of subsequent extradition to another State.

Article 12 (Extradition procedure and required documents)

1. A request for extradition shall be made in writing, and shall be communicated through the diplomatic channel. All documents furnished in support of a request for extradition shall be authenticated.
2. The request for extradition shall be accompanied:
- (a) if the person is charged with 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 fugitive in respect of each offence;
 - (b) if the person has been convicted of an offence—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 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 provision 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 documentation as to the nationality and residence of the person and by documents that establish that the person whose surrender is sought is the person charged with or convicted of the extraditable offence.
3. Extradition may be granted of a person sought pursuant to the provisions of this Treaty notwithstanding that the requirements of paragraphs 1 and 2 of this Article have not been complied with, provided that the person sought consents to an order for his extradition being made.

Article 13 (Authenticated documents)

1. A document that, in accordance with Article 12, accompanies a request for extradition shall be admitted in evidence, if authenticated, in any extradition proceedings in the territory of the requested State.
2. A document is authenticated for the purposes of this Treaty if:
- (a) in the case of a warrant it is signed, and in any other case its authenticity is certified, by a Judge, Magistrate or other competent authority in the requesting State; and
 - (b) it is sealed with the official seal of a Minister of State or a Ministry of the requesting State.

Article 14 (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

SCHEDULE—continued

law with respect to extradition, that State may request that additional information be furnished within such time as it specifies.

2. If the person claimed is under arrest and the additional information furnished is not sufficient or is not received within the time specified, he may be released from custody but his release shall not preclude the requesting State from making a fresh request for his extradition.

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

Article 15 (Provisional arrest)

1. In case of urgency the requesting State may request the provisional arrest of the person claimed.

2. The application shall contain a description of the person sought, a statement that extradition is to be requested through the diplomatic channel, a statement of the existence and terms of a warrant of arrest or a judgment of conviction against the person, a statement of the punishment that can be imposed or has been imposed for the offence and, if requested by the requested State, a statement of the acts or omissions alleged to constitute the offence.

3. A request for provisional arrest shall be sent to the requested State either through the diplomatic channel or through the International Criminal Police Organisation (Interpol). The requesting State shall be informed without delay of the result of its request.

4. The requesting State shall submit the request for extradition as soon as possible, but the person claimed, if subjected to coercive measures, may be released from such measures at any time, or for any reason, in accordance with the law of the requested State.

5. Release of the person claimed under paragraph 4 shall not prevent the initiation of subsequent extradition proceedings if the request for extradition is received after such release.

Article 16 (Postponed surrender)

The requested State may postpone the surrender of a person in order to prosecute him for an offence, other than an offence for which his extradition is requested, or in order that he may serve a sentence for such an offence, and shall advise the requesting State accordingly.

Article 17 (Notification of decision)

The requested State shall notify the requesting State through the diplomatic channel as soon as possible of its decision with regard to a request for extradition. Reasons shall be given for any complete or partial refusal.

Article 18 (Surrender)

1. Where an order has been made for the extradition of a person, he shall be removed from the territory of the requested State from such place of embarkation in the territory of that State as is convenient to the requesting State and is agreed by the Contracting Parties.

2. If an order for the extradition of a person has been issued by the competent authority of the requested State and he is not removed from the territory of the requested State within such time as is prescribed by the laws of that State, he may be set at liberty and the requested State may subsequently refuse to extradite that person for the same offence.

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3. The requested State shall inform the requesting State of the period of time during which the person claimed was in custody for the purpose of extradition.

Article 19 (Handing over of property)

1. To the extent that the law of the requested State permits, any property that may be material as evidence in proving the offence for which extradition is requested, or that has been acquired by the person claimed directly or indirectly as a result of the offence, shall, if the requesting State so requests, be delivered up with him on his surrender.
2. Any property so delivered up shall be returned to the requested State free of charge after trial of the person surrendered if that State so requests.
3. This Article shall not be applied so as to prejudice the rights of any person in respect of any property.

Article 20 (Translation)

Any documents submitted in accordance with this Treaty shall be accompanied by a translation certified in accordance with the law of the requesting State.

Article 21 (Representation of the requesting State, expenses)

1. The requested State shall arrange for the representation of the requesting State in any legal proceedings relating to the extradition of the person claimed and shall otherwise represent the interests of the requesting State.
2. Except as provided by paragraph 3, no pecuniary claim arising out of the arrest, detention, examination and extradition of the person claimed shall be made by the requested State against the requesting State.
3. Expenses relating to the transportation of the person claimed from the place of embarkation referred to in Article 18 shall be paid by the requesting State.

Article 22 (Transit)

1. Transit of a person who is being extradited from a third State through the territory of one Contracting Party to the other Contracting Party shall be granted on request, subject to the law of the Contracting Party through the territory of which the person is to be transported, provided that transit of a person may be refused on any ground on which the extradition of that person might be refused under this Treaty.
2. Permission for the transit of a person includes permission for the person during transit to be held in custody by a person nominated by the Contracting Party to which the first-mentioned person is to be surrendered.
3. Where a person is being held in custody pursuant to paragraph 2, the Contracting Party in whose territory the person is being held may direct that he be released if his transportation is not continued within a reasonable time.
4. 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 23 (Procedure)

Proceedings with regard to provisional arrest and extradition shall be governed solely by the law of the requested State, and transit through the territory of a Contracting Party shall be governed solely by the law of that Contracting Party.

Article 24 (Final clauses)

1. This Treaty shall come into force ninety days after the day on which the Contracting Parties exchange Notes notifying each other that their respective constitutional and other requirements necessary to give effect to this Treaty have been complied with.

SCHEDULE—continued

2. On the entry into force of this Treaty the provisions of the Treaty for the Mutual Surrender of Fugitive Criminals signed at Stockholm on 26 June 1873 as supplemented by the Agreement signed at Kristiania on 18 February 1907 shall cease to have effect as between Australia and Norway.

3. Extradition may be granted pursuant to the provisions of this Treaty irrespective of when the offence in relation to which the extradition is sought was committed, provided that:

- (a) it was an offence in 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 territory of the requested State at the time of the making of the request for extradition, have constituted an offence against the law in force in that State.

4. Either Contracting Party may terminate this Treaty by notice in writing at any time and it shall cease to be in force on the one hundred and eightieth day after the date of receipt of such notice.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

DONE in duplicate at Oslo on the ninth day of September One thousand nine hundred and eightyfive, in the Norwegian and English languages, each text being equally authentic.

For Australia

LIONEL BOWEN

For Norway

LARS ROAR LANGSLET

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on *L* 1988.

30 November/