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Statutory Rules 1988 No. 1

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## Extradition (Finland) 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 (Finland) Regulations.

### Interpretation

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

### Declaration of Finland as extradition country

3. Finland is declared to be an extradition country.

### Application of Act

4. The Act applies in relation to Finland subject to the Treaty between Australia and Finland concerning Extradition that came into force on 23 June 1985 (being the treaty a copy of the English text of which is set out in Schedule 1) as amended by the Protocol between Australia and Finland amending that Treaty that came into force on 14 February 1986 (being the protocol a copy of the English text of which is set out in Schedule 2).

## SCHEDULE 1

Regulation 4

TREATY BETWEEN AUSTRALIA AND FINLAND  
CONCERNING EXTRADITION

Australia and Finland,

DESIRING to make a new treaty for the reciprocal extradition of persons charged with or convicted of offences,

HAVE AGREED as follows:

## Article 1

1. Each Contracting Party undertakes to extradite to the other Contracting Party, subject to the provisions of this Treaty, any person found in its territory who is charged by a competent authority with, or has been convicted of, an offence against the law of the other Contracting Party, whether committed within the territory of that Party or outside that territory in the circumstances referred to in paragraph 3.
2. Extradition may be refused for an offence committed within the territory of the requested State, but if the offence has been committed within that territory by an officer or employee of the requesting State who is a national of the requesting State, the requested State shall, subject to its law, extradite the person sought unless it considers it proper not to do so, in which event it shall submit the case to its competent authorities for the purpose of prosecution.
3. Extradition shall be granted in respect of an offence committed outside the territory of the requesting State only where the law of the requested State provides for the punishment of an offence committed outside its territory in similar circumstances.

## Article 2

1. Subject to the provisions of this Article, extradition shall be granted only in respect of the following offences:
  - (i) Wilful murder; murder.
  - (ii) Manslaughter.
  - (iii) An offence against the law relating to genocide.
  - (iv) Aiding or abetting, or counselling or procuring the commission of, suicide.
  - (v) Illegal abortion.
  - (vi) Maliciously or wilfully wounding or inflicting serious bodily harm.
  - (vii) Assault causing actual bodily harm.
  - (viii) Assaulting a Magistrate, a police officer or a public officer.
  - (ix) Assault on board a ship or aircraft with intent to destroy life or to cause grievous bodily harm.
  - (x) Rape.
  - (xi) Unlawful sexual intercourse with a female.
  - (xii) Indecent assault.
  - (xiii) An offence against the law relating to the suppression of the traffic in persons and of the exploitation of the prostitution of others.
  - (xiv) Bigamy.
  - (xv) Kidnapping; abduction; false imprisonment; dealing in slaves.
  - (xvi) Stealing, abandoning, exposing or unlawfully detaining a child.
  - (xvii) Bribery.
  - (xviii) Perjury; subornation of perjury; obstructing or defeating the course of justice.
  - (xix) Arson.
  - (xx) An offence relating to counterfeit currency.
  - (xxi) An offence against the law relating to forgery or uttering what is forged.
  - (xxii) Embezzlement; fraudulent conversion; false accounting; obtaining property, money, valuable securities or credit by false pretences or other form of deception; receiving stolen property; any other offence involving fraud.
  - (xxiii) Stealing; burglary; housebreaking; any similar offence.
  - (xxiv) Robbery.

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SCHEDULE 1—continued

- (xxv) Blackmail or extortion by means of threats or by abuse of authority.
  - (xxvi) An offence against the law relating to bankruptcy or insolvency.
  - (xxvii) An offence against the law relating to companies.
  - (xxviii) Maliciously or wilfully damaging property.
  - (xxix) An act done with the intention of endangering the safety of persons travelling on a railway, vehicle, vessel or aircraft or of endangering or damaging a railway, vehicle, vessel or aircraft.
  - (xxx) Piracy.
  - (xxxi) An unlawful act against the authority of the master of a vessel or the commander of an aircraft.
  - (xxxii) Unlawful seizure, or unlawful exercise of control, of a vessel or an aircraft, by force or threat of force or by any other form of intimidation.
  - (xxxiii) An unlawful act of any of the kinds specified in paragraph 1 of Article 1 of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.
  - (xxxiv) An offence against the law relating to dangerous drugs, narcotics or psychotropic substances.
  - (xxxv) Participating in the commission of, impeding the arrest or prosecution of a person who has committed, or attempting or conspiring to commit, an offence described in this paragraph.
  - (xxxvi) Any offence which would be described in this paragraph if the description contained a reference to any intent or state of mind on the part of the person committing the offence, or to any circumstance of aggravation, necessary to constitute the offence.
2. Extradition shall only be granted for an act or omission constituting an offence referred to in paragraph 1 if:
- (a) in the requesting State the offence is punishable by a maximum punishment that is not less severe than imprisonment or other deprivation of liberty for a period exceeding one year; and
  - (b) in the requested State the offence is, or if it had been committed there in similar circumstances would have been, punishable by a maximum punishment that is not less severe than imprisonment or other deprivation of liberty for a period exceeding one year.
3. Extradition shall also be granted in respect of any other offence that is, according to the laws of both Contracting Parties, one for which extradition may be granted.
4. Where a person has been convicted in his absence of an offence referred to in paragraphs 1 or 3 and the conviction is not a final conviction, then, for the purposes of this Treaty, the person shall be deemed not to have been convicted of that offence but shall be deemed to be accused of that offence.

Article 3

1. A person shall not be extradited if—
- (a) the offence for which his extradition is requested is regarded by the requested State as an offence of a political character or as an offence connected with an offence of a political character; or
  - (b) 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 or political opinions or that his position may be prejudiced for any of these reasons.
2. An offence against the law relating to genocide shall not be regarded as an offence of a political character or an offence connected with an offence of a political character.

Article 4

1. Either Contracting Party may refuse to extradite its own nationals.
2. If Australia requests the extradition of a person born in Finland of Finnish nationality who, at the time of the request for extradition, is a permanent resident of Finland and a national of Denmark, Iceland, Norway or Sweden, Finland shall have the right to recommend that the request for extradition be withdrawn, specifying the reasons therefor.
3. If extradition is not granted in pursuance of paragraphs 1 or 2, the requested State shall submit the case to its competent authorities for the purpose of prosecution.

## SCHEDULE 1—continued

## Article 5

1. Extradition may be refused where:
  - (a) the act or omission constituting the offence for which extradition is requested is of a kind that, under the law of the requested State, constitutes an offence against military law;
  - (b) the person whose extradition is requested is liable to be tried by a Court or Tribunal that is specially established for the purpose of trying his case or is only occasionally, or under exceptional circumstances, authorized to try such cases or his extradition is requested for the purpose of his serving a sentence imposed by such a Court or Tribunal;
  - (c) 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 whose extradition is requested, the extradition of that person would be unjust, oppressive or incompatible with humanitarian considerations;
  - (d) the person whose extradition is requested has already been proceeded against in the territory of the requested State or in a third State for the act or omission constituting the offence for which extradition is requested;
  - (e) the person whose extradition is requested 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 act or omission constituting the offence for which extradition is requested;
  - (f) in the case of a person charged with an offence—the evidence of criminality would not, according to the law of the requested State, have justified his being placed on trial if the act or omission constituting the offence had been committed in the territory of the requested State; or
  - (g) in the case of a person convicted and sentenced in respect of an offence—less than four months of the sentence of imprisonment or any other form of deprivation of liberty imposed in the territory of the requesting State for the offence for which extradition is requested remains to be served.

2. If criminal proceedings are instituted in Finland against the person sought for the offence for which his extradition is requested and the charge against him is waived, Finland shall not be bound to extradite him for that offence unless the executive authority of Finland determines, after due consideration of the circumstances of the case, that the interests of justice would be served thereby. In any event, the requesting State shall be afforded an opportunity to supplement its request before final determination on the request for extradition pursuant to this provision.

## Article 6

If, under the law of the requesting State, a person whose extradition is requested 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 15, the requested State may refuse the extradition of the person unless the requesting State undertakes that the death penalty will not be imposed or, if imposed, will not be carried out.

## Article 7

1. A request for extradition of a person shall be in writing.
2. The request shall be accompanied:
  - (a) by a duly authenticated warrant for his arrest;
  - (b) if the person is charged with an offence—by such duly authenticated documents as, according to the law in force in the part of the territory of the requested State in which he is found, would justify his arrest and trial if the act or omission constituting the offence had taken place in that part of that territory;
  - (c) if the person has been convicted of an offence—by such duly authenticated documents as prove the conviction and the sentence imposed, the evidence that the sentence is immediately enforceable, and a statement showing the extent to which the sentence has not been carried out;
  - (d) if the person has been convicted of an offence but no sentence has been imposed—by such duly authenticated documents as prove the conviction and a statement showing the reasons why no sentence has been imposed;
  - (e) by information about the date, place and other details of the offence for which extradition is requested to the extent to which that information is not contained in the documents referred to in the previous sub-paragraphs;

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**SCHEDULE 1—continued**

- (f) 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, as the case may be, and in either case a statement of the punishment that can be imposed for the offence; and
- (g) by information as to the nationality and residence of the person and such duly authenticated documents as are available and necessary for his identification.

Article 8

1. A document that, in accordance with Article 7, accompanies a request for extradition shall be admitted in evidence, if duly authenticated, in any extradition proceedings in the territory of the requested State.
2. A document is duly 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 9

1. If the requested State considers that the evidence or 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 evidence or information be furnished within such time as it specifies.
2. If the person whose extradition is requested is under arrest and the additional evidence or information furnished is not sufficient or is not received within the time specified, 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 a person is released from custody in accordance with paragraph 2, the requested State shall notify the requesting State accordingly.

Article 10

1. Where requests are received from the requesting State and from one or more other States for the extradition of the one person, 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 the circumstances and, in particular, to:
  - (a) if the requests relate to different offences—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 subsequent extradition to another State.

Article 11

The requested State may postpone the extradition of a person in order to proceed against him, or so that he may serve a sentence for an offence other than an offence constituted by an act or omission for which his extradition is requested and, where the requested State so postpones the extradition of a person, it shall advise the requesting State accordingly.

Article 12

Where the act or omission for which extradition is granted 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.

Article 13

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

## SCHEDULE 1—continued

2. The requesting State shall remove the person from the territory of 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.
3. Australia is not required to extradite a person before the expiration of fifteen days after:
  - (a) the date on which he has been held judicially to be liable to extradition; or
  - (b) if proceedings for a writ of habeas corpus have been brought—the final decision of the competent court has been given.

## Article 14

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 the extradition of a person is requested or that has been acquired by the person directly or indirectly as a result of the offence shall, if the requesting State so requests, be delivered up with the person 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 15

1. Subject to paragraph 3, 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 territory of the requesting State for any offence committed before his extradition other than—
    - (i) an offence for which he was extradited or any other offence to which Article 2 applies of which he could be convicted upon proof of the facts upon which the request for his extradition was based; or
    - (ii) any other offence to which Article 2 applies in respect of which the requested State consents to his being so detained, tried or subjected to a restriction of his personal liberty; or
  - (b) be detained in the requesting State for the purpose of his being extradited to a third State unless the requested State consents to his being so detained.
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 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 sub-paragraph 1 (a) to leave the requesting State or if he has returned to that State after having left it.

## Article 16

If extradition is refused, or is refused in respect of one or more of the offences for which extradition was requested, the requested State shall inform the requesting State as soon as possible of the refusal and of the reasons for the refusal.

## Article 17

1. In case of urgency the requesting State may apply for the provisional arrest of a person pending the making of a request for the extradition of the person.
2. The application shall be accompanied by:
  - (a) a statement of intention to request the extradition of the person;
  - (b) a statement that a warrant for the arrest of the person for the alleged commission of an offence for which his extradition may be requested under this Treaty has been issued by a competent authority in the requesting State or that the person has been convicted of such an offence in the territory of the requesting State; and
  - (c) such further information, if any, as would, according to the law in force in the part of the territory of the requested State in which the person is, or is suspected of being, justify the arrest of the person without the issue of a warrant, or justify the issue of a warrant for the arrest of the person, if the act or omission constituting the offence had taken place in similar circumstances in that part of that territory.

**SCHEDULE 1—continued**

3. If a request for the extradition of a person who has been arrested upon such an application is not made in accordance with this Treaty within a reasonable time after the arrest of the person, the person may be set at liberty, but nothing in this paragraph prevents the institution of further proceedings for the purpose of securing the extradition of the person if such a request is subsequently made.

Article 18

1. Where a person is to be extradited for an offence by a third State to a Contracting Party through the territory of the other Contracting Party, the first-mentioned Contracting Party shall request the other Contracting Party to permit the transit of that person through its territory.
2. Upon receipt of such a request the other 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 includes permission for the person to be held in custody during transit by a person nominated by the Contracting Party to which the first-mentioned person is to be extradited.
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 19

1. Communications between the Contracting Parties shall be conveyed through the diplomatic channel.
2. An application under Article 17 may also be made by means of the facilities of the International Criminal Police Organization.

Article 20

A Contracting Party which sends to the other Contracting Party a document in accordance with this Treaty that is not in the language of the other Contracting Party shall provide, as soon thereafter as is practicable, a translation of the document into that language.

Article 21

1. The requested State shall make all necessary arrangements for and meet the cost of the representation of the requesting State in any proceedings arising out of a request for extradition and shall otherwise represent the interests of the requesting State.
2. The requested State shall bear the expenses incurred in its territory in the arrest of the person whose extradition is requested, in any legal proceedings relating to the extradition of the person and in the maintenance in custody of the person until he is surrendered to a person nominated by the requesting State.
3. The requesting State shall bear the expenses incurred in conveying the person from the territory of the requested State.

Article 22

1. For the purposes of this Treaty, the territory of a Contracting Party means all the territory under the jurisdiction of that Party including the airspace over, and the territorial sea of, any such territory and any vessel or aircraft owned by that Party or registered in any such territory if any such vessel is on the high seas or any such aircraft is in flight when the act or omission constituting the offence for which extradition is requested takes place.
2. For the purposes of this Treaty, the territory under the jurisdiction of Australia includes the Territories for the international relations of which Australia is responsible.
3. For the purposes of this Treaty, an aircraft shall be considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation.

Article 23

1. This Treaty is subject to ratification and the instruments of ratification shall be exchanged in Canberra as soon as possible.

## SCHEDULE 1—continued

2. This Treaty shall enter into force ninety days after the exchange of instruments of ratification.
3. On the entry into force of this Treaty the provisions of the Treaty for the mutual surrender of fugitive criminals, signed at London on May 30, 1924 (in this Article referred to as 'the Treaty of 1924') shall cease to have effect between Australia and Finland.
4. This Treaty shall apply to an offence committed before its entry into force if the offence would have constituted an offence under the Treaty of 1924 and is an offence referred to in paragraphs 1 or 3 of Article 2.
5. 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 day on which notice is given.

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

DONE in duplicate in the English and Finnish languages, each text being equally authentic, at Helsinki on the seventh day of June 1984.

For Australia  
M. R. MCGOVERN

For Finland  
MATTI TUOVINEN

## SCHEDULE 2

Regulation 4

PROTOCOL BETWEEN AUSTRALIA AND FINLAND AMENDING THE TREATY  
CONCERNING EXTRADITION DONE AT HELSINKI ON 7 JUNE 1984

Australia and Finland, desiring to amend the Treaty between Australia and Finland concerning Extradition, done at Helsinki on 7 June 1984, have agreed as follows:

## Article 1

The text of Article 2 of the Treaty shall be replaced by the following:

- "1. For the purposes of this Treaty, extradition shall be granted only in respect of offences which 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 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. Subject to the conditions set forth in paragraph 1 of this Article extradition shall also be granted for the offences of:
  - (a) aiding, abetting, counselling or procuring the commission of, being an accessory before or after the fact to, or attempting or conspiring to commit an offence described in paragraph 1; and
  - (b) impeding the apprehension or prosecution of a person charged with an offence described in paragraph 1.
- "3. 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.
- "4. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, foreign exchange control or any other revenue matter extradition may not be refused on the ground that the law of the Requested State does not impose the same kind of tax or duty or does not contain a tax, duty, customs or exchange regulation of the same kind as the law of the Requesting State.
- "5. 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.



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**SCHEDULE 2—continued**

- “6. Extradition may be granted pursuant to the provisions of this Treaty irrespective of when the offence in relation to which 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.
- “7. When a person has been convicted in his absence of an extraditable offence, then, for the purposes of this Treaty, the person shall be deemed not to have been convicted of that offence but shall be deemed to be accused of that offence.”

Article 2

Article 5 of the Treaty shall be amended by adding “or” to the end of paragraph 1 (e) and deleting paragraph 1 (f).

Article 3

The text of Article 7 of the Treaty shall be replaced by the following:

- “1. A request for extradition shall be made in writing. All documents submitted in support of a request for extradition shall be duly authenticated.
- “2. The request for extradition shall be accompanied:
- (a) if the person is accused of an offence by a warrant for the arrest or a copy of the warrant for 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 documents setting out 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 as to the nationality and residence of the person and by documents that establish that the person whose surrender is sought is the person accused or convicted of the extraditable offence.
- “3. To the extent permitted by the law of each Contracting Party extradition may be granted of a person sought pursuant to the provisions of this Treaty notwithstanding that the requirements of paragraph 2 of this Article have not been complied with provided that the person sought consents to an order for his extradition being made.”

Article 4

- 1. This Protocol shall enter into force thirty days after the Contracting Parties have notified each other that the constitutional requirements for the entry into force of this Protocol have been complied with.
- 2. This Protocol shall remain in force so long as the Treaty remains in force.

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

DONE in duplicate at Helsinki on the tenth day of September One thousand nine hundred and eighty-five in the English and Finnish languages, both texts being equally authentic.

For Australia  
LIONEL BOWEN

For Finland  
CHRISTOFFER TAXELL

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*Extradition (Finland)* 1988 No. *K*

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**NOTE**

1. Notified in the *Commonwealth of Australia Gazette* on *K*

1988.

*30 November/*