

L.N. 224 of 2006

EXTRADITION ACT
(CAP. 276)

Extradition (Designated Foreign Countries) (Amendment) Order,
2006

IN exercise of the powers conferred by article 7 of the Extradition Act, the Deputy Prime Minister and Minister for Justice and Home Affairs has made the following order:-

1. The title of this Order is the Extradition (Designated Foreign Countries) (Amendment) Order, 2006, and it shall be read and construed as one with the Extradition (Designated Foreign Countries) Order, 2004, hereinafter referred to as “the principal order”. Citation.
L.N. 320 of 2004.

2. Article 5 of the principal order shall be amended as follows:- Amends article 5 of
the principal order.

(a) in paragraph (a) of sub-article (5) thereof, for the words “the relevant Act;” there shall be substituted the words “the relevant Act:” and immediately thereafter there shall be inserted the following proviso:

“Provided that this sub-paragraph shall be deemed to have been complied with notwithstanding the fact that a copy of the relative enactments or of a statement of the relevant law may have not been furnished;”;

(b) in paragraph (a) of sub-article (8) thereof, for the words “the relevant Act;” there shall be substituted the words “the relevant Act:” and immediately thereafter there shall be inserted the following proviso:

“Provided that this sub-paragraph shall be deemed to have been complied with notwithstanding the fact that a copy of the relative enactments or of a statement of the relevant law may have not been furnished;”;

(c) immediately after sub-article (8) thereof, there shall be inserted the following new sub-article:

“(9) Any arrest warrant to which this Part applies may be transmitted by any secure means capable of producing written records and under conditions permitting the ascertainment of its authenticity.”.

Adds new article 5A to the principal order.

3. Immediately after article 5 of the principal order, there shall be inserted the following new article:

“Arrest warrant issued by scheduled country.

5A. (1) A relevant arrest warrant for prosecution shall also include a warrant issued by a judicial authority of a scheduled country which is accompanied by the form contained in the Annex to the Arrangement setting out the information required by the same form and containing the statement referred to in sub-article (4).

(2) A relevant arrest warrant after conviction shall also include a warrant issued by a judicial authority of a scheduled country which is accompanied by the form contained in the Annex to the Arrangement setting out the information required by the same form and containing the statement referred to in sub-article (7).”.

Amends article 11 of the principal order.

4. After sub-article (1) of article 11 of the principal order, there shall be inserted the following new sub-article:

“(1A) The person brought before the court:

(a) shall have the right to be assisted by a lawyer or legal procurator, and

(b) if he does not understand the language in which the proceedings are conducted, shall have the right to the appointment of an interpreter.”.

Adds new article 13A to the principal order.

5. Immediately after article 13 of the principal order there shall be inserted the following new article:

“Request for supplementary information.

13A. In the event that the Court finds the information communicated by the authority which issued a Part II warrant to be insufficient to allow it to decide on surrender, it shall request the necessary supplementary information subject to any time limit which it may lay down for the purpose.”.

Substitutes article 16 of the principal order.

6. For article 16 of the principal order, there shall be substituted the following:

“16. A person’s return to a scheduled country is barred by reason of prescription if prosecution for the offence in respect of which extradition is requested is barred by prescription according to the law of Malta and the acts constituting the offence for which

extradition is requested fall within the jurisdiction of the Maltese criminal courts.”.

7. In article 22 of the principal order, for the words “paragraph (c)” there shall be substituted the words “paragraph (b)”. Amends article 22 of the principal order.

8. Sub-article (8) of article 23 of the principal order shall be deleted. Amends article 23 of the principal order.

9. For article 28 of the principal order, there shall be substituted the following: Substitutes article 28 of the principal order.

“28. (1) This article applies if at any time in the extradition hearing the court is informed that the person in respect of whom the Part II warrant is issued is charged with an offence in Malta based on the same act on which the Part II warrant is based.

(2) The court may adjourn the extradition hearing until one of these occurs –

(a) the charge is disposed of;

(b) the charge is withdrawn;

(c) proceedings in respect of the charge are discontinued;

(d) the proceedings are put off *sine die*.

(3) If before the court adjourns the extradition hearing under sub-article (2) the court has decided under article 13 whether the person’s return is barred by reason of the rule against *ne bis in idem*, the court must decide that question again after resumption of the hearing.”.

10. After article 28 of the principal order there shall be inserted the following new article: Adds new article 28A to the principal order.

“Person also charged with offence in Malta.

28A. (1) This article applies if at any time in the extradition hearing the court is informed that the person in respect of whom the Part II warrant is issued is charged with an offence in Malta based on an act other than the act on which the Part II warrant is based.

(2) If the court commits the person to custody to await his return and the person is still being prosecuted for

the charges referred to in sub-article (1), it may postpone the surrender of the person until one of the following occurs:

- (a) the charge is disposed of;
- (b) the charge is withdrawn;
- (c) proceedings in respect of the charge are discontinued;
- (d) the proceedings are put off sine die.

(3) If the court commits the person to custody to await his return and the person has been sentenced and has not yet served his sentence the court may:

- (a) postpone surrender until the person has served his sentence; or
- (b) temporarily surrender the person under conditions agreed in writing with the authority which issued the Part II warrant.”.

Adds new article
31A to the principal
order.

11. Immediately after article 31 of the principal order, there shall be inserted the following new article:

“Request by
scheduled
country to
hear person.

31A. (1) This article applies if at any time in the course of the extradition hearing the court is informed that a request has been received from the judicial authority of the scheduled country to hear the person in respect of whom the Part II warrant is issued.

(2) The court shall decide, after consulting the Attorney General, whether:

- (a) to temporarily transfer the person requested to the requesting country under such conditions and for such period as may be agreed, with the concurrence of the Attorney General, with the requesting judicial authority; and
- (b) to order that the request shall be communicated to a magistrate for execution whereupon the provisions of sub-articles (1) and (6) of article 649 of the Criminal Code shall apply.”.

12. For article 32 of the principal order, there shall be substituted the following: Substitution of article 32 of the principal order.

“32. The provisions of articles 18 and 19, both inclusive, of the relevant Act shall apply to appeals by the person committed to custody and to appeals by the Attorney General as the case may be and to an application for redress to the Constitutional Court under article 46 of the Constitution.”.

13. Immediately after sub-article (3) of article 35 of the principal order, there shall be inserted the following new sub-article: Amends article 35 of the principal order.

“(4) If sub-article (3) is not complied with and the person applies to the Court to be discharged the court must order his discharge, unless reasonable cause is shown for the delay.”.

14. Article 43 of the principal order shall be amended as follows:- Amends article 43 of the principal order.

(a) for sub-article (3) thereof, there shall be substituted the following:

“43. If a person consents to his return under this article he must declare whether he waives any right he would have (apart from the consent) not to be dealt with in the scheduled country for an offence committed before his return.”; and

(b) in sub-article (4) thereof, immediately after the word “Consent” there shall be inserted the words “and any waiver declared”.

15. In sub-article (8) of article 54 of the principal order, for the words “judge” there shall be substituted the words “court”. Amends article 54 of the principal order.

16. Article 59 of the principal order shall be amended as follows:- Amends article 59 of the principal order.

(a) immediately after sub-article (4) thereof, there shall be inserted the following new sub-article:-

“(4A) The conduct also constitutes an extraditable offence in relation to a scheduled country if these conditions are satisfied:

(a) the conduct occurs outside the scheduled country and no part of it occurs in Malta;

(b) the conduct would constitute an offence under the law of Malta punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in Malta;

(c) the conduct is so punishable under the law of the scheduled country (however it is described in that law).”; and

(d) immediately after sub-article (7) thereof, there shall be inserted the following new sub-article:

“(8) The scheduled conduct must be taken for the purposes of sub-article (2)(b) to include conduct which constitutes-

(a) an attempt, conspiracy or incitement to carry out conduct falling within the schedule, or

(b) aiding, abetting, counseling or procuring the carrying out of conduct falling within the schedule.”.

Amends article 60
of the principal
order.

17. Article 60 of the principal order shall be amended as follows:-

(a) immediately after sub-article (4) thereof, there shall be inserted the following new sub-article:-

“(4A) The conduct also constitutes an extraditable offence in relation to a scheduled country if the following conditions are satisfied:

(a) the conduct occurs outside the scheduled country and no part of it occurs in Malta;

(b) the conduct would constitute an offence under the law of Malta punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in Malta;

(c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the scheduled country in respect of the conduct.”; and

(b) immediately after sub-article (7) thereof, there shall be inserted the following new sub-article:

“(8) The scheduled conduct must be taken for the purposes of sub-article (2)(b) to include conduct which constitutes –

(a) an attempt, conspiracy or incitement to carry out conduct falling within the schedule, or

(b) aiding, abetting, counseling or procuring the carrying out of conduct falling within the schedule.”.

18. Immediately after sub-article (7) of article 62 of the principal order, there shall be inserted the following: Amends article 62 of the principal order.

“(8) Any statement or certificate referred to by this article may be set out in accordance with the form contained in the Annex to the Arrangement.”.

19. Immediately after article 70 of the principal order, there shall be inserted the following new article: Adds new article 70A to the principal order.

“70A. Any period spent by the returned person in preventive detention in the scheduled country as a result of the execution in the scheduled country of a Part III warrant shall be deducted from any sentence to be served in Malta in respect of the offences for which the Part III warrant was executed by the scheduled country.”.

20. Immediately after article 73 of the principal order, there shall be inserted the following new articles: Adds new articles 73A to 73D to the principal order.

“Receiving of Part II warrant in evidence.

73A. (1) A Part II warrant may be received in evidence in proceedings under this Order.

(2) Any other document issued in a scheduled country may be received in evidence in proceedings under this Order if it is duly authenticated.

(3) A document is duly authenticated if (and only if) one of these applies -

(a) it purports to be signed by a judge, magistrate, any other judicial authority or an officer of the scheduled country;

(b) it purports to be authenticated by the oath or affirmation of a witness:

Provided that subsections (2) and (3) do not prevent a document that is not duly authenticated from being received in evidence in proceedings under this Order.

Applicability
of articles 22
and 27.

73B. Articles 22(3) and 27 of the relevant Act shall apply to proceedings in connection with a request for extradition to a scheduled country under this Order.”.

Transit of
person
surrendered
to scheduled
country.

73C. (1) The Commissioner of Police may authorize transit through Malta of a person who is being surrendered to a scheduled country provided that the following information is furnished:

(a) the identity and nationality of the person against whom a Part II warrant has been issued;

(b) the existence of a Part II warrant;

(c) the nature and legal classification of any offence on which the Part II warrant is based;

(d) the description of the circumstances of any offence, including the date and place of such offence:

Provided that transit may be refused if the person being surrendered is a national or permanent resident of Malta and the surrender is being made for the purpose of execution of a sentence of imprisonment or another form of detention.

(2) The information in sub-article (1) may be transmitted to the Commissioner of Police by any means capable of producing a written record.

(3) When the transport of the surrendered person is to take place by air, it will only be necessary to provide the Commissioner of Police with the information required in sub-article (1) in the event that an unscheduled landing occurs.

Seizing of
property
on Court
order.

73D. (1) The Court shall, on its own initiative or at the request of the authority which issued the Part II warrant or of the Attorney General, through the

Commissioner of Police, seize and hand over to the said authority any property –

(a) which may be required as evidence in that country; or

(b) which has been acquired by the person against whom the Part II warrant was issued as a result of the offence and which, at the time of the arrest of the person whose return is requested, is found in the possession of such person or is discovered subsequently.

(2) The property referred to in sub-article (1) may be handed over to the authority which issued the Part II warrant even if extradition, cannot be carried out owing to the death, disappearance or escape of the person whose return is requested.

(3) When the said property is liable to seizure or confiscation in Malta, the Court may, in connection with proceedings that are pending or with proceedings about to be taken, temporarily retain such property or hand it over to the requesting country on condition that it be returned.”.

21. In paragraph (e) of sub-article (1) of article 76 of the principal order, for the words “judge” there shall be substituted the words “court”. Amends article 76 of the principal order.

22. For Schedule 1 to the principal Order there shall be substituted the following Schedule 1 which, for purposes of the Arrangement, shall continue to have effect as if in Schedule 1 thereto there were included the countries listed in the Schedule hereto:- Amends Schedule 1 to the principal regulations.

“SCHEDULE 1

(Article 2)

Austria
Belgium
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece

Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Poland
Portugal
Slovakia
Slovenia
Spain
Sweden
The Netherlands (except for Antilles or Aruba)
United Kingdom”.