SUBSIDIARY LEGISLATION 276.05

EXTRADITION (DESIGNATED FOREIGN COUNTRIES) ORDER

7th June, 2004

LEGAL NOTICES 320 of 2004 (as amended by Legal Notices 224 of 2006, 275, 367, 390 and 396 of 2007, 278 of 2008, 123 of 2010, 213 of 2011, and 247, 249 and 421 of 2013 and 116, 204 and 400 of 2021 and 199 of 2022), 289 of 2005 and 72 of 2007, consolidated.

PART I

General

Citation and commencement.

1. The title of this Order is the Extradition (Designated Foreign Countries) Order, and it shall come into force on the 7th June, 2004, hereinafter in this Order referred to as "the relevant date".

Definitions.
Amended by: L.N. 275 of 2007; L.N. 390 of 2007; L.N. 213 of 2011; L.N. 116 of 2021; L.N. 204 of 2021.

2. In this Order, unless the context otherwise requires -

"the Arrangement" means the Council Framework Decision of the 13th June, 2002 on the European arrest warrant and the surrender procedures between Member States done at Luxembourg on the 13th June, 2002, adopted pursuant to Title VI of the Treaty, the terms of which are set out in the relative arrangement published in the Government Gazette dated the 1st June, 2004, as amended by Council Framework Decision 2009/299/JHA of the 26th February, 2009;

"the extradition hearing" is the hearing in which the court is to decide whether a person in respect of whom a warrant as is referred to in article 5(2) was issued is to be returned to the scheduled country in which the warrant was issued;

"the Minister" means the Minister responsible for justice;

"Part II warrant" means a warrant referred to in article 5;

"Part III warrant" means a warrant referred to in article 62;

"the relevant Act" means the Extradition Act; Cap. 276.

"the relevant date" shall have the same meaning assigned to it by article 1;

"relevant arrest warrant for prosecution" shall have the same meaning assigned to it by article 5(3) or article 5A(1);

"relevant arrest warrant after conviction" shall have the same meaning assigned to it by article 5(6) or article 5A(2);

"requesting country" shall have the same meaning assigned to it by article 6;

"scheduled conduct" is a conduct in the list of conduct set out in Schedule 2;

"scheduled country" means a country listed in Schedule 1;

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"Schengen Information System" shall have the same meaning assigned to it by the Criminal Code;

"Trade and Cooperation Agreement" means the Trade and Cooperation Agreement signed on 30 December 2020 between the European Union and the European Atomic Energy Community and the United Kingdom of Great Britain and Northern Ireland and presented to the House on the 3rd May 2021;

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"the Treaty" has the same meaning as is assigned to it by the European Union Act.

Relationship between the Order and the relevant Act and transitory provisions.

3. (1) Only the provisions of this Order, save where otherwise expressly indicated, shall apply to requests received or made by Malta on or after the relevant date for the return of a fugitive criminal to or from a scheduled country, or to persons returned to Malta from a scheduled country in pursuance of a request made under this Order, and the provisions of the relevant Act shall have effect in relation to the return under this Order of persons to, or in relation to persons returned under this Order from, any scheduled country subject to such conditions, exceptions, adaptations or modifications as are specified in this Order.

(2) The relevant Act and any applicable Order in force before the relevant date shall continue to apply to requests for the return of a fugitive criminal to a scheduled country pending in Malta on the relevant date and to requests made by Malta to a scheduled country before the relevant date, and any arrangement applicable between that country and Malta before the relevant date shall also continue to apply to those requests.

(3) Where a scheduled country has, in terms of the Arrangement, given notice that as the requested country the legislation in force before its legislation implementing the provisions of the Arrangement applies to acts committed before a date specified by it, the relevant Act and any applicable Order in force before the relevant date shall continue to apply to those acts and any arrangement applicable between that country and Malta before the relevant date shall also continue to apply thereto.

Scheduled countries.

4. (1) Subject to the provisions of article 3, those countries listed in Schedule 1 are hereby being designated as foreign countries for the purposes of article 7 of the relevant Act in respect of requests for the return of fugitive criminals from or to a scheduled country received or made by Malta on or after the relevant date and any arrangement with any such country, other than the Arrangement, applicable to Malta before the relevant date shall, in respect of such requests, be deemed to have been revoked with effect from the relevant date.

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(2) Subject to the provisions of article 3, the provisions of the Extradition (Designated Foreign Countries) Order (No.2), of the Extraditon (Designated Foreign Countries) Order, and those of the European Convention on Extradition (Fiscal Offences) Order, in so far as applicable to any scheduled country before the relevant date shall with effect from the relevant date no longer apply to any such country in respect of requests for the return of fugitive criminals from or to a scheduled country received or made by Malta after the

relevant date.

PART II

Extradition to scheduled countries

Warrants.
Amended by: L.N. 224 of 2006; L.N. 421 of 2013.

5. (1) The provisions of this Part apply to any arrest warrant as is referred to in sub-article (2).

(2) The reference to any arrest warrant in sub-article (1) is a reference to a relevant arrest warrant for prosecution or a relevant arrest warrant after conviction.

(3) A relevant arrest warrant for prosecution is a warrant issued by a judicial authority of a scheduled country and which contains -

(*a*) the statement referred to in sub-article (4), and

(*b*) the information referred to in sub-article (5).

(4) The statement referred to in sub-article (3)(*a*) is one that the person in respect of whom the warrant is issued is wanted in the scheduled country for the purposes of conducting a criminal prosecution for the commission of an offence specified in the warrant.

(5) The information is -

(*a*) to the extent applicable, the particulars mentioned in article 13(2)(*b*)(i) and (ii) of the relevant Act:

Provided that this 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*) particulars of any other warrant issued in the requesting country for the person's arrest in respect of the offence;

(*c*) particulars of the sentence which may be imposed under the law of the requesting country in respect of the offence if the person is convicted of it.

(6) A relevant arrest warrant after conviction is a warrant issued by a judicial authority of a scheduled country and which contains -

(*a*) the statement referred to in sub-article (7) and

(*b*) the information referred to in sub-article (8).

(7) The statement is one that -

(*a*) the person in respect of whom the warrant is issued is alleged to be unlawfully at large after conviction of an offence specified in the warrant by a court in the scheduled country, and

(*b*) the warrant is issued with a view to his arrest and extradition to the scheduled country for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence.

(8) The information is -

(*a*) to the extent applicable, the particulars mentioned in article 13(2)(*b*)(i) and (ii) of the relevant Act:

Provided that this 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*) particulars of the conviction;

(*c*) particulars of any other warrant issued in the requesting country for the person's arrest in respect of the offence;

(*d*) particulars of the sentence which may be imposed under the law of the requesting country in respect of the offence, if the person has not been sentenced for the offence;

(*e*) particulars of the sentence which has been imposed under the law of the requesting country in respect of the offence, if the person has been sentenced for the offence.

(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.

Arrest warrant issued by scheduled country.
Added by: L.N. 224 of 2006. Amended by: L.N. 367 of 2007. Substituted by: L.N. 390 of 2007; Amended by: L.N. 116 of 2021.

5A. (1) A form, as contained in the Annex to the Arrangement, or as contained in ANNEX LAW-5 to the Trade and Cooperation Agreement, as the case may be purporting to reproduce details setting out the information required by the same form and containing the statement referred to in article 5(4), shall constitute a relevant arrest warrant for prosecution for the purposes of this order.

(2) A form, as contained in the Annex to the Arrangement, or as contained in ANNEX LAW-5 to the Trade and Cooperation Agreement, as the case may be purporting to reproduce details setting out the information required by the same form and containing the statement referred to in article 5(7), shall constitute a relevant arrest warrant after conviction for the purposes of this order.

Requests for return of a fugitive criminal.

6. A Part II warrant shall be deemed to be a request for the return of a fugitive criminal by the scheduled country where the warrant was issued and, unless the context otherwise requires that country shall be deemed to be a "requesting country" within the meaning of this Order and of the relevant Act.

Schengen Information System Article 26 alerts.
Added by: L.N. 275 of 2007. Amended by: L.N. 278 of 2008; L.N. 247 of 2013.

6A. (1) This article applies in a case where an Article 26 alert is issued in the Schengen Information System by an authority of a scheduled country.

(2) In such a case, this Order applies as if -

(*a*) the alert were a Part II warrant issued by the authority, pending the receipt of the original in due and proper form;

(*b*) any information sent with the alert relating to the case were included in the warrant.

(3) As applied by sub-article (2), this Order has effect with these modifications -

(*a*) in article 7 for the words "issuing arrest warrants" there shall be substituted the words "requesting the issue of alerts";

(*b*) in articles 7 and 13A, for the words "authority which issued a Part II warrant" there shall be substituted "authority at the request of which the alert was issued";

(*c*) in articles 28A(3)(*b*), 34(4)(*b*), 35(3)(*b*), 45(3)(*b*), 47(3)(*b*), 73D(1) and (2), for the words "authority which issued the Part II warrant" there shall be substituted "authority at the request of which the alert was issued";

(*d*) article 9 shall be omitted; and

(*e*) in article 61(2), for the words from "believes has the function of issuing arrest warrants in that territory" there shall be substituted "believes is the authority at the request of which the alert was issued".

(4) An Article 26 alert is an alert issued pursuant to Article 26 of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II).

Certificate by Attorney General.

7. The Attorney General may, in his own individual judgement, issue a certificate to the effect that the authority which issued a Part II warrant has the function of issuing arrest warrants in the requesting country and such certificate shall be conclusive of its contents.

Arrest

Arrest after issue of certificate.

8. (1) Where a certificate has been issued by the Attorney General under article 7, this article shall apply.

(2) Without the need of any further authority under the relevant Act other than the authority conferred by this article the warrant may be executed by a police officer not below the rank of Inspector even if neither the warrant nor a copy of it is in the possession of the person executing it at the time of the arrest.

(3) A copy of the warrant must be given to the person arrested as soon as practicable after his arrest.

(4) The provisions of article 15(1) of the relevant Act shall apply to the person arrested under this article.

(5) If sub-article (3) is not complied with and the person arrested applies to the court to be discharged the court may order his discharge.

(6) If sub-article (4) is not complied with and the person arrested applies to the court to be discharged, the court must order

his discharge.

(7) A person arrested under the warrant must be treated as continuing in legal custody until he is brought before the court under sub-article (4) or he is discharged under sub-articles (5) or (6).

Provisional arrest.

9. (1) A provisional warrant for the arrest of a person accused of an extraditable offence or alleged to be unlawfully at large after conviction of such an offence may be issued by a magistrate as provided in articles 14(1) and 14(2) of the relevant Act and such warrant shall be forthwith executed by a Police officer.

(2) The provisions of article 15(1) of the relevant Act shall apply to the person arrested under this article.

(3) At the initial hearing upon the person arrested under a provisional warrant being brought before the court as provided in sub-article (2) the following documents must be produced:

(*a*) a Part II warrant;

(*b*) a certificate under article 7 in respect of the warrant.

(4) If sub-article (2) or sub-article (3) are not complied with and the person applies to be discharged, the court must order his discharge.

(5) The person must be treated as continuing in legal custody until he is brought before the court under sub-article (2) or he is discharged under sub-article (4).

The initial hearing

Identity of person arrested.

10. (1) This article applies if -

(*a*) a person arrested by virtue of a warrant mentioned in article 5 is brought before the court under article 8(4), or

(*b*) a person is arrested under article 9 and article 9(3) is complied with.

(2) The court must decide whether the person brought before it is the person in respect of whom -

(*a*) the warrant referred to in sub-article (1)(*a*) was issued, or

(*b*) the warrant referred to in article 9(3) was issued.

(3) The court must decide the question in sub-article (2) on a balance of probabilities.

(4) If the court decides the question in sub-article (2) in the negative it must order the person's discharge.

(5) If the court decides that question in the affirmative it must proceed under article 11.

Date of extradition hearing, etc.
Amended by: L.N. 224 of 2006.

11. (1) If the court is required to proceed under this article it must -

(*a*) fix a date on which the extradition hearing is to begin,

which date must be not later than twenty days from the date of the initial hearing;

(*b*) inform the person of the contents of the warrant referred to in article 5;

(*c*) give the person the required information about consent.

(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.

(2) The required information about consent is -

(*a*) that the person may consent to his return to the scheduled country in which the warrant was issued;

(*b*) that upon his consent to his return the provisions of article 15(5) of the relevant Act shall apply;

(*c*) an explanation of the procedure that will apply if he gives his consent;

(*d*) that consent must be given before the court and is irrevocable.

The extradition hearing

Decision on whether offence is an extraditable offence. *Amended by: L.N. 199 of 2022.*

12. (1) Where a person in respect of whom a warrant as is referred to in article 5(2) has been issued is brought before the court for the extradition hearing the following provisions shall apply.

(2) The court must decide whether the offence specified in the warrant is an extraditable offence.

(3) If the court decides the question in sub-article (2) in the negative it may, after considering all the circumstances of the case on their own merits, order the person's discharge.

(4) If the court decides that question in the affirmative it must proceed under article 13.

Bars to extradition. *Amended by: L.N. 278 of 2008; L.N. 400 of 2021.*

13. (1) If the court is required to proceed under this article it must decide whether the person's return to the scheduled country is prohibited by reason of:

(a) the rule of *ne bis in idem*;

(b) the person's age;

(c) amnesty.

(1A) If the court is required to proceed under this article, it may refuse to execute the return of the person to the scheduled country if the return is prohibited by reason of:

(a) prescription or lapse of time;

(b) speciality;

(c) the person's earlier extradition to Malta from another scheduled country;

(d) the person's earlier extradition to Malta from a country other than a scheduled country.

(2) Articles 14 to 22 apply for the interpretation of sub-articles (1) and (1A).

(3) If the court decides that the person's return is barred by any of the reasons mentioned in sub-articles (1) and (1A), it must order the person's discharge.

(4) If the court decides that the person's return is not barred by any of the reasons mentioned in sub-articles (1) and (1A) and the person is alleged to be unlawfully at large after conviction of the extraditable offence, the court must proceed under article 23.

(5) If the court decides that the person's return is not barred by any of the reasons mentioned in sub-articles (1) and (1A) and the person is accused of the commission of the extraditable offence but is not alleged to be unlawfully at large after conviction of it, the court must proceed under article 24.

Request for supplementary information. *Added by: L.N. 224 of 2006.*

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.

Ne bis in idem. Substituted by: L.N. 400 of 2021. Amended by: L.N. 199 of 2022.

14. For the purposes of this order, a person's return to a scheduled country is barred by reason of the rule of *ne bis in idem* if, and only if, it appears that the person has been finally judged by a court of a scheduled country or has been finally judged by a court in Malta in respect of the same acts provided that, where there has been a conviction, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing scheduled country.

Extraneous considerations.

15. **(***Deleted by Legal Notice 278 of 2008*).

Prescription. *Substituted by: L.N. 224 of 2006. Amended by: L.N. 400 of 2021.*

16. A person's return to a scheduled country may be 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.

Age.

17. A person's return to a scheduled country is barred by reason of his age if, and only if, at the time that he is alleged to have committed the extraditable offence he would have been because of his age exempted from criminal responsibility under the criminal law of Malta on the assumption -

(*a*) that the conduct constituting the extraditable offence constituted an offence in Malta;

(*b*) that the person carried out the conduct when the extraditable offence was committed or alleged to be committed;

(*c*) that the person carried out the conduct in Malta.

Speciality. *Amended by: L.N. 400 of 2021.*

18. (1) A person's return to a scheduled country is barred by reason of speciality if, and only if, there is no speciality arrangement with the scheduled country as is referred to in article 10(3) and 10(4) of the relevant Act.

(2) Article 10(3) of the relevant Act shall have effect subject to the following provisions of this article.

(3) Article 10(3) of the relevant Act shall be read and construed as if for paragraphs (*a*) to (*c*) thereof, both inclusive, there were substituted the following paragraphs:

(*a*) the offence in respect of which the person is returned;

(*b*) an extraditable offence disclosed by the same facts as that offence;

(*c*) an extraditable offence in respect of which the court gives its consent under article 55 to the person being dealt with;

(*d*) an offence which is not punishable with imprisonment or another form of detention;

(*e*) an offence in respect of which the person will not be detained in connection with his trial, sentence or appeal;

(*f*) an offence in respect of which the person waives the right that he would have (but for this paragraph) not to be dealt with for the offence.

(4) The person returned may be dealt with in the scheduled country for an offence falling within sub-article (2) and committed before his return only if that person is given the opportunity to leave the scheduled country and -

(*a*) he does not do so before the end of a period of 45 days starting with the day on which the person arrives in the scheduled country;

(*b*) or if he does so before the end of the aforesaid period, he returns there.

(5) Article 10(4) of the relevant Act shall also apply to any arrangement as is mentioned in this article.

Earlier extradition to Malta from a scheduled country or a third country. *Amended by: L.N. 400 of 2021. Substituted by: L.N. 199 of 2022.*

19. (1) In any case, a person who has been surrendered to a scheduled country pursuant to a European arrest warrant may, without the consent of the executing country, be surrendered to another scheduled country pursuant to a European arrest warrant issued for any offence committed prior to his surrender in the following cases:

(*a*) where the requested person, having had an opportunity to leave the territory of the country to which he has been surrendered, has not done so within forty-five (45) days of his final discharge, or has returned to that territory after leaving it;

(*b*) where the requested person consents to be surrendered

to a scheduled country other than the executing country pursuant to a European arrest warrant. Consent shall be given before the court and this shall be recorded in a clear manner attesting that the person concerned has given his consent voluntarily and in full awareness of the consequences. The requested person shall have the right to legal counsel; and

(*c*) where the requested person is not subject to the speciality rule in accordance with this Order.

(2) A person who has been surrendered pursuant to a European arrest warrant shall not be extradited to a third country without the consent of the competent authority of the scheduled country which surrendered the person. Consent shall be given in accordance with the applicable conventions.

Earlier extradition to Malta from country other than scheduled country. *Amended by: L.N. 367 of 2007; L.N. 400 of 2021.*

20. A person's return to a scheduled country may be barred by reason of his earlier extradition to Malta from a country other than a scheduled country if, and only if, -

(*a*) the person was returned to Malta from a country that is not a scheduled country, hereinafter in this article referred to as "the extraditing country";

(*b*) under arrangements between Malta and the extraditing country, that country's consent is required to the person's being dealt with in Malta in respect of the extraditable offence under consideration;

(*c*) after having been sought from the extraditing country immediately upon the person's return to Malta, consent has not been given on behalf of the extraditing territory to the person's return from Malta to the scheduled country in respect of the extraditable offence under consideration.

Amnesty.

21. A person's return to a scheduled country is barred by reason of amnesty if the condition specified in article 11(2)(*f*) of the relevant Act is satisfied.

Death penalty. *Amended by: L.N. 224 of 2006.*

22. (*Deleted by Legal Notice 400 of 2021*).

Where person requested has been convicted. *Amended by: L.N. 224 of 2006; L.N. 213 of 2011; L.N. 199 of 2022.*

23. (1) If the court is required to proceed under this article by virtue of article 13(4) it must decide whether the person was convicted in his presence.

(2) If the court decides the question in sub-article (1) in the affirmative it must proceed under article 24.

(3) If the court decides that question in the negative, it must decide whether from the Part II warrant it is shown that any of the following circumstances exist:

(*a* the person requested was in due time:

(i) summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the

scheduled date and place of that trial in such a manner that it was unequivocally established that he was aware of the scheduled trial; and

(ii) informed that a decision may be handed down if he does not appear for the trial; or

(*b*) the person requested, being aware of the scheduled trial, had given a mandate to legal counsel appointed by him or by the scheduled country, to defend him at his trial, and was indeed defended by the said legal counsel at the trial; or

(*c*) the person requested, after being served with the decision and being expressly informed of the right to a retrial or an appeal, in which he has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined and which may lead to the original decision being reversed, expressly stated that he does not contest the decision or he did not request a retrial or an appeal within the applicable timeframe; or

(*d*) the person against whom the relevant arrest warrant was issued was not personally served with the decision but:

(i) will be personally served with the said decision without delay after the surrender and will be expressly informed of his right to a retrial or an appeal, in which he will have a right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed; and

(ii) will be informed of the time-frame within which he has to request such a retrial or an appeal as is mentioned in the Part II warrant.

(4) If the court decides the question in sub-article (3) in the affirmative it must proceed under article 24.

(5) If the court decides that question in the negative it may order the person's discharge.

Where a Part II warrant is issued after conviction. *Added by: L.N. 213 of 2011.*

23A. (1) When a Part II warrant was issued after conviction under the conditions of article 23(3)(*d*) and the person requested has not previously received any official information about the existence of any criminal proceedings against him, he may, when being informed under article 11(1)(*b*) about the content of the Part II warrant, request to receive a copy of the judgement before being surrendered.

(2) The judicial authority which issued the Part II warrant shall be informed of a request made under sub-article (1).

(3) The receipt of a copy of the said judgement will only serve for information purposes and shall not be deemed as a formal service of the said judgement, nor will it have the effect of actuating any time-limits applicable to request a retrial or an

appeal.

(4) A request made under sub-article (1) shall not operate as a cause to suspend the time-limits within which the decision on surrender is to be taken.

Committal to custody to await return.

24. If the court is required to proceed under this article by virtue of article 13(5) or of article 23 the court must order the person to be committed to custody to await his return to the scheduled country in which the warrant was issued.

Duty of court of committal to inform person committed of his rights.

25. (1) Where a person is committed to custody under article 24, the provisions of article 16 of the relevant Act shall apply subject to the modification in sub-article (2).

(2) Article 16 of the relevant Act shall apply as if for the words "fifteen days" therein there were substituted the words "seven days".

Custody.

26. The provisions of article 17 of the relevant Act apply to any person remanded or committed for custody under this Order.

Discharge.

27. The proviso in article 15(3) of the relevant Act shall apply to any order discharging the person requested from custody under the provisions of this Order.

Decision to surrender.
Added by: L.N. 367 of 2007.
Substituted by: L.N. 400 of 2021.

27A. (1) The final decision on surrender, including the appeal decision, if an appeal is lodged, shall be taken by the court within sixty (60) days starting on the day when the person in respect of whom the Part II warrant was issued was arrested.

(2) Where in exceptional circumstances the time limits set out in sub-article (1) cannot be observed, the central authority shall inform Eurojust, giving the reasons for the delay.

Matters arising before end of extradition hearing

Person charged with offence in Malta.
Substituted by: L.N. 224 of 2006.
Amended by: L.N. 199 of 2022.

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) Notwithstanding the court is informed that a 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, the court shall continue with the extradition hearing.

(3) *Repealed by Legal Notice 199 of 2022.*

Person also charged with offence in Malta.
Added by: L.N. 224 of 2006.
Amended by: L.N. 367 of 2007; L.N. 396 of 2007; L.N. 400 of 2021; L.N. 199 of 2022.

28A. (1) This article applies if the court after deciding to execute the European arrest warrant 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:

(*a*) postpone the surrender of the person until any of the following occurs:

(i) the charge is disposed of;

(ii) the charge is withdrawn;

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

(iv) the proceedings are put off *sine die*:

Provided that at any time after the decision to postpone, the court may grant bail to the person whose surrender has been temporarily postponed, so however that, when any of the events mentioned in sub-paragraph (i) to (iv) occurs, the court shall forthwith order the re-arrest and surrender of the person; or

(*b*) temporarily surrender the person under conditions agreed in writing with the authority which issued the Part II warrant which conditions shall be binding on all the authorities of the issuing scheduled country.

(3) If the court commits the person to custody to await his return and the person has been sentenced for an act other than that referred to in the said warrant 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 which conditions shall be binding on all the authorities of the issuing scheduled country.

Person serving sentence in Malta. *Amended by: L.N. 199 of 2022.*

29. (1) This article applies if the court after deciding to execute the European arrest warrant is informed that the person in respect of whom the Part II warrant is issued, is serving a sentence of imprisonment or another form of detention in Malta.

(2) The court may adjourn the extradition hearing until the sentence has been served.

Extradition request.

30. This article applies if at any time in the extradition hearing the court is informed that -

(*a*) a request for the person's return has been received from a country other than a scheduled country;

(*b*) the request has not been disposed of;

(*c*) an order has been made under article 71(2) for further proceedings on the warrant to be deferred until the request has been disposed of.

Physical or mental condition. *Amended by: L.N. 367 of 2007; L.N. 278 of 2008; L.N. 199 of 2022.*

31. (1) This article applies, once the decision to execute a Part II warrant is taken, and it appears to the court that the conditions in sub-article (2) are satisfied.

(2) The conditions are that for serious humanitarian reasons including the existence of serious grounds that would manifestly endanger the requested person's life or health.

(3) The court shall postpone surrender until it appears to it that the condition in sub-article (2) is no longer satisfied.

Request by scheduled country to hear person. *Added by: L.N. 224 of 2006.*

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 article 649(1) and (6) of the Criminal Code shall apply.

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Appeals

Appeals by person committed to custody and by Attorney General. *Substituted by: L.N. 224 of 2006.*

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.

Decision of Court of Appeal. *Added by: L.N. 367 of 2007.*

32A. (*Deleted by L.N. 400 of 2021).*

Time for extradition

Surrender not to take place before happening of certain circumstances. *Amended by: L.N. 213 of 2011.*

33. (1) Subject to the modification in sub-article (2) the provisions of article 21(2) of the relevant Act apply to surrender to a scheduled country.

(2) Article 21(2) of the relevant Act shall apply as if for the words "fifteen days" therein there were substituted the words "seven days".

(3) The decision on any proceedings as those described in article 21(2)(*b*) of the relevant Act shall be taken not later than one month starting on the day when the proceedings are instituted.

Surrender where no appeal or other proceedings. *Amended by: L.N. 400 of 2021; L.N. 199 of 2022.*

34. (1) This article applies if -

(*a*) the court of committal orders a person's surrender to a scheduled country under this Order, and

(*b*) no appeal is filed within the time allowed under the relevant Act.

(2) This article does not apply if the order is made under article 45 or 46.

(3) Subject to sub-article (6) of this article and to article 38(3), the person must be surrendered to the scheduled country before the end of the required period.

(4) The required period is -

(*a*) ten days starting with the day on which the court makes the order, or

(*b*) if the court is informed that the judicial authority which

issued the Part II warrant has, on the ground that the surrender of the person is prevented by circumstances beyond the control of the scheduled country and of Malta, agreed to a later date, ten (10) days starting from the later date.

(5) If sub-article (3) is not complied with the court must order his discharge, unless reasonable cause is shown for the delay.

(6) Notwithstanding anything contained in article 21(2)(b) and (c) of the Act, if within the period mentioned in sub-article (4), and before he is returned to the scheduled country, the person files any proceedings as those described in article 21(2)(b) and (c) of the Act even if he failed to appeal within the time allowed by the Act, the provisions of this article shall apply.

Surrender following appeal or other proceedings. *Amended by: L.N. 224 of 2006; L.N. 199 of 2022.*

35. (1) This article applies if -

(*a*) there is an appeal against an order for a person's return to a scheduled country or other proceedings as those described in article 21(2)(*b*) of the relevant Act, and

(*b*) the person is not discharged by order of the Court of Criminal Appeal or of any other court.

(2) Subject to article 38(3) the person must be returned to the scheduled country before the end of the required period.

(3) The required period is -

(*a*) ten days starting with the first day on which, having regard to article 21(2)(*b*) of the relevant Act, he could have been returned; or

(*b*) if the court is informed that the judicial authority which issued the Part II warrant has, on the ground that the surrender of the person is prevented by circumstances beyond the control of the scheduled country and of Malta, agreed to a later date, ten (10) days starting from the later date.

(4) If sub-article (3) is not complied with, the court must order his discharge.

Undertaking in relation to person serving sentence in Malta.

36. (1) This article applies if -

(*a*) the court orders a person's return to a scheduled country;

(*b*) the person is serving a sentence of imprisonment or another form of detention in Malta.

(2) This article does not apply if the order is made under article 44 or 46.

(3) The court may make the order for return subject to the condition that the return is not to take place before it receives an undertaking given on behalf of the scheduled country in terms specified by the court.

(4) The terms which may be specified by the court in relation to a person accused in a scheduled country of the commission of an

offence include terms -

(*a*) that the person be kept in custody until the conclusion of the proceedings against him for the offence and any other offence in respect of which he is permitted to be dealt with in the scheduled country;

(*b*) that the person be returned to Malta to serve the remainder of his sentence on the conclusion of those proceedings.

(5) The terms which may be specified by the court in relation to a person alleged to be unlawfully at large after conviction of an offence by a court in a scheduled country include terms that the person be returned to Malta to serve the remainder of his sentence after serving any sentence imposed on him in the scheduled country for -

(*a*) the offence, and

(*b*) any other offence in respect of which he is permitted to be dealt with in the scheduled country.

(6) Sub-articles (7) and (8) apply if the court makes an order for surrender subject to a condition under sub-article (3).

(7) If the court does not receive the undertaking before the end of the period of twenty-one days starting with the day on which it makes the order and the person applies to the court to be discharged, the court must order his discharge.

(8) If the court receives the undertaking before the end of that period -

(*a*) in a case where article 34 applies, the required period for the purposes of article 34(3) is ten days starting with the day on which the court receives the undertaking;

(*b*) in a case where article 35 applies, the required period for the purposes of article 35(2) is ten days starting with the first day on which, having regard to article 21(2)(*b*) and (*c*) of the relevant Act, the person could have been returned or (if later) the day on which the court receives the undertaking.

Extradition following deferral for competing claim.

37. (1) Subject to sub-article (2), this article applies if -

(*a*) an order is made under this Order for a person to be returned to a scheduled country in pursuance of a Part II warrant;

(*b*) before the person is returned to the scheduled country an order is made under article 42(4)(*b*) or 71(2)(*b*) for the person's return in pursuance of the warrant to be deferred;

(*c*) the court makes an order under article 73(2) for the person's return in pursuance of the warrant to cease to be deferred.

(2) This article does not apply if the order for the person's

return is made under article 44 or 46.

(3) In a case where article 34 applies, the required period for the purposes of article 34(3) is ten days starting with the day on which the order under article 73(2) is made.

(4) In a case where article 35 applies, the required period for the purposes of article 35(2) is ten days starting with the first day on which, having regard to article 21(2)(*b*) and (*c*) of the relevant Act, the person could have been returned or (if later) the day on which the order under article 73(2) is made.

Asylum claim.

38. (1) This article applies if -

(*a*) a person in respect of whom a Part II warrant is issued makes an asylum claim at any time in the relevant period;

(*b*) an order is made under this Order for the person to be returned in pursuance of the warrant.

(2) The relevant period is the period -

(*a*) starting when a certificate is issued under article 7 in respect of the warrant;

(*b*) ending when the person is returned in pursuance of the warrant.

(3) The person must not be returned in pursuance of the warrant before the asylum claim is finally determined; and articles 34, 35, 45 and 47 have effect subject to this sub-article.

(4) Sub-article (3) is subject to article 39.

(5) If, under the International Protection Act, the Minister responsible for immigration allows the asylum claim, the claim is deemed to have been finally determined when he makes his decision on the claim. Cap. 420.

(6) If the person's asylum claim is rejected the provisions of article 21(2)(*a*) and (*b*) of the relevant Act shall *mutatis mutandis* apply to any proceedings as are referred to in the said provisions which may lead to the reversal, annulment or modification of the decision rejecting the person's asylum claim in the same way as they apply to similar proceedings in relation to the court's order of committal.

Certificate in respect of asylum claimant.

39. (1) Article 38(3) does not apply in relation to a person if the Minister responsible for immigration (hereinafter, in this article, referred to as "the Minister") has certified that the conditions in sub-article (2) or the conditions in sub-article (3) are satisfied in relation to him.

(2) The conditions are that -

(*a*) the scheduled country to which the person's return has been ordered has accepted that, under standing arrangements, it is the responsible State in relation to the person's asylum claim;

(*b*) in the opinion of the Minister the person is not a

national or citizen of the scheduled country.

(3) The conditions are that, in the opinion of the Minister -

(*a*) the person is not a national or citizen of the scheduled country to which his return has been ordered;

(*b*) the person's life and liberty would not be threatened in that country by reason of his race, religion, nationality, political opinion or membership of a particular social group;

(*c*) the government of that country would not send the person to another country otherwise than in accordance with the Convention.

(4) In this article -

"Convention" has the meaning assigned to it by article 2 of the International Protection Act; Cap. 420.

"standing arrangements" means arrangements in force between Malta and the designated territory for determining which State is responsible for considering applications for asylum.

Withdrawal of Part II warrant

Withdrawal of warrant before return.

40. (1) This article applies if at any time in the relevant period the court is informed by the Attorney General that a Part II warrant issued in respect of a person has been withdrawn.

(2) The relevant period is the period -

(*a*) starting when the person is first brought before the court following his arrest under this Order;

(*b*) ending when the person is returned in pursuance of the warrant or discharged.

(3) The court must order the person's discharge.

(4) If the person is not before the court at the time the court orders his discharge, the court must inform him of the order as soon as practicable.

Withdrawal of warrant while appeal pending

41. (1) This article applies if at any time in the relevant period the Court of Criminal Appeal is informed by the Attorney General that a Part II warrant issued in respect of a person has been withdrawn.

(2) The relevant period is the period -

(*a*) starting when an appeal application is filed by the person or by the Attorney General;

(*b*) ending when proceedings on the appeal are discontinued or the court makes its decision on the appeal.

(3) The court must -

(*a*) if the appeal is under article 18 of the relevant Act, order the person's discharge and quash the order for his return;

(*b*) if the appeal is under article 19 of the relevant Act,

dismiss the appeal.

(4) If the person is not before the court at the time the court orders his discharge, the court must inform him of the order as soon as practicable.

Competing Part II warrants

Competing Part II warrants. *Amended by: L.N. 199 of 2022.*

42. (1) This article applies if at any time in the relevant period the conditions in sub-article (3) are satisfied in relation to a person in respect of whom a Part II warrant has been issued.

(2) The relevant period is the period -

(*a*) starting when the person is first brought before the court following his arrest under this Order;

(*b*) ending when the person is returned in pursuance of the warrant or discharged.

(3) The conditions are that -

(*a*) the court is informed that another Part II warrant has been issued in respect of the person;

(*b*) the other warrant falls to be dealt with by the court;

(*c*) the other warrant has not been disposed of.

(4) The court may -

(*a*) order further proceedings on the warrant under consideration to be deferred until the other warrant has been disposed of, if the warrant under consideration has not been disposed of;

(*b*) order the person's return in pursuance of the warrant under consideration to be deferred until the other warrant has been disposed of, if an order for his return in pursuance of the warrant under consideration has been made:

Provided that the final decision on the execution of the Part II warrant shall be taken by the court within a period of ten (10) days from when the requested person consents to his surrender, while a final decision on the execution of the Part II warrant shall be taken within a period of sixty (60) days after the arrest of the requested person when the requested person does not consent to his surrender.

(5) In applying sub-article (4) the court must take account in particular of the circumstances in paragraphs (*a*) to (*c*), both inclusive, of article 21(4) of the relevant Act, as well as of the following matters -

(*a*) the place where each offence was committed (or was alleged to have been committed);

(*b*) whether, in the case of each offence, the person is accused of its commission (but not alleged to have been convicted) or is alleged to be unlawfully at large after conviction.

Consent to extradition

Consent to return.
Amended by:
L.N. 224 of 2006.

43. (1) A person arrested under a Part II warrant may consent to his return to the scheduled country in which the warrant is issued.

(2) A person arrested under article 9 may consent to his return to the scheduled country which has issued or will be issuing a Part II warrant in his regard.

(3) 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.

(4) Consent and any waiver declared under this article -

(*a*) must be given before the court;

(*b*) must be recorded in writing;

(*c*) is irrevocable.

(5) A person may not give his consent under this article unless -

(*a*) he is legally represented before the court at the time he gives consent, or

(*b*) he is a person to whom sub-article (6) applies.

(6) This sub-article applies to a person if -

(*a*) he has been informed of his right to apply for legal aid and has had the opportunity to apply for legal aid, but he has refused or failed to apply;

(*b*) he has applied for legal aid but his application has been refused;

(*c*) he was granted legal aid but the legal aid was withdrawn.

(7) In sub-article (6) "legal aid" means a right to representation by virtue of article 77.

(8) For the purposes of sub-article (5) a person is to be treated as legally represented before the court if (and only if) he has the assistance of counsel to represent him in the proceedings before the court.

Order for return to scheduled country following consent.
Amended by:
L.N. 367 of 2007;
L.N. 400 of 2021;
L.N. 199 of 2022.

44. (1) This article applies if a person consents to his return under article 43.

(2) Article 15(5) of the relevant Act shall apply.

(3) If the court has not fixed a date under article 11 on which the extradition hearing is to begin it is not required to do so.

(4) If the extradition hearing has begun, the court is no longer required to proceed or continue proceeding under articles 12 to 31, with the exclusion of article 14.

(5) The court must by final decision delivered within the period of ten days starting with the day on which consent is given order the person’s return to the scheduled country.

(6) Sub-article (5) has effect subject to articles 46 and 49.

(7) If sub-article (5) is not complied with the court must order his discharge.

Return to scheduled country following consent. *Amended by: L.N. 199 of 2022.*

45. (1) This article applies if the court makes an order under article 44(5) for a person's return to a scheduled country.

(2) The person must be returned to the scheduled country before the end of the required period.

(3) The required period is -

(*a*) ten days starting with the day on which the order is made, or

(*b*) if the court and the judicial authority which issued the Part II warrant agree a later date, ten days starting with the later date.

(4) If sub-article (3) is not complied with the court must order his discharge.

(5) If before the person is returned to the scheduled country the court is informed by the Attorney General that the Part II warrant has been withdrawn -

(*a*) sub-article (2) does not apply, and

(*b*) the court must order the person's discharge.

Other warrant issued following consent.

46. (1) This article applies if -

(*a*) a person consents under article 43 to his return to a scheduled country, and

(*b*) the conditions in sub-article (2) are satisfied before the court orders his return under article 44(5).

(2) The conditions are that -

(*a*) the court is informed that another Part II warrant has been issued in respect of the person;

(*b*) the warrant has not been disposed of.

(3) Article 44(5) does not apply but the court may -

(*a*) order the person's return in pursuance of his consent, or

(*b*) order further proceedings on the warrant under consideration to be deferred until the other warrant has been disposed of.

(4) Sub-article (3) is subject to article 49.

(5) In applying sub-article (3) the court must take account in particular of the circumstances in paragraphs (*a*) to (*c*), both inclusive, of article 21(4) of the relevant Act, as well as the matters in article 42(5)(*a*) and (*b*).

Other warrant issued and extradition to scheduled country. *Amended by: L.N. 199 of 2022.*

47. (1) This article applies if the court makes an order under article 46(3)(*a*) for a person's return to a scheduled country.

(2) The person must be returned to the scheduled country before the end of the required period.

(3) The required period is -

(*a*) ten days starting with the day on which the order is made, or

(*b*) if the court and the authority which issued the Part II warrant agree a later date, ten days starting with the later date.

(4) If sub-article (2) is not complied with the court must order his discharge.

(5) If before the person is returned to the scheduled country the court is informed by the Attorney General that the Part II warrant has been withdrawn -

(*a*) sub-article (2) does not apply, and

(*b*) the court must order the person's discharge.

Other warrant issued and proceedings deferred.

48. (1) This article applies if the court makes an order under article 46(3)(*b*) for further proceedings on a Part II warrant to be deferred.

(2) If an order is made under article 49(5) for proceedings on the warrant to be resumed, the period specified in article 44(5) must be taken to be ten days starting with the day on which the order under article 49(5) is made.

Extradition request following consent.

49. (1) This article applies if -

(*a*) a person in respect of whom a Part II warrant is issued consents under article 43 to his return to the scheduled country in which the warrant was issued, and

(*b*) the condition in sub-article (2) is satisfied before the court orders his return under article 44(5) or 46(3)(*a*).

(2) The condition is that the court is informed that -

(*a*) a request by a country other than a scheduled country for the person's return has been received by a Minister under the relevant Act;

(*b*) the request has not been disposed of.

(3) The court must not make an order under article 44(5) or 46(3) until it is informed whether an order has been made under article 13 of the relevant Act.

(4) If the court is informed that an order has been made under article 13 of the relevant Act it must suspend further proceedings.

(5) If -

(*a*) an order has been made under article 13 of the relevant Act, and

(*b*) the extradition request in respect of which the order in

paragraph (*a*) was made has been disposed of,

the court may make an order for the proceedings to be resumed.

(6) Where the court makes an order under sub-article (5) for the proceedings to be resumed the period specified in article 44(5) must be taken to be ten days starting with the day on which the order under sub-article (5) is made.

(7) If the court is informed that the Minister will not be issuing an order under article 13 of the relevant Act the period specified in article 44(5) must be taken to be ten days starting with the day on which the court is informed as aforesaid.

Undertaking in relation to person serving sentence.

50. (1) This article applies if -

(*a*) the court makes an order under article 44(5) or 46(3)(*a*) for a person's return to a scheduled country;

(*b*) the person is serving a sentence of imprisonment or another form of detention in Malta.

(2) The court may make the order for return subject to the condition that extradition is not to take place before he receives an undertaking given on behalf of the scheduled country in terms specified by it.

(3) The terms which may be specified by the court in relation to a person accused in a scheduled country of the commission of an offence include terms -

(*a*) that the person be kept in custody until the conclusion of the proceedings against him for the offence and any other offence in respect of which he is permitted to be dealt with in the scheduled country;

(*b*) that the person be returned to Malta to serve the remainder of his sentence on the conclusion of those proceedings.

(4) The terms which may be specified by the court in relation to a person alleged to be unlawfully at large after conviction of an offence by a court in a scheduled country include terms that the person be returned to Malta to serve the remainder of his sentence after serving any sentence imposed on him in the scheduled country for -

(*a*) the offence, and

(*b*) any other offence in respect of which he is permitted to be dealt with in the scheduled country.

(5) If the court makes an order for return subject to a condition under sub-article (2) the required period for the purposes of articles 45(2) and 47(2) is ten days starting with the day on which the court receives the undertaking.

Extradition following deferral for competing claim.

51. (1) This article applies if -

(*a*) an order is made under article 44(5) or 46(3)(*a*) for a person to be returned to a scheduled country in pursuance of a Part II warrant;

(*b*) before the person is returned to the scheduled country an order is made under article 42(4)(*b*) or 71(2)(*b*) for the person's return in pursuance of the warrant to be deferred;

(*c*) the court makes an order under article 73(2) for the person's return in pursuance of the warrant to cease to be deferred.

(2) The required period for the purposes of articles 45(2) and 47(2) is ten days starting with the day on which the order under article 73(2) is made.

Post-extradition matters

Request for consent to other offence being dealt with.
Amended by: L.N. 400 of 2021; L.N. 199 of 2022.

52. (1) This article applies if -

(*a*) a person is returned to a scheduled country in respect of an offence in accordance with this Order;

(*b*) a court receives a request for consent to the person being dealt with in the scheduled country for another offence;

(*c*) the request is certified under this article by the Attorney General.

(2) The Attorney General may certify a request for consent under this article if he believes that the authority making the request -

(*a*) is a judicial authority of the scheduled country, and

(*b*) has the function of making requests for the consent referred to in sub-article (1)(*b*) in that country.

(3) A certificate under sub-article (2) must certify that the authority making the request falls within paragraphs (*a*) and (*b*) of that sub-article.

(4) The court must serve notice on the person that he has received the request for consent, unless he is satisfied that it would not be practicable to do so.

(5) The consent hearing must begin before the end of the required period, which is twenty-one days starting with the day on which the request for consent is received by the Attorney General.

(6) The court may extend the required period for another period of thirty (30) days if it believes it to be in the interest of justice to do so.

(7) The power in sub-article (6) may be exercised even after the end of the required period.

(8) If the consent hearing does not begin before the end of the required period and the court does not exercise the power in sub-article (6) to extend the period, the court must refuse consent.

(9) The consent hearing is the hearing at which the court is to consider the request for consent.

Questions for decision at consent hearing.

53. (1) At the consent hearing under article 52 the court must decide whether consent is required to the person being dealt with in

the territory for the offence for which consent is requested.

(2) If the court decides the question in sub-article (1) in the negative it must inform the Attorney General of its decision.

(3) If the court decides that question in the affirmative it must decide whether the offence for which consent is requested is an extraditable offence.

(4) If the court decides the question in sub-article (3) in the negative it must refuse consent.

(5) If the court decides that question in the affirmative it must decide whether it would order the person's return under articles 13 to 31 if -

(*a*) the person were in Malta, and

(*b*) the court were required to proceed under article 13 in respect of the offence for which consent is requested.

(6) If the court decides the question in sub-article (5) in the affirmative it must give consent.

(7) If the court decides that question in the negative it must refuse consent.

(8) Consent is not required to the person being dealt with in the scheduled country for the offence if the person has been given an opportunity to leave the territory and -

(*a*) he has not done so before the end of the permitted period, or

(*b*) if he did so before the end of the permitted period, he has returned there.

(9) The permitted period is forty-five days starting with the day on which the person arrived in the scheduled country following his extradition there in accordance with this Order.

(10) Subject to sub-article (8), the court must decide whether consent is required to the person being dealt with in the scheduled country for the offence by reference to what appears to it to be the law of the scheduled country or arrangements made between the scheduled country and Malta.

Request for consent to further extradition to scheduled country. *Amended by: L.N. 224 of 2006; L.N. 199 of 2022.*

54. (1) This article applies if -

(*a*) a person is returned to a scheduled country, hereinafter in this article and in article 55 referred to as "the requesting country", in accordance with this Order;

(*b*) the court receives a request for consent to the person's extradition to another scheduled country for an offence;

(*c*) the request is certified under this article by the Attorney General.

(2) The Attorney General may certify a request for consent under this article if he believes that the authority making the request -

(*a*) is a judicial authority of the requesting territory, and

(*b*) has the function of making requests for the consent referred to in sub-article (1)(*b*) in that scheduled country.

(3) A certificate under sub-article (2) must certify that the authority making the request falls within paragraphs (*a*) and (*b*) of that sub-article.

(4) The court must serve notice on the person that he has received the request for consent, unless it is satisfied that it would not be practicable to do so.

(5) The consent hearing must begin before the end of the required period, which is twenty-one days starting with the day on which the request for consent is received by the Attorney General.

(6) The court may extend the required period for another period of thirty (30) days if it believes it to be in the interest of justice to do so.

(7) The power in sub-article (6) may be exercised even after the end of the required period.

(8) If the consent hearing does not begin before the end of the required period and the court does not exercise the power in sub-article (6) to extend the period, he must refuse consent.

(9) The court may at any time adjourn the consent hearing.

(10) The consent hearing is the hearing at which the court is to consider the request for consent.

Questions for decision at consent hearing.

55. (1) At the consent hearing under article 54 the court must decide whether consent is required to the person's extradition to the other scheduled country for the offence.

(2) If the court decides the question in sub-article (1) in the negative it must inform the authority making the request of its decision.

(3) If the court decides that question in the affirmative it must decide whether the offence is an extraditable offence in relation to the scheduled country referred to in article 54(1)(*b*).

(4) If the court decides the question in sub-article (3) in the negative it must refuse consent.

(5) If the court decides that question in the affirmative it must decide whether it would order the person's extradition under articles 13 to 31 if -

(*a*) the person were in Malta, and

(*b*) the court were required to proceed under article 13 in respect of the offence for which consent is requested.

(6) If the court decides the question in sub-article (5) in the affirmative it must give consent.

(7) If the court decides that question in the negative it must refuse consent.

(8) Consent is not required to the person's extradition to the other scheduled country for the offence if the person has been given an opportunity to leave the requesting country and -

(*a*) he has not done so before the end of the permitted period, or

(*b*) if he did so before the end of the permitted period, he has returned there.

(9) The permitted period is forty-five days starting with the day on which the person arrived in the requesting country following his extradition there in accordance with this Order.

(10) Subject to sub-article (8), the court must decide whether consent is required to the person's extradition to the other scheduled country for the offence by reference to what appears to it to be the arrangements made between the requesting country and Malta.

Consent to further extradition to country other than scheduled country.

56. (1) This article applies if -

(*a*) a person is extradited to a scheduled country, in this article and in article 57 referred to as "the requesting country", in accordance with this Order;

(*b*) the Minister receives a request for consent to the person's extradition to a country, other than a scheduled country, in this article and in article 57 referred to as "the third country", for an offence;

(*c*) the request is certified under this article by the Attorney General.

(2) The Attorney General may certify a request for consent under this article if he believes that the authority making the request -

(*a*) is a judicial authority of the requesting country, and

(*b*) has the function of making requests for the consent referred to in sub-article (1)(*b*) in that country.

(3) A certificate under sub-article (2) must certify that the authority making the request falls within paragraphs (*a*) and (*b*) of that sub-article.

(4) The Minister must serve notice on the person that he has received the request for consent, unless he is satisfied that it would not be practicable to do so.

(5) The Minister must decide whether the offence is an extraditable offence within the meaning given by article 5 or article 8 of the relevant Act, as the case may be, in relation to the third country.

(6) If the Minister decides the question in sub-article (5) in the negative he must refuse consent.

(7) If the Minister decides that question in the affirmative he must decide whether the court would commit the person to custody to await his return under article 15 of the relevant Act if -

(*a*) the person were in Malta, and

(*b*) the court were required to proceed under articles 13 and 15 of the relevant Act in respect of the offence for

which the consent of the Minister is requested.

(8) If the Minister decides the question in sub-article (7) in the negative he must refuse his consent.

(9) If the Minister decides that question in the affirmative he must decide whether, if the person were in Malta, his extradition to the third country in respect of the offence would be prohibited under article 10 or article 12 of the relevant Act or whether he would have decided not to order his extradition under article 11 of the relevant Act.

(10) If the Minister decides the question in sub-article (9) in the negative he may give consent.

(11) If the Minister decides that question in the affirmative he must refuse consent.

Return of person to serve remainder of sentence.

57. (1) This article applies if -

(*a*) a person who is serving a sentence of imprisonment or another form of detention in Malta is returned to a scheduled country in accordance with this Order;

(*b*) the person is returned to Malta to serve the remainder of his sentence.

(2) The person is liable to be detained in pursuance of his sentence.

(3) If he is at large he must be treated as being unlawfully at large.

(4) Time during which the person was not in Malta as a result of his extradition does not count as time served by him as part of his sentence.

(5) Sub-article (4) shall not apply if -

(*a*) the person was extradited for the purpose of being prosecuted for an offence, and

(*b*) the person has not been convicted of the offence or of any other offence in respect of which he was permitted to be dealt with in the scheduled country.

(6) In a case falling within sub-article (5), time during which the person was not in Malta as a result of his extradition counts as time served by him as part of his sentence if (and only if) it was spent in custody in connection with the offence or any other offence in respect of which he was permitted to be dealt with in the scheduled country.

Repatriation cases

Persons serving sentences outside territory where convicted. *Amended by: L.N. 213 of 2011.*

58. (1) This article applies if an arrest warrant is issued in respect of a person by an authority of a scheduled country and the warrant contains the statement referred to in sub-article (2).

(2) The statement is one that -

(*a*) the person is alleged to be unlawfully at large from a prison in one territory, hereinafter in this article

referred to as "the imprisoning territory", in which he was serving a sentence after conviction of an offence specified in the warrant by a court in another territory, hereinafter in this article referred to as "the convicting territory", and

(*b*) the person was serving the sentence in pursuance of international arrangements for prisoners sentenced in one territory to be repatriated to another territory in order to serve their sentence, and

(*c*) the warrant is issued with a view to his arrest and extradition to the scheduled country for the purpose of serving a sentence or another form of detention imposed in respect of the offence.

(3) If the scheduled country is either the imprisoning territory or the convicting territory, article 5(6)(*a*) has effect as if the reference to the statement referred to in sub-article (7) of that article were a reference to the statement referred to in sub-article (2) of this article.

(4) If the scheduled country is the imprisoning territory -

(*a*) article 5(8)(*e*) has effect as if "requesting country" read "the convicting territory";

(*b*) article 12(2) has effect as if "an extraditable offence" read "an extraditable offence in relation to the convicting territory";

(*c*) article 23(3)(*c*) and (*d*) and article 23A(3) have effect as if after the words "a retrial or an appeal", wherever they occur, there were inserted the words "in the convicting territory";

(*d*) article 36(5) has effect as if "a scheduled country" read "the convicting territory" and as if "the scheduled country" in both places read "the convicting territory";

(*e*) article 50(4) has effect as if "a scheduled country" read "the convicting territory" and as if "scheduled country" in both places read "the convicting territory";

(*f*) article 60(1) has effect as if "a scheduled country" read "the convicting territory";

(*g*) article 60(2) has effect as if "the scheduled country" in the opening words and paragraphs (*a*) and (*c*) read "the convicting territory" and as if "the scheduled country" in paragraph (*b*) read "the imprisoning territory";

(*h*) in article 60, sub-articles (3), (4), (5) and (6) have effect as if "the scheduled country" in each place read "the convicting territory".

Extraditable offences

Extraditable offences where person not sentenced for offence.
Amended by: L.N. 224 of 2006; L.N. 249 of 2013; L.N. 199 of 2022.

59. (1) This article applies in relation to the conduct of a person if -

(*a*) he is accused in a scheduled country of the commission of an offence constituted by the conduct, or

(*b*) he is alleged to be unlawfully at large after conviction by a court in a scheduled country of an offence constituted by the conduct and he has not been sentenced for the offence.

(2) The conduct constitutes an extraditable offence in relation to the scheduled country if these conditions are satisfied:

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

(*b*) a certificate issued by an appropriate authority of the scheduled country shows that the conduct is scheduled conduct;

(*c*) the certificate shows that the conduct is punishable under the law of the scheduled country with imprisonment or another form of detention for a term of three years or a greater punishment.

(3) The conduct also constitutes an extraditable offence in relation to the scheduled country if these conditions are satisfied:

(*a*) the conduct occurs in the scheduled country;

(*b*) the conduct would constitute an offence under the law of Malta if it occurred in Malta;

(*c*) the conduct is punishable under the law of the scheduled country with imprisonment or another form of detention for a term of twelve months or a greater punishment (however it is described in that law).

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

(*a*) the conduct occurs outside the scheduled country;

(*b*) the conduct is punishable under the law of the scheduled country with imprisonment or another form of detention for a term of twelve months or a greater punishment (however it is described in that law);

(*c*) in the case of an offence not listed in Schedule 2, in corresponding circumstances, equivalent conduct would constitute an extra-territorial offence under the law of Malta punishable with imprisonment or another form of detention for a term of twelve months or a greater punishment.

(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*) in the case of an offence not listed in Schedule 2, the

conduct would constitute an offence under the law of Malta punishable with imprisonment or another form of detention for a term of twelve 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).

(5) 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 is punishable under the law of the scheduled country with imprisonment or another form of detention for a term of twelve months or a greater punishment (however it is described in that law);

(*c*) the conduct constitutes or if committed in Malta would constitute any of the offences mentioned in article 54A(1) of the Criminal Code. Cap. 9.

(6) For the purposes of sub-articles (3)(*b*) and (4)(*c*) -

(*a*) if the conduct relates to a tax or duty, it is immaterial that the law of Malta does not impose the same kind of tax or duty or does not contain rules of the same kind as those of the law of the scheduled country;

(*b*) if the conduct relates to customs or exchange, it is immaterial that the law of Malta does not contain rules of the same kind as those of the law of the scheduled country.

(7) This article applies for the purposes of this Order.

(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, counselling or procuring the carrying out of conduct falling within the schedule.

(9) Notwithstanding the foregoing provisions of this article, conduct also constitutes an extraditable offence in relation to Malta if in relation to the said conduct a decision on supervision measures in terms of the Decisions on Supervision Measures (Execution in the European Union) Regulations was issued, even when the conduct is not punishable with imprisonment or another form of detention for a term of twelve months or a greater punishment. S.L. 9.19.

60. (1) This article applies in relation to conduct of a person if - Extraditable offences and person sentenced for offence. *Amended by: L.N. 224 of 2006; L.N. 199 of 2022.*

(*a*) he is alleged to be unlawfully at large after conviction by a court in a scheduled country of an offence constituted by the conduct, and

(*b*) he has been sentenced for the offence.

(2) The conduct constitutes an extraditable offence in relation to the scheduled country if these conditions are satisfied:

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

(*b*) a certificate issued by an appropriate authority of the scheduled country shows that the conduct is scheduled conduct;

(*c*) the certificate shows that a sentence of imprisonment or another form of detention for a term of four (4) months or a greater punishment has been imposed in the scheduled country in respect of the conduct.

(3) The conduct also constitutes an extraditable offence in relation to the scheduled country if these conditions are satisfied:

(*a*) the conduct occurs in the scheduled country;

(*b*) the conduct would constitute an offence under the law of Malta if it occurred in Malta;

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

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

(*a*) the conduct occurs outside the scheduled country; and

(*b*) a sentence of imprisonment or another form of detention for a term of four (4) months or a greater punishment has been imposed in the scheduled country in respect of the conduct..

(4A) *Repealed by Legal Notice 199 of 2022.*

(5) The conduct also constitutes an extraditable offence in relation to the scheduled country if these conditions are satisfied:

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

(*b*) a sentence of imprisonment or another form of detention for a term of four months or a greater punishment has been imposed in the scheduled country in respect of the conduct;

(*c*) the conduct constitutes or if committed in Malta would constitute any of the offences mentioned in article 54A(1) of the Criminal Code.

Cap. 9.

(6) For the purposes of sub-articles (3)(*b*) and (4)(*c*) -

(*a*) if the conduct relates to a tax or duty, it is immaterial that the law of Malta does not impose the same kind of tax or duty or does not contain rules of the same kind as those of the law of the scheduled country;

(*b*) if the conduct relates to customs or exchange, it is immaterial that the law of Malta does not contain rules of the same kind as those of the law of the scheduled

country.

(7) This article applies for the purposes of this Order.

(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, counselling or procuring the carrying out of conduct falling within the schedule.

Supplementary provisions concerning extraditable offences.

61. (1) Sub-articles (2) and (3) apply for the purposes of articles 59 and 60.

(2) An appropriate authority of a scheduled country is a judicial authority of the scheduled country which the court believes has the function of issuing arrest warrants in that territory.

(3) The law of a scheduled country is the general criminal law of the country.

PART III

Extradition to Malta from scheduled countries

Issue of Part III warrant.
Amended by: L.N. 224 of 2006; L.N. 421 of 2013; L.N. 116 of 2021.

62. (1) A magistrate may issue a Part III warrant in respect of a person if -

(*a*) a police officer not below the rank of inspector applies to a Magistrate for a Part III warrant, and

(*b*) the condition in sub-article (2) is satisfied.

(2) The condition is that the Attorney General has given his consent to the issue of a Part III warrant in respect of the person and there are reasonable grounds for believing -

(*a*) that the person has committed an extraditable offence, or

(*b*) that the person is unlawfully at large after conviction of an extraditable offence by a court in Malta.

(3) A Part III warrant is an arrest warrant which contains -

(*a*) the statement referred to in sub-article (4) or the statement referred to in sub-article (5), and

(*b*) the certificate referred to in sub-article (6).

(4) The statement referred to in sub-article (3)(*a*) is one that the person in respect of whom the warrant is issued is wanted in Malta for the purposes of conducting a criminal prosecution for the commission of an offence specified in the warrant.

(5) The statement is one that -

(*a*) the person in respect of whom the warrant is issued is alleged to be unlawfully at large after conviction of an extraditable offence specified in the warrant by a court in Malta, and

(*b*) the warrant is issued with a view to his arrest and

extradition to Malta for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence.

(6) The certificate is one certifying -

(*a*) whether the conduct constituting the extraditable offence specified in the warrant falls within the European framework list;

(*b*) whether the offence is an extra-territorial offence;

(*c*) what is the maximum punishment that may be imposed on conviction of the offence or (if the person has been sentenced for the offence) what sentence has been imposed.

(7) The conduct which falls within the European framework list must be taken for the purposes of sub-article (6)(*a*) to include conduct which constitutes -

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

(*b*) aiding, abetting, counselling or procuring the carrying out of conduct falling within the list.

The European framework list is the list of conduct set out in Schedule 2.

(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 or as contained in ANNEX LAW-5 to the Trade and Cooperation Agreement, as the case may be.

Magistrate may request the issue of an alert in the Schengen Information System.
Added by: L.N. 275 of 2007.

62A. Where a Part III warrant is issued in respect of a person whose whereabouts are unknown, the Magistrate shall, *ex officio* or at the request of the police, request the issue of an alert in the Schengen Information System.

Undertaking in relation to person serving sentence.

63. (1) This article applies if -

(*a*) a Part III warrant is issued in respect of a person;

(*b*) the person is serving a sentence of imprisonment or another form of detention in a scheduled country;

(*c*) the person's extradition to Malta from the scheduled country in pursuance of the warrant is made subject to a condition that an undertaking is given on behalf of Malta with regard to his treatment in Malta or his return to the scheduled country (or both).

(2) The Minister may give an undertaking to a person acting on behalf of the scheduled country with regard to either or both of these things:

(*a*) the treatment in Malta of the person in respect of whom the warrant is issued;

(*b*) the return of that person to the scheduled country.

(3) The terms which may be included by the Minister in an undertaking given under sub-article (2) in relation to a person accused in Malta of the commission of an offence include terms -

(*a*) that the person be kept in custody until the conclusion of the proceedings against him for the offence and any other offence in respect of which he is permitted to be dealt with in Malta;

(*b*) that the person be returned to the scheduled country to serve the remainder of his sentence on the conclusion of those proceedings.

(4) The terms which may be included by the Minister in an undertaking given under sub-article (2) in relation to a person alleged to be unlawfully at large after conviction of an offence by a court in Malta include terms that the person be returned to the scheduled country to serve the remainder of his sentence after serving any sentence imposed on him in Malta.

Return to extraditing country to serve sentence.

64. (1) This article applies if -

(*a*) a Part III warrant is issued in respect of a person;

(*b*) the warrant states that it is issued with a view to his extradition to Malta for the purpose of being prosecuted for an offence;

(*c*) he is extradited to Malta from a scheduled country in pursuance of the warrant;

(*d*) he is extradited on the condition that, if he is convicted of the offence and a sentence of imprisonment or another form of detention is imposed in respect of it, he must be returned to the scheduled country to serve the sentence;

(*e*) he is convicted of the offence and a sentence of imprisonment or another form of detention is imposed in respect of it.

(2) The person must be returned to the designated country to serve the sentence as soon as is reasonably practicable after the sentence is imposed.

(3) If sub-article (2) is complied with the punishment for the offence must be treated as remitted but the person's conviction for the offence must be treated as a conviction for all other purposes.

(4) If sub-article (2) is not complied with and the person applies to a Magistrate to be discharged the Magistrate must order his discharge, unless reasonable cause is shown for the delay.

Service of sentence in country executing Part III warrant.

65. (1) This article applies if -

(*a*) a Part III warrant is issued in respect of a person;

(*b*) the certificate contained in the warrant certifies that a sentence has been imposed;

(*c*) an undertaking is given on behalf of a scheduled

country that the person will be required to serve the sentence in that country;

(*d*) on the basis of the undertaking the person is not extradited to Malta from the scheduled country.

(2) The punishment for the offence must be treated as remitted but the person's conviction for the offence must be treated as a conviction for all other purposes.

Dealing with person for other offences.

66. (1) This article applies if a person is extradited to Malta from a scheduled country in pursuance of a Part III warrant.

(2) The person may be dealt with in Malta for an offence committed before his extradition only if -

(*a*) the offence is one falling within sub-article (3), or

(*b*) the condition in sub-article (4) is satisfied.

(3) The offences are -

(*a*) the offence in respect of which the person is extradited;

(*b*) an offence disclosed by the information provided to the designated country in respect of that offence;

(*c*) an extraditable offence in respect of which consent to the person being dealt with is given on behalf of the scheduled country;

(*d*) an offence which is not punishable with imprisonment or another form of detention;

(*e*) an offence in respect of which the person will not be detained in connection with his trial, sentence or appeal;

(*f*) an offence in respect of which the person waives the right that he would have (but for this paragraph) not to be dealt with for the offence.

(4) The condition is that the person has been given an opportunity to leave Malta and -

(*a*) he has not done so before the end of the permitted period, or

(*b*) he has done so before the end of the permitted period and has returned to Malta.

(5) The permitted period is 45 days starting with the day on which the person arrives in Malta.

Effect of consent to extradition to Malta.

67. (1) This article applies if -

(*a*) a person is extradited to Malta from a scheduled country in pursuance of a Part III warrant;

(*b*) the person consented to his extradition to Malta in accordance with the law of the scheduled country.

(2) Article 66(2) does not apply if the conditions in sub-article (3) or the conditions in sub-article (4) are satisfied.

(3) The conditions are that -

(*a*) under the law of the scheduled country, the effect of the person's consent is to waive his right under article 66(2);

(*b*) the person has not revoked his consent in accordance with that law, if he is permitted to do so under that law.

(4) The conditions are that -

(*a*) under the law of the scheduled country, the effect of the person's consent is not to waive his right under article 66(2);

(*b*) the person has expressly waived his right under article 66(2) in accordance with that law;

(*c*) the person has not revoked his consent in accordance with that law, if he is permitted to do so under that law;

(*d*) the person has not revoked the waiver of his right under article 66(2) in accordance with that law, if he is permitted to do so under that law.

Extraditable offences. *Amended by: L.N. 249 of 2013.*

68. (1) Conduct constitutes an extraditable offence in relation to Malta if these conditions are satisfied:

(*a*) the conduct occurs in Malta;

(*b*) the conduct is punishable under the laws of Malta with imprisonment or another form of detention for a term of twelve months or a greater punishment.

(2) Conduct also constitutes an extraditable offence in relation to Malta if these conditions are satisfied:

(*a*) the conduct occurs outside Malta;

(*b*) the conduct constitutes an extra-territorial offence punishable under the law of Malta with imprisonment or another form of detention for a term of twelve months or a greater punishment.

(3) Sub-articles (1) and (2) do not apply, however, in relation to conduct of a person if -

(*a*) he is alleged to be unlawfully at large after conviction by a court in Malta of the offence constituted by the conduct, and

(*b*) he has been sentenced for the offence.

(4) Conduct also constitutes an extraditable offence in relation to Malta if these conditions are satisfied:

(*a*) the conduct occurs in Malta;

(*b*) a sentence of imprisonment or another form of detention for a term of four months or a greater punishment has been imposed in Malta in respect of the conduct.

(5) Conduct also constitutes an extraditable offence in relation

to Malta if these conditions are satisfied:

(*a*) the conduct occurs outside Malta;

(*b*) the conduct constitutes an extra-territorial offence;

(*c*) a sentence of imprisonment or another form of detention for a term of four months or a greater punishment has been imposed in Malta in respect of the conduct.

(6) The relevant proceedings are the proceedings in which it is necessary to decide whether conduct constitutes an extraditable offence.

(7) Sub-articles (1) to (5) apply for the purposes of articles 62 to 67.

(8) Notwithstanding the foregoing provisions of this article, conduct also constitutes an extraditable offence in relation to Malta if in relation to the said conduct a decision on supervision measures in terms of the Decisions on Supervision Measures (Execution in the European Union) Regulations was issued, even when the conduct is not punishable with imprisonment or another form of detention for a term of twelve months or a greater punishment.

S.L. 9.19

Treatment of persons returned to Malta

Restrictions on proceedings after return to Malta.

69. The provisions of articles 25 and 26 of the relevant Act shall apply to a person returned to Malta from a scheduled country.

Restriction on bail where undertaking given by Minister.

70. (1) This article applies in relation to a person if -

(*a*) the Minister has given an undertaking in connection with the person's extradition to Malta, and

(*b*) the undertaking includes terms that the person be kept in custody until the conclusion of any proceedings against him in Malta for an offence.

(2) A court, judge or magistrate may grant bail to the person in the proceedings only if the court, judge or magistrate considers that there are exceptional circumstances which justify it.

Period spent in preventive detention. *Added by: L.N. 224 of 2006.*

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.

PART IV

Miscellaneous

Competing claims to extradition.

71. (1) This article applies if at the same time -

(*a*) there is a Part II warrant in respect of a person, a certificate has been issued under article 7 in respect of the warrant, and the person has not been returned in pursuance of the warrant or discharged, and

(*b*) there is a request for the same person's extradition

from a country other than a scheduled country (hereinafter in this article referred to as the "competing request") and the person has not been returned in pursuance of the request or discharged.

(2) The Minister may -

(*a*) order proceedings (or further proceedings) on the warrant to be deferred until the competing request has been disposed of, if neither the warrant nor the request has been disposed of;

(*b*) order the person's return in pursuance of the warrant to be deferred until the competing request has been disposed of, if an order for his return in pursuance of the warrant has been made.

(3) In applying sub-article (2) the Minister must take account in particular of the circumstances in paragraphs (*a*) to (*c*), both inclusive, of article 21(4) of the relevant Act, as well as of the following matters:

(*a*) the place where each offence was committed (or was alleged to have been committed);

(*b*) whether in the case of each offence, the person is accused of its commission (but not alleged to have been convicted) or is alleged to be unlawfully at large after conviction.

Proceedings on deferred warrant or request.
Amended by: L.N. 199 of 2022.

72. (1) This article applies if -

(*a*) an order is made under this Order deferring proceedings on a Part II warrant in respect of a person (the deferred claim) until another extradition claim in respect of the person has been disposed of, and

(*b*) the other extradition claim is disposed of.

(2) The court may make an order for proceedings on the deferred claim to be resumed:

Provided that in any case, the final decision on the execution of the Part II warrant shall be taken by the court within a period of ten (10) days from when the requested person consents to his surrender while a final decision on the execution of the Part II warrant shall be taken within a period of sixty (60) days after the arrest of the requested person when the requested person does not consent to his surrender.

(3) No order under sub-article (2) may be made after the end of the required period.

(4) If the person applies to the appropriate court to be discharged, the court may order his discharge.

(5) If the person applies to the court to be discharged, the court must order his discharge if -

(*a*) the required period has ended, and

(*b*) the court has not made an order under sub-article (2) or ordered the person's discharge.

(6) The required period is twenty-one days starting with the day on which the other extradition claim is disposed of.

(7) An extradition claim is made in respect of a person if -

(*a*) a Part II warrant is issued in respect of him;

(*b*) a request for his extradition is made.

Proceedings where extradition is deferred.
Amended by: L.N. 367 of 2007.

73. (1) This article applies if -

(*a*) an order is made under this Order deferring a person's return in pursuance of an extradition claim (the deferred claim) until another extradition claim in respect of him has been disposed of;

(*b*) the other extradition claim is disposed of.

(2) The court may make an order for the person's extradition in pursuance of the deferred claim to cease to be deferred.

(3) No order under sub-article (2) may be made after the end of the required period.

(4) If the person applies to the court to be discharged, the court may order his discharge.

(5) If the person applies to the court to be discharged, the court must order his discharge if -

(*a*) the required period has ended, and

(*b*) the court has not made an order under sub-article (2) or ordered the person's discharge.

(6) The required period is twenty-one days starting with the day on which the other extradition claim is disposed of.

(7) An extradition claim is made in respect of a person if -

(*a*) a Part II warrant is issued in respect of him;

(*b*) a request for his extradition is made.

Receiving of Part II warrant in evidence.
Added by: L.N. 224 of 2006.
Amended by: L.N. 123 of 2010.

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. Any such document may be transmitted as provided under article 5(9).

(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 sub-articles (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. *Added by: L.N. 224 of 2006. Amended by: L.N. 123 of 2010.*

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:

Provided that for the purposes of this Order, the words "the Minister may ask" in article 27 of the relevant Act, shall be read and construed as "the Court may ask".

Transit of person surrendered to scheduled country. *Added by: L.N. 224 of 2006. Amended by: L.N. 213 of 2011; L.N. 400 of 2021.*

73C. (1) The Commissioner of Police shall 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.

(4) A person being conveyed through Malta in the course of his extradition or removal as a convicted prisoner to a scheduled country shall be kept in custody during the period of transit.

Seizing of property on Court order. *Added by: L.N. 224 of 2006.*

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.

Time limits for surrender of persons enjoying privilege, etc. *Added by: L.N. 367 of 2007. Amended by: L.N. 400 of 2021.*

73E. (1) Where the person in respect of whom a Part II warrant is issued, enjoys a privilege or immunity regarding jurisdiction or execution in Malta, the time limits for surrender shall not start running unless, and counting from the day when, the court is informed of the fact that the privilege or immunity has been waived.

(2) Where power or authority to waive the privilege or immunity lies with the Maltese authorities, the court shall forthwith request the relevant authority to exercise that power.

(3) Where the power or authority to waive the privilege or immunity lies with an authority of another State or international organisation, the judicial authority issuing the Part II warrant shall request it to exercise that power.

Re-extradition

Re-extradition: preliminary.

74. (1) Article 75 applies in relation to a person if the conditions in sub-articles (2) to (6) are satisfied.

(2) The first condition is that the person was extradited to a scheduled country in accordance with Part II.

(3) The second condition is that the person was serving a sentence of imprisonment or another form of detention in Malta (in this article and in articles 75 and 76 referred to as "Malta sentence") before he was extradited.

(4) The third condition is that the Part II warrant in pursuance of which he was extradited contained a statement that it was issued with a view to his extradition for the purpose of being prosecuted for an offence.

(5) The fourth condition is that a certificate issued by a judicial authority of the scheduled country shows that -

(*a*) a sentence of imprisonment or another form of detention for a term of four months or a greater punishment (in this article and in articles 75 and 76 referred to as "the overseas sentence") was imposed on the person in the territory;

(*b*) the overseas sentence was imposed on him in respect of -

(i) the offence specified in the warrant or request, or

(ii) any other offence committed before his extradition in respect of which he was permitted to be dealt with in the territory.

(6) The fifth condition is that before serving the overseas sentence the person was returned to Malta to serve the remainder of Malta sentence.

Re-extradition hearing.

75. (1) If this article applies in relation to a person, as soon as practicable after the relevant time the person must be brought before the court for it to decide whether the person is to be extradited again to the territory in which the overseas sentence was imposed.

(2) The relevant time is the time at which the person would otherwise be released from detention pursuant to Malta sentence.

(3) If sub-article (1) is not complied with and the person applies to the court to be discharged, the court must order his discharge.

(4) The person must be treated as continuing in legal custody until he is brought before the court under sub-article (1) or he is discharged under sub-article (3).

(5) If the person is brought before the court under sub-article (1), article 76 applies.

Re-extradition to scheduled country. *Amended by: L.N. 224 of 2006.*

76. (1) Subject to sub-article (2), if this article applies, this Order applies as it would if -

(*a*) a Part II warrant had been issued in respect of the person;

(*b*) the warrant contained a statement that -

(i) the person was alleged to be unlawfully at large after conviction of the relevant offence, and

(ii) the warrant was issued with a view to the person's arrest and extradition to the territory for the purpose of serving a sentence imposed in respect of the relevant offence;

(*c*) the warrant were issued by the authority of the territory which issued the certificate referred to in article 74(5);

(*d*) the relevant offence were specified in the warrant;

(*e*) the hearing at which the court is to make the decision referred to in article 75(1) were the extradition hearing;

(*f*) the proceedings before the court were under Part II.

(2) As applied by sub-article (1) this Order has effect with the following modifications:

(*a*) in article 13(1), paragraphs (*c*), (*f*) and (*g*) are to be omitted;

(*b*) in article 38(2)(*a*), for the words "a certificate is issued under article 7 in respect of the warrant" there shall be substituted the words "the person would (apart from article 75(1)) be released from detention pursuant to Malta sentence";

(*c*) in article 42(2)(*a*), for the words "following his arrest under this Order" substitute the words "under article 75(1)";

(*d*) in article 43(1), for the words from "arrested" to

"issued" substitute the words "brought before the court under article 75(1) may consent to his return to the territory in which the overseas sentence was imposed".

Legal aid

Legal aid. Cap. 9.

77. The provisions of articles 570 to 573, both inclusive, of the Criminal Code shall *mutatis mutandis* apply to requests for legal aid in proceedings under this Order by a person arrested by virtue of a warrant under article 5 or article 9.

Amended by:
L.N. 289 of 2005.
Substituted by:
L.N. 224 of 2006.
Amended by:
L.N. 72 of 2007.

SCHEDULE 1

(Article 2)

Austria

Belgium

Bulgaria

Cyprus

Czech Republic

Denmark

Estonia

Finland

France

Germany

Greece

Hungary

Ireland

Italy

Latvia

Lithuania

Luxembourg

Poland

Portugal

Romania

Slovakia

Slovenia

Spain

Sweden

The Netherlands (except for Antilles or Aruba)

United Kingdom

SCHEDULE 2

1 Participation in a criminal organisation.

2 Terrorism.

3 Trafficking in human beings.

4 Sexual exploitation of children and child pornography.

5 Illicit trafficking in narcotic drugs and psychotropic substances.

6 Illicit trafficking in weapons, munitions and explosives.

7 Corruption.

8 Fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests.

9 Laundering of the proceeds of crime.

10 Counterfeiting currency, including of the euro.

11 Computer-related crime.

12 Environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties.

13 Facilitation of unauthorised entry and residence.

14 Murder, grievous bodily injury.

15 Illicit trade in human organs and tissue.

16 Kidnapping, illegal restraint and hostage-taking.

17 Racism and xenophobia.

18 Organised or armed robbery.

19 Illicit trafficking in cultural goods, including antiques and works of art.

20 Swindling.

21 Racketeering and extortion.

22 Counterfeiting and piracy of products.

23 Forgery of administrative documents and trafficking therein.

24 Forgery of means of payment.

25 Illicit trafficking in hormonal substances and other growth promoters.

26 Illicit trafficking in nuclear or radioactive materials.

27 Trafficking in stolen vehicles.

28 Rape.

29 Arson.

30 Crimes within the jurisdiction of the International Criminal Court.

31 Unlawful seizure of aircraft/ships.

32 Sabotage.