
STATUTORY INSTRUMENTS

1997 No. 1759

EXTRADITION

**The European Convention on Extradition
Order 1990 (Amendment) Order 1997**

Made - - - - 22nd July 1997
Laid before Parliament 1st August 1997
Coming into force - - 1st September 1997

At the Court at Buckingham Palace, the 22nd day of July 1997

Present,

The Queen's Most Excellent Majesty in Council

Whereas the European Convention on Extradition ("the Convention")(1) opened for signature at Paris on 13th December 1957 entered into force for the United Kingdom on 14th May 1991:

And whereas section 3(2) of the Extradition Act 1989(2) provides that for the purpose of extradition procedures under Part III of the Act, a State which is a party to the Convention may be treated as a foreign State:

And whereas the Convention entered into force in respect of Malta on 17th June 1996 and Malta made the reservations and declarations set out in article 2(c) of this Order:

Now, therefore, Her Majesty, in exercise of the powers conferred on Her by section 4(1) of the Extradition Act 1989, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the European Convention on Extradition Order 1990 (Amendment) Order 1997 and shall come into force on 1st September 1997.

2. The European Convention on Extradition Order 1990(3) shall be amended as follows:

(a) For article 2(2) there shall be substituted the following:

“(2) for this purpose, Cyprus and Malta shall be treated as foreign States.”,

(1) Cm. 1762.

(2) 1989 c. 33.

(3) S.I.1990/1507 as amended by S.I. 1992/2663, 1993/2667, 1994/2796, 1994/3203, 1995/1624, 1995/1962, 1995/2703, 1996/2596 and 1996/2875.

- (b) In Part 1 of Schedule 2 (which names States parties to the Convention), at the appropriate place in the alphabetical order, the following entry shall be inserted—
“Malta.”
- (c) In Schedule 3 (which sets out the reservations and declarations made by States parties to the Convention), the following Part shall be inserted after Part 13—

“PART 13A

MALTA

Reservations

Article 1

Malta reserves the right to grant a request for the extradition of a person accused of an offence only where the court of committal is satisfied, after hearing any evidence tendered in support of the request for the return of that person or on behalf of that person, that the evidence would be sufficient to warrant his trial for that offence if it had been committed within the jurisdiction of the Courts of Criminal Justice of Malta. A person convicted of an offence in his absence shall be treated as a person accused of that offence.

Malta reserves the right, when granting extradition, to stipulate that the extradited person shall not be prosecuted for the offence in question in a court which is only provisionally, or under exceptional circumstances, empowered to deal with such offences. Extradition requested for the execution of a sentence rendered by such special court may be refused.

Malta reserves the right to apply the Convention in accordance with Section 20 Chapter 276 of the laws of Malta (The Extradition Act, 1978) which section reads as follows:

“On an appeal made to the Court of Criminal Appeal or an application for redress to the Constitutional Court under Section 46 of the Constitution of Malta, either of the said Courts may, without prejudice to any other jurisdiction, order the person committed to be discharged from custody if it appears to such Court that,

- (a) by reason of the trivial nature of the offence of which he is accused or was convicted; or
- (b) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or
- (c) because the accusation against him is not made in good faith in the interests of justice,

it would, having regard to all circumstances, be unjust or oppressive to return him.”

Article 3

Malta reserves the right to apply paragraph 3 of this Article in accordance with Section 10(5) of the Extradition Act which reads as follows:

“For the purposes of this section, an offence against the life or person of a Head of State, or any related offence described in subsection (3) of Section 5 of this Act, shall not necessarily be deemed to be an offence of a political character.”

Article 9

Malta reserves the right to apply this Article in accordance with the rule of “Non bis in idem” as laid down in section 527 of the Criminal Code (Chapter 9 of the Laws of Malta) which reads as follows:

“Where in a trial, judgment is given acquitting the person charged or accused, it shall not be lawful to subject such person to another trial for the same fact.”

Article 18

Malta reserves the right to apply the provisions set out in paragraphs 4 and 5 of this Article in accordance with Section 24 of the Extradition Act (Chapter 276 of the Laws of Malta) which reads as follows:

“(1) If any person committed to await his return is in custody in Malta under this Act after the expiration of the following period that is to say—

- (a) in any case, the period of two months beginning with the first day on which, having regard to subsection (2) of Section 21 of this Act, he could have been returned;
- (b) where a warrant for his return has been issued under Section 21 of this Act, the period of one month beginning with the day on which that warrant was issued—

he may apply to the Court of Criminal appeal, sitting as a court of appeal from judgments of the Court of Judicial Police, for his discharge.

(2) If upon any such application the court is satisfied that reasonable notice of the proposed application has been given to the Minister, the court may, unless sufficient cause is shown to the contrary, by order direct the applicant to be discharged from custody, and if a warrant for his return has been issued under the said section squash that warrant.”

Article 21

Malta reserves the right to grant such transit under this Article only in so far as transit is permissible under its own laws.”.

N. H. Nicholls
Clerk of the Privy Council

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which comes into force on 1st September 1997, amends the European Convention on Extradition Order 1990 by adding Malta to the States parties to the European Convention listed in Schedule 2 to the 1990 Order. It also adds the reservations made by Malta to the reservations set out in Schedule 3 to the 1990 Order.