

EXPLANATORY STATEMENT

Statutory Rules 2004 No. 368

Issued by the authority of the Minister for Justice and Customs

Extradition Act 1988

Extradition (Kyrgyzstan) Regulations 2004

Section 55 of the *Extradition Act 1988* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 5 of the Act defines an 'extradition country' to include a country that is declared by the regulations to be an extradition country. Paragraph 11(1)(b) of the Act provides that the regulations may make provision for application of the Act subject to certain limitations, conditions, exceptions or qualifications.

The purpose of the Regulations is to establish extradition arrangements with Kyrgyzstan under regulations for that specific purpose, enabling Australia to consider extradition requests received from Kyrgyzstan. Australia did not have a prior extradition relationship with Kyrgyzstan.

The Act applies the modern 'no evidence' extradition procedure. Under this procedure countries are not required to present evidence establishing a *prima facie* case against the person sought.

Extradition to Kyrgyzstan under the Regulations operates in accordance with the Act, subject to a modification, namely that an arrested person may apply to a magistrate for release after 90 days if a request for his or her extradition has not been received. The standard period under the Act is 45 days. Modification to apply a 60 day period is common and has been included in extradition agreements with Brazil, Chile, Hungary, Mexico, Paraguay, South Korea and the United States. This is the first occasion on which the 90 day period has been established for an extradition country. It is considered that a 90 day period in this instance is necessary in order to provide Kyrgyzstan with a sufficient period in which to prepare and lodge an extradition request, as Kyrgyzstan has no experience in making extradition requests to Australia and has very limited bureaucratic and judicial resources.

Extradition under the Regulations is subject to the various safeguards set out in the Act. For example, extradition would not be permitted where the fugitive may be subject to the death penalty or torture, or where the fugitive was sought for or in connection with her or his race, religion, nationality or political opinions. In addition, the Attorney-General would retain a broad discretion to refuse an extradition request by Kyrgyzstan in any particular case.

This action is consistent with the provisions of the Act. Similar 'non-treaty Regulations' currently provide that the Act applies to Denmark, Estonia, Iceland, Japan, Latvia, the Marshall Islands, Thailand, Cambodia, Lebanon, Jordan, the United Kingdom and Canada.

The Regulations commenced on the date of their notification in the *Gazette*.