



Extradition (United Arab Emirates) Regulations 2010¹

Select Legislative Instrument 2010 No. 36

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Extradition Act 1988*.

Dated 10 March 2010

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

BRENDAN O'CONNOR
Minister for Home Affairs

1 Name of Regulations

These Regulations are the *Extradition (United Arab Emirates) Regulations 2010*.

2 Commencement

These Regulations commence on the day on which the Treaty on Extradition between Australia and the State of the United Arab Emirates, done at Hobart in Australia on 26 July 2007, enters into force.

3 Definition

In these Regulations:

Act means the *Extradition Act 1988*.

United Arab Emirates means the State of the United Arab Emirates.

4 Declaration of the United Arab Emirates as an extradition country

For the definition of *extradition country* in section 5 of the Act, the United Arab Emirates is declared to be an extradition country.

5 Application of Act

For paragraph 11 (1) (a) of the Act, the Act applies to the United Arab Emirates subject to the Treaty on Extradition between Australia and the State of the United Arab Emirates, done at Hobart in Australia on 26 July 2007, a copy of which is set out in Schedule 1.

**Schedule 1 Treaty on Extradition between
Australia and the State of the
United Arab Emirates, done at
Hobart in Australia on 26 July
2007**

(regulation 5)

**TREATY ON EXTRADITION BETWEEN AUSTRALIA AND
THE STATE OF THE UNITED ARAB EMIRATES**

Australia and The State of the United Arab Emirates (hereinafter referred to as the States)

DESIRING to make more effective the cooperation of the two States in the suppression of crime by concluding a treaty on extradition.

HAVE AGREED as follows:

ARTICLE 1
OBLIGATION TO EXTRADITE

Each State agrees to extradite to the other, in accordance with the provisions of this Treaty, any persons who are wanted for prosecution, or the imposition or enforcement of a sentence, in the Requesting State for an extraditable offence.

ARTICLE 2
APPLICATION OF TREATY

This Treaty shall apply to extradition requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date, provided that the relevant acts or omissions constituted an offence in the Requesting State at the time they occurred.

ARTICLE 3
EXTRADITABLE OFFENCES

1. For the purposes of this Treaty, extraditable offences are offences which are punishable under the laws of both States by imprisonment for a maximum period of at least one year or by a more severe penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment, extradition shall be granted only if a period of at least six months of such penalty remains to be served.
2. For the purpose of this Article in determining whether an offence is an offence against the laws of both States:
 - (a) the acts or omissions constituting the offence must, if they had taken place in the Requested State, be an offence against the law of the Requested State at the time the request is made;
 - (b) it shall not matter whether the laws of the States place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;
 - (c) the totality of the acts or omissions alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the States, the constituent elements of the offence differ.
3. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, foreign exchange control or other revenue matters, extradition may not be refused on the ground that the law of the Requested State does not impose the same kind of tax or duty or does not contain a tax, duty, customs, or exchange regulation of the same kind as the law of the Requesting State.
4. Where the offence has been committed outside the territory of the Requesting State, extradition shall be granted where the law of the Requested State provides for the punishment of an offence committed

outside its territory in similar circumstances. Where the law of the Requested State does not so provide the Requested State may, in its discretion, grant extradition.

ARTICLE 4
GROUND FOR REFUSAL

1. Extradition shall not be granted in any of the following circumstances:

- (a) if the offence for which extradition is sought is regarded by the Requested State as a political offence. Reference to a political offence shall not include:
 - (i) the taking or attempted taking of the life, or other offence against the life, the physical integrity or liberty of a Head of State, a member of Government, a member of the Supreme Council of The State of the United Arab Emirates or a family member of those people;
 - (ii) an offence constituted by taking or endangering, attempting to take or endanger or participating in the taking or endangering of the life a person, being an offence committed in circumstances in which such conduct creates a collective danger, whether direct or indirect, to the lives of other persons and includes such offences committed against communications or transport facilities;
 - (iii) genocide offences; or
 - (iv) any offence in respect of which both States have an obligation pursuant to a multilateral agreement to extradite the person sought or to submit the case to its competent authorities for the purpose of prosecution.

- (b) if there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of that person's race, colour, sex, language, religion, nationality, political opinion or that that person's position may be prejudiced for any of those reasons;
- (c) if the offence for which extradition is sought is regarded by the Requested State as an offence under military law, but not an offence under the ordinary criminal law of the Requested State;
- (d) if the person has been acquitted or pardoned, or has undergone the punishment provided by the law of the Requested State, or a third state, in respect of the offence for which the person's extradition is sought;
- (e) if the person whose extradition is sought has, according to the law of the Requesting State, become immune from prosecution or punishment by reason of lapse of time;
- (f) if the person, on being extradited to the Requesting State, would be liable to be tried or sentenced in that State by an extraordinary court or tribunal;
- (g) if the offence with which the person sought is accused or convicted, or any other offence for which that person may be detained or tried in accordance with this Treaty, carries the death penalty under the law of the Requesting State, unless that State undertakes that the death penalty will not be imposed or, if imposed, will not be carried out; or
- (h) if the offence for which extradition is sought is an offence which carries a punishment that constitutes torture within the meaning of Article 1 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment.

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2. Extradition may be refused in any of the following circumstances:
- (a) if the person whose extradition is sought is a national of the Requested State;
 - (b) if the offence for which extradition is sought is regarded under the law of the Requested State as having been committed in whole or in part within that State;
 - (c) if a prosecution in respect of the offence for which extradition is sought is pending in the Requested State against the person whose extradition is requested;
 - (d) if the competent authorities of the Requested State, having considered the matter, have decided to refrain from prosecuting the person for the offence in respect of which extradition is sought; or
 - (e) if the Requested State, while taking into account the nature of the offence and the interests of the Requesting State, considers that the extradition of the person is unjust, oppressive, or incompatible with humanitarian considerations in view of age, health, or other personal circumstances of that person.
3. This Article shall not affect any obligations which are assumed by the States under any multilateral Convention.

ARTICLE 5
PROSECUTION IN LIEU

1. If the Requested State refuses to extradite a person on any of the grounds described in sub-paragraphs 4(1)(f), (g) or (h) or sub-paragraphs 4(2)(a), (b) or (e) it shall, if the other State so requests and the laws of the Requested State allow, submit the case to the competent authorities in order that proceedings for the prosecution of the person in respect of all or any of the offences for which extradition has been sought may be taken.

2. In such a case the Requesting State shall send a request for prosecution accompanied by the relevant files and documents in its possession, through the diplomatic channels.
3. The Requesting State shall be informed of the result of its request.

ARTICLE 6
EXTRADITION PROCEDURE AND REQUIRED DOCUMENTS

1. A request for extradition shall be made in writing and shall be communicated through the diplomatic channel. All documents submitted in support of a request for extradition shall be authenticated in accordance with Article 7.
2. The request for extradition shall be accompanied:
 - (a) if the person is accused of an offence - by a warrant for the arrest of the person, or a copy thereof;
 - (b) if a person has been convicted in her or his absence of an offence - by a judicial or other document, or a copy thereof, authorising the apprehension of the person and a statement setting out the procedures available to that person to appeal against or otherwise challenge the conviction and the sentence imposed;
 - (c) if the person has been convicted of an offence otherwise than in that person's absence - by the original or certified copy of the judgment or any other document setting out the conviction and the sentence imposed, the fact that the sentence is enforceable, and the period of the sentence which remains to be served;
 - (d) if the person has been convicted of an offence otherwise than in that person's absence but no sentence has been imposed - by a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the offence and by a document

setting out the conviction and a statement affirming that there is an intention to impose a sentence;

- (e) in all cases by:
- (i) a statement of each offence for which extradition is sought;
 - (ii) a statement of the acts and omissions which are alleged against the person in respect of each offence for which extradition is sought;
 - (iii) the text of the laws creating each offence and describing the penalty which may be imposed;
 - (iv) a statement as to whether there is any limitation in respect of proceedings or punishment;
 - (v) the details necessary to establish the identity and nationality of the person sought including, when possible, photographs or fingerprints or both; and
 - (vi) a statement of the current location of the person, if known.

3. All requests and supporting documents provided by the States in accordance with this Treaty shall be accompanied by a translation into the official language of the Requested State.

ARTICLE 7
AUTHENTICATION OF SUPPORTING DOCUMENTS

1. A document that, in accordance with Article 6, accompanies a request for extradition shall be admitted in evidence, if authenticated, in any extradition proceedings in the territory of the Requested State.

2. A document is authenticated for the purposes of this Treaty if:
- (a) it purports to be signed or certified by a judicial official or other officer in or of the Requesting State; and
 - (b) it purports to be authenticated by the competent authority of the Requesting State.

ARTICLE 8
ADDITIONAL INFORMATION

1. If the Requested State considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted that State may request that additional information be furnished within such time as it specifies.
2. If the person whose extradition is requested is under arrest and the additional information furnished is not sufficient in accordance with this Treaty or is not received within the time specified, the person may be released from custody. Such release shall not preclude the Requesting State from making a fresh request for the extradition of the person.
3. Where the person is released from custody in accordance with paragraph 2 of this Article, the Requested State shall notify the Requesting State as soon as practicable.

ARTICLE 9
PROVISIONAL ARREST

1. In case of urgency a Requesting State may apply by means of the facilities of the International Criminal Police Organisation (INTERPOL), the diplomatic channel or directly between the Central Authorities for the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel. The application shall be made in writing and transmitted by any means including electronic means.
2. The Central Authority of Australia shall be the Attorney-General's Department, Canberra and the Central Authority of The State

of the United Arab Emirates shall be the Ministry of Justice. Either State shall notify the other of any change of its Central Authority.

3. The application for provisional arrest shall contain:
- (a) a description of the person sought, including, if possible, a photograph or fingerprints;
 - (b) the location of the person sought, if known;
 - (c) a concise statement of the acts or omissions alleged to constitute each offence and a statement of the provisions of the law allegedly breached for each offence;
 - (d) a statement of the existence of a warrant of arrest, or finding of guilt or judgment of conviction, against the person sought;
 - (e) a statement of the punishment that can be, or has been, imposed for the offences; and
 - (f) a statement that a request for the extradition of the person is to follow.
4. On receipt of such an application, the Requested State shall take the necessary steps to secure the arrest of the person sought and the Requesting State shall be promptly notified of the result of its application.
5. A person arrested upon such an application may be set at liberty upon the expiration of 60 days from the date of that person's arrest if a request for extradition, supported by the documents specified in Article 6, has not been received.
6. The release of a person pursuant to paragraph 5 of this Article shall not prevent the institution of proceedings to extradite the person sought if the extradition request is subsequently received.

ARTICLE 10
CONFLICTING REQUESTS

1. Where requests are received from two or more States for the extradition of the same person, the Requested State shall determine to which of those States the person is to be extradited and shall notify the Requesting States of its decision.
2. In determining to which State a person is to be extradited, the Requested State shall have regard to all relevant circumstances and, in particular, to:
 - (a) if the requests relate to different offences - the relative seriousness of the offences;
 - (b) the time and place of commission of each offence;
 - (c) the respective dates of the requests;
 - (d) the nationality of the person;
 - (e) the ordinary place of residence of the person; and
 - (f) the possibility of any of the Requesting States extraditing the person to another State.

ARTICLE 11
SURRENDER

1. The Requested State shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting State.
2. Where extradition is granted, the Requested State shall surrender the person from a point of departure in its territory convenient to the Requesting State.
3. The Requesting State shall remove the person from the territory of the Requested State within 30 days and, if the person is not removed

within that period, the Requested State may refuse to extradite that person for the same offence.

4. If circumstances beyond its control prevent a Requested State from surrendering or removing the person to be extradited it shall notify the Requesting State. The two States shall agree upon a new date of surrender, and the provisions of paragraph 3 of this Article shall apply.

ARTICLE 12 **SURRENDER OF PROPERTY**

1. To the extent permitted under the law of the Requested State and subject to the rights of third parties, which shall be duly respected, all property found in the Requested State that has been acquired as a result of the offence or may be required as evidence shall be surrendered if extradition is granted and the Requesting State so requests.

2. Subject to paragraph 1 of this Article, the abovementioned property shall, if the Requesting State so requests, be surrendered to the Requesting State even if the extradition cannot be carried out due to death, escape or disappearance of the person sought.

3. If the property referred to in paragraph 1 of this Article is required for an investigation or prosecution of an offence in the Requested State, then the delivery of that property may be delayed until the completion of the investigation or prosecution, or it may be delivered on condition that it shall be returned after the conclusion of the proceedings in the Requesting State.

4. Where property is delivered on a condition referred to in paragraph 3 of this Article, it shall be returned to the Requested State free of charge.

ARTICLE 13 **POSTPONEMENT OF EXTRADITION** **AND TEMPORARY SURRENDER**

1. The Requested State may postpone the surrender of a person in order to proceed against that person, or so that that person may serve a

sentence, for an offence other than an offence constituted by an act or omission for which extradition is sought. In such case the Requested State shall advise the Requesting State accordingly.

2. When the person is serving a sentence in the territory of the Requested State for an offence other than an offence constituted by an act or omission for which extradition is sought, the Requested State may temporarily surrender the person to the Requesting State to be prosecuted for an offence for which extradition is sought. The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State after proceedings against the person have concluded, in accordance with written conditions to be mutually determined by the States.

3. When, in the opinion of the competent medical authority in the Requested State, the person whose extradition is sought cannot be transported from the Requested State to the Requesting State without serious danger to the person's life due to grave illness, the surrender of the person shall be deferred until such time as the danger, in the opinion of the competent medical authority, has been sufficiently mitigated.

ARTICLE 14 **RULE OF SPECIALITY**

1. A person extradited under this Treaty shall not be proceeded against, sentenced, detained, or subjected to any other restriction of personal liberty in the territory of the Requesting State for any offence committed before surrender other than:

- (a) an offence for which extradition is granted;
- (b) any other offence in respect of which the Requested State consents. Consent shall be given if the offence for which it is requested is itself subject to extradition in accordance with this Treaty.

2. A request for the consent of the Requested State under this Article shall be accompanied by the documents mentioned in paragraph 2 of

Article 6 of this Treaty and a legal record of any statement made by the extradited person with respect to the offence.

3. Paragraph 1 of this Article shall not apply if the person has had an opportunity to leave the Requesting State and has not done so within 30 days of final discharge in respect of the offence for which that person was extradited or if the person has returned to the territory of the Requesting State after leaving it. The 30 day period of immunity may be extended to take account of circumstances beyond the control of that person which do not include the commission of a criminal offence.

ARTICLE 15 **SURRENDER TO A THIRD STATE**

1. Where a person has been surrendered to the Requesting State by the Requested State, the first-mentioned State shall not surrender that person to any third state for an offence committed before that person's surrender unless:

- (a) the Requested State consents to that surrender; or
- (b) the person has had an opportunity to leave the Requesting State and has not done so within 30 days of final discharge in respect of the offence for which that person was surrendered by the Requested State or has returned to the territory of the Requesting State after leaving it.

2. The 30 day period of immunity may be extended to take account of circumstances beyond the control of that person which do not include the commission of a criminal offence.

3. Before acceding to a request pursuant to sub-paragraph (1)(a) of this Article, the Requested State may request the production of the documents mentioned in Article 6.

ARTICLE 16
TRANSIT

1. When either of the States is to extradite a person from a third state through the territory of the other State, the former should request the latter for the permission of such transit.
2. The Requested State shall, in so far as it is not contrary to its laws, approve the request for transit made by the Requesting State.
3. No permission is required where air transport is used and no landing is scheduled in the territory of the other State.
4. In the event of an unscheduled landing, the State to be requested to permit transit may, at the request of the escorting officer, hold the person in custody for 48 hours, pending receipt of the transit request to be made in accordance with paragraphs 1 and 2 of this Article.
5. The Requesting State to which the person is being extradited shall reimburse the Requested State for any expense incurred by that Requested State in connection with the transit.

ARTICLE 17
REPRESENTATION AND EXPENSES

1. Unless otherwise provided in this Treaty the Requested State shall make all necessary arrangements for the representation of the Requesting State in any proceedings arising out of the request.
2. The Requesting State shall pay all the expenses related to the translation of extradition documents, and the transportation of the person surrendered. The Requested State shall pay all other expenses incurred in that State in connection with the extradition proceedings.
3. If it is apparent that exceptional expenses may be incurred as a result of a request for extradition, the States shall consult with a view to deciding how those expenses will be met.

ARTICLE 18
CONSULTATION

The States shall consult promptly, at the request of either, concerning the interpretation, the application or the carrying out of this Treaty either generally or in relation to a particular case.

ARTICLE 19
ENTRY INTO FORCE AND TERMINATION

1. This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged. This Treaty shall enter into force on the thirtieth day after the date of exchange of instruments of ratification.

2. Either State may terminate this Treaty by notice in writing through diplomatic channels at any time. Termination shall take effect six months after the date from which the notice is given. However, any request already received before or up to the date of receipt of the notice to terminate shall continue to be governed by this Treaty until the request is concluded.

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

DONE at Hobart on the twenty-sixth day of July two thousand and seven in the English and Arabic languages, both texts being equally authentic.

For the Government of Australia 	For the State of the United Arab Emirates
Hon David Johnston Minister for Justice and Customs	HE Mohammed Nekhaira Al Dhaheri Minister of Justice

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.