
STATUTORY INSTRUMENTS

1997 No. 1176

EXTRADITION

The Brazil (Extradition) Order 1997

<i>Made</i>	- - - -	<i>8th April 1997</i>
<i>Laid before Parliament</i>		<i>14th May 1997</i> <i>on a date to be</i> <i>notified in the</i> <i>London, Edinburgh</i> <i>and Belfast Gazettes</i>
<i>Coming into force</i>	- -	

Whereas a Treaty was concluded on 18th July 1995 between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federative Republic of Brazil for the reciprocal extradition of offenders, the terms of which are set out in the Schedule to this Order:

And whereas section 4(1) of the Extradition Act 1989(1) (“the 1989 Act”) provides that where general extradition arrangements have been made, Her Majesty may, by Order in Council reciting or embodying their terms, direct that the 1989 Act, so far as it relates to extradition procedures under Part III of that Act, shall apply as between the United Kingdom and the foreign State or any foreign State with which they have been made, subject to the limitations, restrictions, exceptions and qualifications in the 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 Brazil (Extradition) Order 1997 and shall come into force on a date to be notified in the London, Edinburgh and Belfast Gazettes.
2. The Extradition Act 1989, so far as it relates to extradition procedures under Part III of that Act, shall apply in the case of the Federative Republic of Brazil in accordance with the said Treaty of 18th July 1995.
3. The operation of this Order is limited to the United Kingdom.

N. H. Nicholls
Clerk of the Privy Council

SCHEDULE

EXTRADITION TREATY BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE FEDERATIVE REPUBLIC OF BRAZIL

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federative Republic of Brazil;

Desiring to make provision for the reciprocal extradition of offenders;

Have agreed as follows:

ARTICLE 1

DUTY TO EXTRADITE

(1) Each Contracting State undertakes to extradite to the other, in the circumstances and subject to the conditions specified in this Treaty, and each in accordance with the legal formalities in force in its own country, any person who, being accused or convicted of an extradition offence as described in Article 2, committed within the territory of the one state, is found within the territory of the other State.

(2) Extradition shall also be available in respect of an extradition offence as described in Article 2 committed outside the territory of the Requesting State but in respect of which it has jurisdiction if the Requested State would, in corresponding circumstances, have jurisdiction over such an offence. In such circumstances the Requested State shall have regard to all the circumstances of the case including the seriousness of the offence.

(3) In addition, extradition shall be available for an extradition offence as described in Article 2:

- (a) if it is committed in a third State by a national of the Requesting State and the Requesting State bases its jurisdiction on the nationality of the offender; and
- (b) if it occurred in the Requested State, it would be an offence under the law of that State punishable with imprisonment for at least twelve months or by a more severe penalty.

(4) Extradition shall be available in respect of an extradition offence as described in Article 2, whether such offence was committed before or after the entry into force of this Treaty.

ARTICLE 2

EXTRADITION OFFENCES

(1) This Treaty shall apply to offences which are punishable under the laws of both Contracting States by deprivation of liberty for at least one year or by a more severe penalty.

(2) Where extradition is requested for the purpose of carrying out a sentence, a further requirement shall be that the punishment awarded must have been for a period of at least four months.

(3) In this Article, "deprivation of liberty" includes deprivation of liberty by virtue of any order which has been made by a criminal court in addition to, or instead of, a prison sentence.

ARTICLE 3

GROUND FOR REFUSAL OF EXTRADITION

(1) A person shall not be extradited if the appropriate authority in the Requested State is satisfied:

- (a) that the offence for which his extradition is requested is an offence of a political character;
or
- (b) that it is an offence under military law which is not also an offence under the general criminal law; or

- (c) that the request for extradition (though purporting to be made on account of an extradition offence as is specified in Article 2) has in fact been made for the purpose of prosecuting or punishing the person sought on account of his race, religion, nationality or political opinions; or
- (d) that the person sought might, if extradited, be prejudiced at his trial or be punished, detained or restricted in his personal liberty, by reason of his race, religion, nationality or political opinions; or
- (e) that it would, having regard to all the circumstances, be unjust or oppressive to extradite the person sought:
 - (i) by reason of the trivial nature of the offence of which he is accused or was convicted; or
 - (ii) in accordance with its laws, because 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
 - (iii) because the accusation against him has not been made in good faith in the interests of justice; or
- (f) that, in the case of a request from the United Kingdom, a previous request based on the same facts has been made for the extradition of the person sought, and that request was denied.

(2) A person shall not be extradited if he would, if proceeded against in the territory of the Requested State for the offence for which his extradition is requested, be entitled to be discharged under any rule of law of the Requested State relating to his previous acquittal or conviction.

(3) If the Requested State does not extradite its own national on the grounds of his nationality, it shall at the request of the Requesting State submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. For this purpose, the file, information and exhibits relating to the offence shall be transmitted without charge by the means provided for in Article 5. The Requesting State shall be informed of the result of its request.

ARTICLE 4

CAPITAL PUNISHMENT

If under the law of the Requesting State the person sought is liable to the death penalty for the offence for which his extradition is requested, but the law of the Requested State does not provide for the death penalty in a similar case, extradition may be refused, unless the Requesting State gives such assurance as the Requested State considers sufficient that the death penalty will not be carried out.

ARTICLE 5

EXTRADITION PROCEDURES

(1) Without prejudice to Article 6, the request for extradition shall be in writing and communicated through the diplomatic channel.

(2) The request shall be accompanied by:

- (a) particulars of the person sought, together with any other information which would help to establish his identity, nationality or citizenship and residence;
- (b) particulars of the offence for which the extradition is requested (including evidence sufficient to justify the issue of a warrant for his arrest);
- (c) the text, if any, of the law:
 - (i) defining that offence; and
 - (ii) prescribing the maximum punishment for that offence; and

- (d) in the case of a convicted person, the judgement or order of conviction and the sentence of the court of an offence for which extradition may be granted under this Treaty, or an authenticated copy thereof, and evidence that he is unlawfully at large; or
- (e) in the case of an accused person, a warrant of arrest issued by a competent authority in the territory of the Requesting State, or an authenticated copy thereof.

(3) In relation to a convicted person who was not present at his trial, the person shall be treated for the purposes of this Treaty as if he had been accused of the offence of which he was convicted.

(4) If the information communicated by the Requesting State is found to be insufficient to allow the Requested State to make a decision in pursuance of this Treaty, the latter State shall request the necessary supplementary information and may fix a time limit for receipt thereof.

ARTICLE 6

PROVISIONAL ARREST

(1) In urgent cases the person sought may, in accordance with the law of the Requested State, be provisionally arrested on the application of the competent authorities of the Requesting State. The application shall contain an indication of the intention to request the extradition of that person and a statement of the existence of a warrant of arrest or a conviction against him, and, if available, his description and such further evidence, if any, as would be necessary to justify the issue of a warrant of arrest had the offence been committed, or the person sought been convicted, in the territory of the Requested State.

(2) A person arrested upon such an application shall be set at liberty upon the expiration of sixty days from the date of his arrest if a request for his extradition shall not have been received. This provision shall not prevent the institution of further proceedings for the extradition of the person sought if a request is subsequently received.

ARTICLE 7

COMPETING REQUESTS

If the extradition of a person is requested concurrently by one of the Contracting States and by another State or States, either for the same offence or for different offences, the Requested State shall make its decision, in so far as its law allows, having regard to all the circumstances, including the provisions in this regard in any Agreements subsisting between the Requested State and the Requesting States, the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality or citizenship and residence of the person sought and the possibility of subsequent extradition to another State.

ARTICLE 8

ADMISSION OF EVIDENCE

(1) The authorities of the Requested State shall admit as evidence, in any proceedings for extradition:

- (a) any judgment or order of conviction or sentence or warrant of arrest;
- (b) any deposition, statement or other evidence given on oath or affirmed;
- (c) any other document given on oath or affirmed; and
- (d) an authenticated copy of any document listed at sub-paragraphs (a) to (c) above,

where such document is duly authenticated.

(2) For the purposes of this Treaty, a document is “duly authenticated” if

- (a) it is authenticated by the oath or affirmation of a witness;

- (b) it has been signed by a competent authority of the Requesting State and it purports to be certified by being sealed with the official seal of the appropriate Minister of that State; or
- (c) it is authenticated in such other manner as may be permitted by the law of the Requested State.

ARTICLE 9

DUE PROCESS

- (1) A person sought shall not be extradited until
 - (a) the evidence has been found sufficient according to the law of the Requested State either:
 - (i) to make a case requiring an answer by the person sought if the proceedings were a summary trial of an information against him if the offence of which he is accused had been committed in the territory of the Requested State; or
 - (ii) to prove that he is the identical person convicted by the courts of the Requesting State; and
 - (b) the expiration of any further period which may be required by the law of that State.
- (2) If criminal proceedings against the person sought are instituted in the territory of the Requested State or he is lawfully detained there in consequence of criminal proceedings, the decision whether or not to extradite him may be postponed until the criminal proceedings have been completed or he is no longer so detained.

ARTICLE 10

DECISION AND SURRENDER

- (1) The Requested State shall inform the Requesting State through the diplomatic channel of its decision with regard to the extradition.
- (2) In the event that a request for extradition is refused, the Requested State shall give reasons for the refusal.
- (3) If the request is agreed to, the Requesting State shall be informed of the place and date of surrender and of the length of time for which the person claimed was detained with a view to surrender.
- (4) The Requesting State shall arrange for the removal of the person sought from the territory of the Requested State within such period as may be specified according to the law of the Requested State or such reasonable period as the Requested State may specify. If he is not removed within that period, the Requested State may refuse to extradite him for the same offence.

ARTICLE 11

SURRENDER OF PROPERTY

- (1) When a request for extradition is granted, the Requested State shall, so far as its law allows, hand over to the Requesting State all articles (including sums of money):
 - (a) which may serve as evidence of the offence; or
 - (b) which have been acquired by the person sought as a result of the offence and are in his possession.
- (2) If the articles in question are liable to seizure or confiscation in the territory of the Requested State the latter may, in connection with pending proceedings, temporarily retain them or hand them over on condition that they are returned.

(3) These provisions shall not prejudice the rights of the Requested State or of any person other than the person sought. When these rights exist the articles shall on request be returned to the Requested State without charge as soon as possible after the end of the proceedings.

ARTICLE 12

RULE OF SPECIALITY

(1) A person who has been extradited shall not be restricted in his personal freedom, proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his surrender other than that for which he was extradited or any extradition offence disclosed by the facts upon which he was extradited, except in the following cases:

- (a) when the State which surrendered him consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 5 and a legal record of any statement made by the extradited person in respect of the offence concerned;
- (b) when that person, having had an opportunity to leave the territory of the Party to which he has been surrendered, has not done so within forty-five days of his final discharge, or has returned to that territory after leaving it.

(2) When the description of the offence charged is altered in the course of proceedings, the extradited person shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition.

(3) A person shall not, without the consent of the Requested State, be re-extradited to a third State in respect of an offence committed before his surrender or return to the Requesting State, except when, having had an opportunity to leave the territory of the State to which he has been surrendered, he has not done so within sixty days of his final discharge, or has returned to that territory after having left it.

ARTICLE 13

DOCUMENTS

If in any particular case the Requested State so requires, the Requesting State shall supply a translation of any document submitted in accordance with the provisions of this Treaty.

ARTICLE 14

EXPENSES

Expenses incurred by reason of the request for extradition shall be met as follows:

- (a) the Requesting State shall make its own arrangements with respect to its representation in the Requested State in any proceedings arising out of the request, and shall meet the expenses of such representation that may occur;
- (b) expenses concerning transportation of the person extradited shall be borne by the Requesting State;
- (c) all other expenses incurred in the territory of the Requested State by reason of the request for extradition shall be borne by that State.

ARTICLE 15

MUTUAL LEGAL ASSISTANCE IN EXTRADITION

Each Contracting State shall, to the extent permitted by its law, afford the other the widest measure of mutual assistance in criminal matters in connection with the offence for which extradition has been requested.

ARTICLE 16

TERRITORIAL APPLICATION

- (1) This Treaty shall apply:
 - (a) in relation to the United Kingdom:
 - (i) to Great Britain and Northern Ireland; and
 - (ii) to any territory for whose international relations to the United Kingdom is responsible and to which the Treaty shall have been extended by agreement between the Contracting States in an Exchange of Notes; and
 - (b) to the Federative Republic of Brazil.
- (2) References to the territory of a Contracting State shall be construed in accordance with paragraph (1) of this Article.
- (3) The application of this Treaty to any territory, in respect of which extension has been made in accordance with paragraph (1) of this Article, may be terminated by either Contracting Party giving six months' notice to the other through the diplomatic channel.

ARTICLE 17

DEPENDENT TERRITORIES

A request on the part of the Brazilian Government for the extradition of an offender who is found in any of the territories to which this Treaty has been extended in accordance with paragraph (1) of Article 16 of this Treaty may be made to the Governor or other competent authority of that territory, who may take the decision himself or refer the matter to Her Majesty's Government in the United Kingdom for their decision.

ARTICLE 18

RATIFICATION, COMMENCEMENT AND TERMINATION

- (1) This Treaty shall be ratified, and the instruments of ratification shall be exchanged at Brasilia as soon as possible. It shall enter into force on the date of the exchange of instruments of ratification.
- (2) Either of the Contracting States may terminate this Treaty at any time by giving notice to the other through the diplomatic channel; and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies Part III of the Extradition Act 1989, as amended, in the case of Brazil in accordance with the Treaty between Her Majesty's Government and the Government of the Federative Republic of Brazil which was concluded on 18th July 1995.