

L.N. 96 of 2008**FUGITIVE OFFENDERS (IRELAND) ORDER**

(Made by the Chief Executive in Council under section 3 of the Fugitive Offenders Ordinance (Cap. 503))

1. Commencement

This Order shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

2. Procedures in Ordinance to apply between Hong Kong and Ireland

In relation to the arrangements for the surrender of fugitive offenders the terms of which are recited in the Schedule, it is directed that the procedures in the Ordinance shall apply as between Hong Kong and Ireland subject to the limitations, restrictions, exceptions and qualifications contained in the terms of the arrangements.

SCHEDULE

[s. 2]

AGREEMENT BETWEEN THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF IRELAND CONCERNING SURRENDER OF FUGITIVE OFFENDERS[#]

The Government of the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong Special Administrative Region") having been duly authorised to conclude this agreement by the Central People's Government of the People's Republic of China and the Government of Ireland (hereinafter referred to as "the Parties"),

Desiring to make provision for the reciprocal surrender of fugitive offenders;

Having agreed as follows:

Note:[#] The Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Ireland Concerning Surrender of Fugitive Offenders was done in the Chinese, English and Irish languages, each text being equally authentic. The Irish text of the Agreement is available for inspection at the Security Bureau of the Government of the HKSAR.

ARTICLE 1

OBLIGATION TO SURRENDER

(1) The Parties agree to surrender to each other, subject to the provisions laid down in this Agreement and in accordance with the law of the requested Party, any person who is found in the jurisdiction of the requested Party and who is wanted by the requesting Party for prosecution or for the imposition or enforcement of a sentence in respect of an offence described in Article 2.

(2) References in this Agreement to “surrender”, “surrender of a fugitive offender” or “surrender of fugitive offenders” shall for the purposes of the law of Ireland be interpreted as “extradition” or “extradite”.

ARTICLE 2

OFFENCES

(1) Surrender shall be granted for an offence coming within any of the following descriptions of offences in so far as it is according to the laws of both Parties punishable by imprisonment or other form of detention for one year or more, or by a more severe penalty:

- (i) murder (including attempted murder) or manslaughter, including criminal negligence causing death;
- (ii) aiding, abetting, counselling or procuring suicide;
- (iii) maliciously wounding; maiming; inflicting grievous or actual bodily harm; assault causing harm or causing serious harm to another person, threats to kill; intentional or reckless endangering of life whether by means of a weapon, a dangerous substance or otherwise, offences relating to unlawful wounding or injuring;
- (iv) offences of a sexual nature including rape; sexual assault; indecent assault; unlawful sexual acts on children; child pornography; statutory sexual offences;
- (v) gross indecency with a child, a mental defective or an unconscious person;
- (vi) kidnapping; abduction; false imprisonment; unlawful confinement; dealing or trafficking in slaves or other persons; taking a hostage;
- (vii) criminal intimidation;

- (viii) offences against the law relating to illegal drugs including narcotics and psychotropic substances and precursors and essential chemicals used in the illegal manufacture of narcotic drugs and psychotropic substances and offences related to the proceeds of drug trafficking;
- (ix) obtaining property or pecuniary advantage by deception; theft; robbery; burglary (including breaking and entering); embezzlement; blackmail; extortion; unlawful handling or receiving of property; false accounting; any other offence in respect of property or fiscal matters involving fraud; any offence against the law relating to unlawful deprivation of property;
- (x) offences against bankruptcy law or insolvency;
- (xi) offences against the law relating to companies including offences committed by officers, directors, and promoters;
- (xii) offences relating to securities and futures trading;
- (xiii) any offence relating to counterfeiting; any offence against the law relating to forgery or uttering what is forged;
- (xiv) an offence against the laws relating to protection of intellectual property, copyrights, patents or trademarks;
- (xv) an offence against the law relating to bribery, corruption, secret commissions, and breach of trust;
- (xvi) perjury and subornation of perjury;
- (xvii) offences relating to the perversion or obstruction of the course of justice;
- (xviii) arson; criminal damage including offences in relation to computer data;
- (xix) an offence against the law relating to firearms;
- (xx) an offence against the law relating to explosives;
- (xxi) an offence against laws relating to environmental pollution or protection of public health;
- (xxii) mutiny or any mutinous act committed on board a vessel at sea;
- (xxiii) piracy involving ships or aircraft, according to international law;
- (xxiv) unlawful seizure or exercise of control of an aircraft or other means of transportation;
- (xxv) genocide or direct and public incitement to commit genocide;
- (xxvi) facilitating or permitting the escape of a person from lawful custody;

- (xxvii) an offence against the laws relating to the control of exportation or importation of goods of any type, or the international transfer of funds;
- (xxviii) smuggling; offences against the laws relating to import and export of prohibited items, including historical and archaeological items and wildlife and endangered species;
- (xxix) immigration offences including fraudulent acquisition or use of a passport or visa;
- (xxx) arranging or facilitating for financial gain, the illegal entry of persons into the jurisdiction of the requesting Party;
- (xxxi) an offence relating to gambling or lotteries;
- (xxxii) offences relating to the unlawful termination of pregnancy;
- (xxxiii) stealing, abandoning, neglecting or unlawfully detaining a child: any other offence involving the exploitation of children;
- (xxxiv) offences against the laws relating to prostitution and premises kept for the purposes of prostitution;
- (xxxv) offences involving the unlawful use of computers;
- (xxxvi) revenue offences, including offences relating to fiscal matters, taxes or duties and customs;
- (xxxvii) offences relating to the unlawful escape from custody;
- (xxxviii) bigamy;
- (xxxix) any offence against the law relating to false or misleading trade descriptions;
- (xl) offences relating to the possession or laundering of proceeds obtained from the commission of any offence for which surrender may be granted under this Agreement;
- (xli) impeding the arrest or prosecution of a person who has or is believed to have committed an offence for which surrender may be granted under this Agreement;
- (xlii) offences for which fugitive offenders may be surrendered under international conventions binding on the Parties; offences created as a result of decisions of international organisations which are binding on the Parties;
- (xlili) conspiracy to commit fraud or to defraud;
- (xliv) torture;

(xlv) conspiracy to commit any offence for which surrender may be granted under this Agreement;

(xlvi) aiding, abetting, counselling or procuring the commission of, inciting, being an accessory before or after the fact to, or attempting to commit any offence for which surrender may be granted under this Agreement;

(xlvii) any other offence for which surrender may be granted in accordance with the law of the requested Party.

(2) A revenue offence is an extraditable offence. For the purposes of this Agreement, 'revenue offence' means an offence connected with taxes or duties even where the requested Party does not impose the same kind of tax or duty or its law does not contain the same type of rules as regards taxes, duties and customs as the requesting Party.

(3) Where surrender is requested for the purpose of carrying out a sentence, a further requirement shall be that in the case of a period of imprisonment or detention at least six months remain to be served.

(4) For the purposes of this Article, in determining whether an offence is an offence punishable under the laws of both Parties the totality of the acts or omissions alleged against the person whose surrender is sought shall be taken into account.

(5) For the purposes of paragraph (1) of this Article, an offence shall be an offence according to the laws of both Parties if the conduct constituting the offence was an offence against the law of the requesting Party at the time it was committed and is an offence against the law of both Parties at the time the request for surrender is received.

(6) Where the surrender of a fugitive offender is requested for the purpose of carrying out a sentence the requested Party may refuse to surrender him or her if it appears that the conviction was obtained in his or her absence, unless he or she has the opportunity to have his or her case retried in his or her presence, in which case he or she shall be considered as an accused person under this Agreement.

ARTICLE 3

SURRENDER OF NATIONALS

(1) The Government of the Hong Kong Special Administrative Region reserves the right to refuse the surrender of nationals of the People's Republic of China. The Government of Ireland reserves the right to refuse the surrender of its nationals.

(2) Where the requested Party exercises this right, the requesting Party may request that the case be submitted to the competent authorities of the requested Party in order that proceedings for prosecution of the person may be considered.

ARTICLE 4

BASIS FOR SURRENDER

A fugitive offender shall be surrendered only if:

- (a) for an accused person, there is sufficient evidence provided, according to the law of the requested Party, to justify the committal for trial of the person sought if the offence of which he or she is accused were committed in the territory of the requested Party; or
- (b) in the case of a person already convicted, there is sufficient information provided showing that the sentence is enforceable and that he or she is the person convicted.

ARTICLE 5

MANDATORY REFUSAL OF SURRENDER

- (1) A fugitive offender shall not be surrendered if the requested Party has substantial grounds for believing:
 - (a) that the offence of which the person is accused or was convicted is a political offence or an offence of a political character in accordance with the law of the requested Party;
 - (b) that the request for surrender (though purporting to be made on account of an offence for which surrender may be granted) is in fact made for the purpose of prosecution or punishment on account of race, religion, nationality, political opinions, sex, sexual orientation, language or ethnic origin;
 - (c) that the person might, if returned, be prejudiced at that person's trial or punished, detained or restricted in his or her personal liberty by reason of race, religion, nationality, political opinions, sex, sexual orientation, language or ethnic origin.
- (2) A person shall not be surrendered if final judgement has been passed in the requested Party upon the person sought in respect of an offence for which his or her surrender has been requested.

(3) Surrender shall not be granted if the offence for which surrender is sought is an offence under military law which is not also an offence under ordinary criminal law.

(4) Surrender shall not be granted where the offence for which surrender is sought is punishable according to the law of the requesting Party by the death penalty.

ARTICLE 6

DISCRETIONARY REFUSAL OF SURRENDER

(1) Surrender may be refused if the requested Party considers that:

(a) there has been excessive delay, for reasons which cannot be imputed to the person sought, in bringing charges, in bringing the case to trial or in making the person serve his or her sentence or the remainder thereof;

(b) the offence for which surrender is sought was committed within the jurisdiction of its courts;

(c) the surrender might place that Party in breach of its obligations under international treaties; or

(d) in the circumstances of the case, the surrender would be incompatible with humanitarian considerations in view of the age, health or other personal circumstances of the person sought.

(2) Surrender may be refused if the offence for which surrender is sought was committed within the jurisdiction of the courts of the requested Party and proceedings for prosecution of the person for that offence are pending.

(3) Surrender may be refused where the person sought has been finally acquitted or convicted in a third country for the same offence for which surrender is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable.

ARTICLE 7

POSTPONEMENT OF SURRENDER

If the person sought is being proceeded against or is under punishment in the jurisdiction of the requested Party for any offence other than that for which surrender is requested, surrender may be granted or deferred until the conclusion of the proceedings and the execution of any punishment imposed.

ARTICLE 8

THE REQUEST AND SUPPORTING DOCUMENTS

(1) A request for surrender shall be in writing. A request and any related documents may be communicated directly between the competent authorities of the Parties.

(2) A request for surrender shall be made:

(a) in the case of Ireland, to the Minister for Justice, Equality and Law Reform;

(b) in the case of Hong Kong Special Administrative Region, to the Department of Justice,

and these shall be deemed to be the competent authorities of the Parties for the purposes of paragraph 1. Either Party may change its competent authority, in which case it shall notify the other Party of the change.

(3) The request shall be accompanied by:

(a) as accurate a description as possible of the person sought, together with any other information which would help to establish that person's identity, nationality and location;

(b) a statement of each offence for which surrender is sought and a statement of the acts and omissions which are alleged against the person in respect of each offence, including the place and date of commission; and

(c) the text or copies of the legal provisions, if any, creating the offence, and a statement of the punishment which can be imposed therefor and any time limit on the institution of proceedings, or on the execution of any punishment for that offence.

(4) If the request relates to an accused person it shall also be accompanied by the original or a copy of the warrant of arrest issued by a judge, magistrate or other competent authority of the requesting Party and by the evidence required under Article 4(a).

(5) If the request relates to a person already convicted or sentenced, it shall also be accompanied by:

(a) the original or a copy of the certificate of the conviction or sentence; and

(b) if the person was convicted but not sentenced, a statement to that effect by the appropriate court and a copy of the warrant of arrest; or

(c) if the person was sentenced, a statement indicating that the sentence is enforceable and how much of the sentence has still to be served.

ARTICLE 9

AUTHENTICATION

(1) Documents supporting a request for surrender shall be admitted in evidence as proof of the facts contained therein if duly authenticated. Documents are duly authenticated if they purport to be:

(a) signed or certified by a judge, magistrate or an official of the requesting Party, and

(b) sealed with the official seal of a competent authority of the requesting Party.

(2) Any certified translation of documents or any certified copy thereof submitted in support of a request for surrender provided by the requesting Party shall be admitted for all purposes in proceedings for surrender.

ARTICLE 10

LANGUAGE OF DOCUMENTATION

All documents submitted in accordance with this Agreement shall be in, or translated into, an official language of the requested Party.

ARTICLE 11

ADDITIONAL INFORMATION

(1) If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision in pursuance of this Agreement, the latter Party may request the necessary supplementary information and may fix a time-limit for receipt thereof.

(2) If the person whose surrender is sought is in custody and the additional information furnished is not sufficient in accordance with this Agreement or is not received within the time specified, the person may be discharged. Such discharge shall not preclude the requesting Party from making a fresh request for the surrender of the person.

(3) Where the person is released from custody in accordance with paragraph (2), the requested Party shall notify the requesting Party as soon as possible of that fact.

ARTICLE 12

PROVISIONAL ARREST

(1) In urgent cases the person sought may, at the discretion of the requested Party and in accordance with its law, be provisionally arrested on the application of the requesting Party.

(2) The application for provisional arrest shall contain a statement as to why the matter is urgent, a statement of intention to request the surrender of the person sought, and the text of a warrant of arrest or a judgment of conviction against that person, a statement of the offence and the penalty for that offence, a statement of the brief facts of the case and details identifying that person.

(3) An application for provisional arrest may be transmitted by any means affording a record in writing. It may be made through the International Criminal Police Organisation (Interpol) or directly between the competent authorities specified in Article 8.

(4) The provisional arrest of the person sought shall be terminated if the request for surrender and supporting documents have not been received within the time periods laid down under the law of the requested Party. The release of a person pursuant to this paragraph shall not prevent the institution or continuation of surrender proceedings if the request and the supporting documents are received subsequently.

ARTICLE 13

CONCURRENT REQUESTS

If the surrender of a person is requested concurrently by one of the Parties and a State with whom the Hong Kong Special Administrative Region or Ireland, whichever is being requested, has agreements or arrangements for the surrender of accused and convicted persons, the requested Party shall make its decision having regard to all the circumstances including the provisions in this regard in any agreements in force between the requested Party and the requesting parties, the relative seriousness, date and place of commission of the offences, the respective dates of the requests, the nationality and ordinary place of residence of the person sought and the possibility of subsequent surrender to another state, and notify the other party of its decision in the event of surrender of the person to another jurisdiction.

ARTICLE 14

REPRESENTATION AND COSTS

- (1) The requested Party shall make all necessary arrangements for and meet the costs of any proceedings arising out of a request for surrender and shall otherwise represent the interests of the requesting Party.
- (2) If it becomes apparent that exceptional expenses may be incurred as a result of a request for surrender the Parties shall consult with a view to deciding how these expenses will be met.
- (3) The requested Party shall bear the expenses incurred in its territory arising out of the arrest and detention of the person whose surrender is sought until that person is surrendered. The requesting Party shall bear all subsequent expenses, including the expenses incurred in conveying the person from the jurisdiction of the requested Party.

ARTICLE 15

ARRANGEMENTS FOR SURRENDER

- (1) The requested Party shall, as soon as a decision on the request for surrender has been made, communicate that decision to the requesting Party.
- (2) Where surrender is granted, the requested Party shall surrender the person in accordance with arrangements agreed to between the competent authorities of the Parties.
- (3) Subject to the provisions of paragraph (4) of this Article, the requesting Party shall remove the person within the period specified by the requested Party and if the person is not removed within that period the requested Party may refuse to surrender that person for the same offence.
- (4) If circumstances beyond its control prevent a Party from surrendering or taking over the person to be surrendered, it shall notify the other Party. In that case, the two Parties shall agree a new date for surrender and the provisions of paragraph (3) of this Article shall apply.

ARTICLE 16

TRANSFER OF PROPERTY

(1) To the extent permitted under the law of the requested Party, when a request for surrender of a fugitive offender is granted, the requested Party:

(a) shall, if the requesting Party so requests, hand over to the requesting Party all articles, including sums of money,

(i) which may be required as evidence; or

(ii) which have been acquired by the person sought as a result of the offence and are in that person's possession or are discovered subsequently,

and which have been specified by the requesting Party,

(b) may, if the articles in question are liable to seizure or confiscation within the jurisdiction of the requested Party in connection with pending proceedings, temporarily retain them or hand them over on condition they are returned.

(2) The rights of the requested Party or of third parties in the property shall be preserved. When such rights exist the articles shall on request be returned to the requested Party without charge as soon as practicable after the end of the proceedings.

(3) Subject to the terms of this Article, the articles in question shall, if the requesting Party so requests, be handed over to that Party even if the surrender cannot be carried out due to the death or escape of the person sought.

ARTICLE 17

SPECIALTY AND RESURRENDER

(1) A fugitive offender who has been surrendered shall not be proceeded against, sentenced, detained or subjected to any other restriction of personal liberty by the requesting Party for any offence committed prior to his or her surrender other than:

(a) the offence or offences in respect of which his or her surrender was granted;

(b) an offence, however described, based on substantially the same facts in respect of which his or her surrender was granted, provided such offence is one for which he or she could be surrendered under this Agreement, and provided further such offence is punishable by a penalty no more severe than the penalty for the offence for which he or she was surrendered;

(c) any other offence for which surrender may be granted under this Agreement in respect of which the requested Party may consent to his or her being dealt with;

unless he or she has first had an opportunity to exercise his or her right to leave the jurisdiction of the Party to which he or she has been surrendered and he or she has not done so within forty five days or has voluntarily returned to that jurisdiction having left it.

(2) A fugitive offender who has been surrendered shall not be surrendered or transferred beyond the jurisdiction of the requesting Party for an offence committed prior to his or her surrender unless:

(a) the requested Party consents to that surrender; or

(b) he or she has first had an opportunity to exercise his or her right to leave the jurisdiction of the Party to which he or she has been surrendered and has not done so within forty five days or has voluntarily returned to that jurisdiction having left it.

(3) A Party whose consent is requested under paragraphs (1)(c) or (2)(a) of this Article may require the submission of any document or statement referred to in Article 8, and any statement made by the surrendered person on the matter.

ARTICLE 18

SURRENDER BY CONSENT

(1) If the person sought consents to surrender to the requesting Party, the requested Party may, in accordance with its law, surrender the person as expeditiously as possible without further proceedings.

(2) The provisions of Article 17 shall apply to a person surrendered pursuant to this Article.

ARTICLE 19

TRANSIT

(1) To the extent permitted by its law, transit through the jurisdiction of a Party may be granted on a request in writing.

(2) The Party through whose jurisdiction transit will occur may request the information referred to in Article 8.

- (3) Permission for the transit of a person shall, subject to the law of the Party of transit, include permission for the person to be held in custody during transit.
- (4) In the case of an unscheduled landing, the request of an officer having custody of the person being surrendered while the person is being conveyed shall be sufficient to constitute a request under paragraph 1 of this Article.
- (5) Where a person is being held in custody pursuant to paragraph 3, the Party in whose territory the person is being held may direct that the person be released if his or her transportation is not continued within a reasonable time.
- (6) The Party who requested transit facilities shall reimburse the other Party for any exceptional expense incurred by that other Party in connection with the transit.

ARTICLE 20

ENTRY INTO FORCE SUSPENSION AND TERMINATION

- (1) This Agreement shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of the Agreement have been complied with.
- (2) The provisions of this Agreement shall apply to requests made after its entry into force regardless of the date of the commission of the offence or offences set out in the request.
- (3) Each of the Parties may suspend or terminate this Agreement at any time by giving notice to the other through the channel notified under paragraph (1) of Article 8. Suspension shall take effect on receipt of the relevant notice. In the case of termination this Agreement shall cease to have effect six months after the receipt of notice to terminate.

In witness whereof the undersigned, being duly authorised by their respective governments have signed this Agreement.

Done in duplicate at Dublin this 5th day of October Two Thousand and Seven in the Chinese and English and Irish languages, each text being equally authentic.

LAM Chik-ting, Tony
Clerk to the Executive Council

COUNCIL CHAMBER
22 April 2008

Explanatory Note

This Order applies the procedures for the surrender of fugitive offenders set out in the Fugitive Offenders Ordinance (Cap. 503) as between Hong Kong and Ireland. The Order is made in consequence of the arrangements for the surrender of fugitive offenders entered into by the Government of the Hong Kong Special Administrative Region and the Government of Ireland and signed in Dublin on 5 October 2007. The terms of those arrangements are recited in the Schedule to the Order. Those procedures are subject to the limitations, restrictions, exceptions and qualifications contained in the terms so recited.