

EXTRADITION RULES 2005

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PART 1

1 Name

These are the Extradition Rules 2005.

2 Interpretation

In these Rules—

“Court” means the High Court;

“extradition country” means —

- (i) New Zealand; or
- (ii) a country with which Tokelau has undertaken to surrender all persons who are wanted by the authorities of that country for the carrying out of a sentence or detention order or against whom those authorities are proceeding for an offence;

“extradition offence” means —

- (i) an offence against a law of an extradition country for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of not less than 12 months; or
- (ii) conduct which is required to be treated as an extradition offence under an extradition treaty between an extradition country and Tokelau;

“extraditable person” means —

- (i) a person accused of having committed an extradition offence; or

- (ii) a person convicted of an extradition offence in respect of whom there is an intention to impose a sentence as a consequence of the conviction;

“extradition request” means a request in writing by an extradition country for the surrender of an extraditable person to that country.

3 Extradition treaties

Where an extradition treaty operates between Tokelau and an extradition country, these Rules shall be read subject to the terms of the treaty and shall be construed to give effect to the treaty.

PART 2 EXTRADITION FROM TOKELAU

4 Request for surrender

An extradition request shall be made to the Court in writing and be accompanied by —

- (i) a charge supported by affidavit, or an authenticated copy of an affidavit made before a judge of the extradition country, and
- (ii) an authenticated copy of a warrant of arrest; and
- (iii) an accurate statement of the offence or offences for which extradition is requested, including the time and place of their commission, their legal descriptions and a reference to the relevant legal provisions; and
- (iv) a copy of the relevant enactments or, where this is not possible, a statement of the relevant law; and
- (v) as accurate a description as possible of the extraditable person, together with any other information which will help to establish that person’s identity and nationality; and
- (vi) (I) a statement that the requirements of rule 15 (1) will be fulfilled; or
(II) a request for consent according to rule 15 (2).

5 Endorsement of extradition country’s arrest warrant

(1) The Court may make an endorsement on the warrant authorising the execution of the warrant in Tokelau where —

- (i) a request for surrender is made in the form provided in rule 4, and

- (ii) the Court is informed by affidavit that the person for whose arrest the warrant is in force is, or is suspected of being, in or on their way to Tokelau; and
 - (iii) there are reasonable grounds to believe that the person is liable under rule 7 to be surrendered to the country requesting the surrender.
- (2) A warrant endorsed under paragraph (1) is sufficient authority for a constable to execute the warrant in accordance with these Rules.

6 Procedure following arrest

- (1) A person arrested on a warrant endorsed under rule 5 must be brought before the Commissioner as soon as possible.
- (2) The Commissioner may remand the person in custody, or, admit the person to bail, for such a period as may be necessary for the purposes of rule 7.

7 Determination of liability for surrender

- (1) The Court must determine whether a person is liable for surrender in relation to the offence for which surrender is sought.
- (2) A person is liable for surrender if the Court is satisfied that —
 - (i) the requirements of rule 4 and 5 have been satisfied; and
 - (ii) the person is an extraditable person in relation to the extradition country; and
 - (iii) the offence is an extradition offence in relation to the extradition country; and
 - (iv) there are no substantial grounds to believe that a restriction under rules 12 or 13 on the surrender of the person applies; and
 - (v) the surrender is in accordance with the provisions of any treaty between Tokelau and the extradition country; and
 - (vi) the extradition country provided sufficient undertakings where they requested under rule 13 (2); and
 - (vii) if the conduct constituting the extradition offence had taken place within the jurisdiction of Tokelau, that conduct or equivalent conduct would have constituted an extradition offence under the laws of Tokelau.

- (3) The Court is not entitled for the purpose of this rule to receive evidence to contradict an allegation that the person to whom the proceedings relate has engaged in conduct that constitutes the offence for which surrender is sought.

8 Procedure following determination of liability for surrender

- (1) If the Court is satisfied that the person is liable for surrender, the Court must —
 - (i) issue a declaration that the person is liable for surrender; and
 - (ii) issue a warrant for the detention of the person pending the surrender of the person to the extradition country; and
 - (iii) inform the person that —
 - (I) He or she will not be surrendered until the expiration of 15 days after the date of the issue of the warrant; and
 - (II) During that time the person has the right to apply for a review of the decision determining liability for surrender under rule 7.
- (2) Where the Court issues a warrant under paragraph (1)(i), the Court may grant bail to the person on such conditions as it thinks fit.
- (3) If the Court is not satisfied that the person is liable for surrender, it must discharge the person, unless it orders that the person continue to be detained, under these Rules.

9 Review of decision

- (1) Where the Court makes a decision under rule 11, the person or the requesting country may, within 15 days after the date of decision, apply to the Court of Appeal for a review of the decision.
- (2) The Court of Appeal may —
 - (i) confirm or quash the Court's decision, and
 - (ii) direct the Court either to discharge and release the person or order by warrant that the person be surrendered to the extradition country.
- (3) The Court of Appeal shall review the decision by way of rehearing, and may have regard to evidence in addition to or in substitution of the evidence that was before the Court.

10 Surrender warrant

- (1) The Court must make a surrender order in respect of the person after the expiration of the period of 15 days from the issue of the warrant of detention.
- (2) Any property in the possession of the person at the time of their arrest that may be material as evidence of the offence to which the request for their surrender relates shall, if the Court so directs, be delivered up on the person's surrender.

11 Discharge of offender

The Court shall, on application, order that the offender be released unless sufficient cause is shown against the release, where a person is in custody in Tokelau at the expiration of one month from the date of the surrender order under rule 9(2) or under rule 10(1), whichever is the later.

12 Mandatory restrictions

An extradition request must be refused if —

- (i) the extradition offence is a political offence in relation to the extradition country; or
- (ii) on surrender to the extradition country, the person may be prejudiced at their trial, or punished, detained or restricted in their personal liberty, by reason of their race, religion, nationality or political opinion; or
- (iii) the person has been acquitted or pardoned by a competent tribunal or authority in the extradition country or Tokelau or has undergone the punishment provided by the law of the extradition country or Tokelau, in respect of the extradition offence or another offence constituted by the same conduct as constitutes the extradition offence.

13 Discretionary restrictions

- (1) An extradition request may be refused if —
 - (i) having regard to all the circumstances of the case, it would be unjust or oppressive to surrender the person, because of —
 - (I) The trivial nature of the case; or
 - (II) The accusation of an offence against that person was not made in good faith in the interests of justice; or

- (III) The amount of time that has passed since the offence is alleged to have been committed or was committed; or
 - (ii) the person has been accused of an offence within the jurisdiction of Tokelau (other than an offence for which the surrender is sought), and the proceedings against the person have not been disposed of; or
 - (iii) the person may be or has been sentenced to death and the extradition country is unable to sufficiently assure that—
 - (I) The person will not be sentenced to death; or
 - (II) The sentence will not be carried out; or
 - (iv) The person is a New Zealand citizen and there is no treaty in force between Tokelau and the extradition country which provides for the extradition of New Zealand citizens.
- (2) For the purpose of determining under paragraph (1) whether an extradition request is to be refused or not, the Court may seek any undertakings from the extradition country that the Court thinks fit.
- (3) Paragraph (1) (iv) does not apply to an extradition request by New Zealand.

14 Consent to surrender by extraditable person

- (1) A person may at any time notify the Court that he or she consents to surrender to the extradition country for the extradition offence for which surrender is sought.
- (2) The person can consent to surrender even when the offence for which surrender is sought is not an extradition offence.
- (3) After receiving notification of consent under paragraph (1) the Court shall make a surrender order in respect of the person.
- (4) The Court must not issue a surrender order under paragraph (3) unless it is satisfied that the person has freely consented to the surrender for the offence or offences in full knowledge of the consequences.

15 Person extradited not to be tried for other offences

- (1) A person who has been extradited shall not be 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 or her surrender

other than that for which he or she was extradited, nor shall he or she be for any other reason restricted in his or her personal freedom, except when Tokelau consents.

- (2) A request for consent under paragraph (1) shall be submitted, accompanied by the documents mentioned in rule 5 and a certified record of any statement made by the extradited person in respect of the offence concerned.
- (3) Consent under this rule shall be given when the offence for which extradition is requested is an extradition offence in accordance with these Rules.

PART 3 EXTRADITION TO TOKELAU

16 Request by Tokelau

- (1) The Director of the Tokelau Public Service responsible for extradition matters (or the person authorised by the law of an extradition country) may make a request to the relevant authority of an extradition country for the surrender of a person who is accused or has been convicted of an extradition offence against the law of Tokelau and is suspected of being in that country or on their way to that country.
- (2) Any person surrendered pursuant to a request under paragraph (1) may be brought to Tokelau and delivered to the proper authorities to be dealt with according to law.

17 Person surrendered not to be tried for other offences

A person who is surrendered by an extradition country shall not, until he or she has left or has had an opportunity of leaving Tokelau —

- (i) be 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 or her surrender other than that for which he or she was extradited, nor shall he or she be for any other reason restricted in his or her personal freedom;
- (ii) be detained in Tokelau for the purpose of being surrendered to another country with the purpose of being 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 or her surrender other than that for which he or she was extradited, nor shall his or her personal freedom be restricted for any other reason.

PART 4 MISCELLANEOUS

18 Procedure

Proceedings under these Rules shall be conducted in accordance with the rules established for the Commissioner's Court.
