

LAWS OF BRUNEI

CHAPTER 8 EXTRADITION

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LAWS OF BRUNEI

CHAPTER 8

EXTRADITION ACT

ARRANGEMENT OF SECTIONS

Section

1. Short title.
2. Interpretation.
3. Construction of First Schedule.
4. Act may be applied by order in relation to foreign State.
5. Restriction on surrender of criminals.
6. Liability of criminal to surrender.
7. Order of Attorney General for issue of warrant if crime is not of a political character.
8. Issue of warrant by magistrate.
9. Hearing of case and evidence of political character of crime.
10. Committal or discharge of prisoner.
11. Surrender of fugitive to foreign State by warrant of Attorney General.
12. Discharge of persons apprehended if not conveyed out of Brunei Darussalam within two months.

13. Execution of warrant of magistrate.
14. Depositions to be evidence.
15. Authentication of depositions and warrants.

CRIMES COMMITTED AT SEA

16. Jurisdiction as to crimes committed at sea.

GENERAL PROVISIONS

17. Criminal surrendered by foreign state not triable for previous crime.
18. Property may be delivered up.
19. Forms.
20. Power of taking evidence in Brunei Darussalam for foreign criminal matters.
21. Foreign State includes dependencies, etc.

SCHEDULES

EXTRADITION ACT

An Act to provide for the surrender to foreign countries of persons accused or convicted of the commission of certain offences within the jurisdiction of such countries

Commencement: 9th December 1915

1. This Act may be cited as the Extradition Act. Short title.
2. In this Act, unless the context otherwise requires — Interpretation.

“accused person” includes a person so convicted for contumacy;

“convicted” do not include or refer to a conviction which under foreign law is a conviction for contumacy;

“conviction” do not include or refer to a conviction which under foreign law is a conviction for contumacy;

“extradition crime” means a crime which would be punishable by the law of Brunei Darussalam if committed in Brunei Darussalam and which would be one of the crimes described in the First Schedule;

“fugitive criminal” means any person accused or convicted of an extradition crime, committed within the jurisdiction of any foreign State, who is in or suspected of being in or on the way to Brunei Darussalam; and

“fugitive criminal of a foreign State” means a fugitive criminal accused or convicted of an extradition crime committed within the jurisdiction of that State;

“oath” includes affirmation;

“warrant” in the case of any foreign State, includes any judicial document authorising the arrest of a person accused or convicted of crime.

Construction of First Schedule.

3. (1) The extradition crimes included from time to time in the First Schedule shall, except where otherwise specially provided, be construed according to the law in force in Brunei Darussalam at the date of the alleged crime.

Variation of First Schedule.

(2) His Majesty the Sultan and Yang Di-Pertuan in Council may from time to time by public notification declare that any crime specified in such notification and not included in the First Schedule shall form part thereof, and from and after the date of the publication of such notification the crime specified therein shall come within the operation of this Act as if the same had been originally included in the said Schedule; and His Majesty in Council may from time to time by public notification declare that any crime specified in the said Schedule or which may have been added to the said Schedule as hereinbefore provided shall no longer form part thereof, and from and after the date of the publication of such notification such crime shall cease to come within the operation of this Act.

Act may be applied by order in relation to foreign State.

4. (1) Where, on or after 1st January 1984 an extradition treaty (including an extradition treaty that affects or amends an earlier extradition treaty) comes into force between Brunei Darussalam and a foreign State, His Majesty in Council may by an order published in the *Gazette* direct that this Act applies in relation to that foreign State subject to such limitations, conditions, exceptions and qualifications as are necessary or desirable to give effect to that extradition treaty and are specified in such order.

(2) Where before 1st January 1984 an arrangement had been made between the United Kingdom and a foreign State for the mutual surrender of persons accused or convicted of crime and the operation of such arrangement has, with the consent of His Majesty, been, extended so as to apply, so far as local circumstances permit, to the mutual surrender of persons

accused or convicted of crime between such foreign State and Brunei Darussalam and His Majesty in Council has before, 1st January 1984, by order published in the *Gazette*, directed that this Act shall apply in the case of that foreign State during the continuance of the arrangement and of the application thereof to Brunei Darussalam, and after such order has been so published and for so long as the same remains unrevoked this Act shall, subject to the terms of the arrangement and of the application thereof to Brunei Darussalam, apply accordingly. No such order shall remain in force for any longer period than the arrangement or the application thereof to Brunei Darussalam, and His Majesty in Council may, by the same or any subsequent order, limit the application of this Act or render the operation thereof subject to such conditions, exceptions and qualifications as may be deemed expedient and may at any time by an order published in the *Gazette* revoke any order under this section.

(3) The notification in the *Gazette* of such order as is in subsections (1) and (2) referred to shall be conclusive evidence in all Courts of Justice —

(a) that an extradition treaty is in force between Brunei Darussalam and the foreign State specified in the order for the mutual surrender of persons accused or convicted of crime;

(b) that an arrangement exists between the United Kingdom and the foreign State specified in the order for the mutual surrender of persons accused or convicted of crime and that the operation of such arrangement has, with the consent of His Majesty, been extended so as to apply, so far as local circumstances permit, to the mutual surrender of persons accused or convicted of crime between such foreign State and Brunei Darussalam.

(4) A notification in the *Gazette* —

(a) of the terms of any such extradition treaty as aforesaid between Brunei Darussalam and a foreign State; and of the termination of any such extradition treaty;

(b) of the terms of any such arrangement as aforesaid between the United Kingdom and a foreign State, and of the terms of the application of any such arrangement to Brunei Darussalam and of the termination of such arrangement or application,

shall be conclusive evidence in all Courts of Justice of the facts in such notification appearing.

Restriction on
surrender of
criminals.

5. The following restrictions shall be observed with respect to the surrender of criminals —

(a) A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character or if he proves to the satisfaction of the magistrate or to the Attorney General that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character;

(b) A fugitive criminal shall not be surrendered to a foreign State unless provision is made by the law of that State, or by arrangement, that the fugitive criminal shall not, until he has been restored or had an opportunity of returning to Brunei Darussalam, be detained or tried in that foreign State for any offence committed prior to his surrender other than the extradition crime proved by the facts on which the surrender is grounded;

(c) A fugitive criminal who has been accused of some offence within Brunei Darussalam not being the offence for which his surrender is asked, or is undergoing sentence under any conviction in Brunei Darussalam, shall not be surrendered until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise;

(d) A fugitive criminal shall not be surrendered until the expiration of 15 days from the date of his being committed to prison to await his surrender.

6. Where this Act applies in the case of any foreign State, every fugitive criminal of that State who is in or suspected of being in Brunei Darussalam shall be liable to be apprehended and surrendered in manner provided by this Act, whether the crime in respect of which the surrender is sought was committed before or after the commencement of this Act, and whether there is or is not any concurrent jurisdiction in any court in Brunei Darussalam over that crime.

Liability of criminal to surrender.

7. (1) A requisition for the surrender of a fugitive criminal of any foreign State who is in, or suspected of being in, Brunei Darussalam shall be made to the Attorney General by a diplomatic representative of that State. The Attorney General may, by order under his hand and seal, signify to a magistrate that such requisition has been made and require him to issue his warrant for the apprehension of the fugitive criminal.

Order of Attorney General for issue of warrant if crime is not of a political character.

(2) If the Attorney General is of opinion that the offence is one of a political character, he may, if he thinks fit, refuse to send any such order and may also at any time order a fugitive criminal accused or convicted of such offence to be discharged from custody.

8. (1) A warrant for the apprehension of a fugitive criminal, whether accused or convicted of crime, who is in or suspected of being in or on the way to Brunei Darussalam may be issued —

Issue of warrant by magistrate.

(a) by a magistrate on the receipt of the said order of the Attorney General and on such evidence as would, in his opinion, justify the issue of the warrant if the crime had been committed or the criminal convicted in Brunei Darussalam; and

(b) by a magistrate on such information or complaint and such evidence or after such proceedings as would, in the opinion of the magistrate, justify the issue of a warrant if the crime had been committed or the criminal convicted in Brunei Darussalam.

(2) A magistrate issuing a warrant under this section without an order from the Attorney General shall forthwith send

a report of the fact of such issue, together with the evidence and information or complaint, or certified copies thereof, to the Attorney General, who may, if he thinks fit, order the warrant to be cancelled and the person who has been apprehended on the warrant to be discharged.

(3) A fugitive criminal apprehended on a warrant issued without the order of the Attorney General shall be discharged by the magistrate, unless the magistrate, within such reasonable time as with reference to the circumstances of the case he may fix, receives from the Attorney General an order signifying that a requisition has been made for the surrender of such criminal.

Hearing of case and evidence of political character of crime.

9. (1) When a fugitive criminal is brought before the magistrate, the magistrate shall hear the case in the same manner and have the same jurisdiction and powers, as near as may be, as if the prisoner were brought before him accused of an offence committed within his jurisdiction and triable by the High Court.

(2) The magistrate shall receive any evidence which may be tendered to show that the crime of which the prisoner is accused or alleged to have been convicted is an offence of a political character or is not an extradition crime.

Committal or discharge of prisoner.

10. (1) In the case of a fugitive criminal accused of an extradition crime, if the foreign warrant authorising the arrest of such criminal is duly authenticated and such evidence is produced as (subject to the provisions of this Act) would, according to the law in force in Brunei Darussalam, justify the committal for trial of the prisoner if the crime of which he is accused had been committed in Brunei Darussalam, the magistrate shall commit him to prison, but otherwise shall order him to be discharged.

(2) In the case of a fugitive criminal alleged to have been convicted of an extradition crime, if such evidence is produced as (subject to the provisions of this Act) would, according to the law in force in Brunei Darussalam, prove that the prisoner was convicted of such crime, the magistrate shall

commit him to prison, but otherwise shall order him to be discharged.

(3) If he commits such criminal to prison, he shall commit him to a prison or other place of safe custody in Brunei Darussalam, there to await the warrant of the Attorney General for his surrender, and shall forthwith send to the Attorney General a certificate of the committal and such report upon the case as he may think fit.

11. (1) If the magistrate commits a fugitive criminal to prison, he shall inform such criminal that he will not be surrendered until after the expiration of such period, not being less than 15 days, as the Attorney General may determine and that he has a right to apply to the High Court to direct that he be set at liberty.

Surrender of
fugitive to
foreign state
by warrant
of Attorney
General.

(2) Upon the expiration of the said period or, if an application that such fugitive criminal be set at liberty has been made to the High Court upon the final determination of such application by the said Court or after such further period as may be allowed in either case by the Attorney General, it shall be lawful for the Attorney General, by warrant under his hand and seal, to order the fugitive criminal (if not delivered on the decision of the said Court) to be surrendered to such person as may in his opinion be duly authorised to receive the fugitive criminal by the foreign State from which the requisition for the surrender proceeded, and such fugitive criminal shall be surrendered accordingly.

(3) It shall be lawful for any person to whom such warrant is directed and for the person so authorised as aforesaid to receive, hold in custody and convey within the jurisdiction of such foreign State the criminal mentioned in the warrant; and if the criminal escapes out of any custody to which he may be delivered on or in pursuance of such warrant, it shall be lawful to retake him in the same manner as any person accused of any crime against the laws of Brunei Darussalam may be retaken upon an escape.

Discharge of persons apprehended if not conveyed out of Brunei Darussalam within two months.

12. If the fugitive criminal who has been committed to prison is not surrendered and conveyed out of Brunei Darussalam within two months after such committal, or if an application that he be set at liberty be made to the High Court after the final determination of such application by the said Court, it shall be lawful for the Attorney General upon application made to him by or on behalf of the criminal, to order the criminal to be discharged out of custody, unless sufficient cause is shown to the contrary.

Execution warrant of magistrate.

13. The warrant of the magistrate issued in pursuance of this Act may be executed in any part of Brunei Darussalam in the same manner as if the same had been originally issued in the place where the same is executed.

Depositions to be evidence.

14. Depositions or statements on oath taken in a foreign State and copies of such original depositions or statements and foreign certificates of or judicial documents stating the fact of a conviction may, if duly authenticated, be received in evidence in proceedings under this Act.

Authentication of depositions and warrants.

15. Foreign warrants and depositions or statements on oath and copies thereof and certificates of or judicial documents stating the fact of a conviction shall be deemed duly authenticated for the purposes of this Act if authenticated in manner provided for the time being by law or authenticated as follows —

(a) if the warrant purports to be signed by a judge, magistrate or officer of the foreign State where the same was issued;

(b) if the depositions or statements or the copies thereof purport to be certified under the hand of a judge, magistrate or officer of the foreign State where the same were taken to be the original depositions or statements, or to be true copies thereof, as the case may require; and

(c) if the certificate of or judicial document stating the fact of conviction purports to be certified by a judge, magistrate or officer of the foreign State where the conviction took place, and

if in every case the warrants, depositions, statements, copies, certificates and judicial documents (as the case may be) are authenticated by the oath of some witness or by being sealed with the official seal of the Minister of Justice or some other Minister of State. And all courts in Brunei Darussalam shall take judicial notice of such official seal and shall admit the documents so authenticated by it to be received in evidence without further proof.

CRIMES COMMITTED AT SEA

16. Where the crime in respect of which the surrender of a fugitive criminal is sought was committed on board any vessel on the high seas which comes into any port of Brunei Darussalam the following provisions shall have effect —

Jurisdiction as to crimes committed at sea.

(a) The criminal may be committed to any prison or other place of detention to which the person committing him has power to commit persons accused of the like crime;

(b) If the fugitive criminal is apprehended on a warrant issued in Brunei Darussalam without the order of the Attorney General, he shall be brought before the magistrate who issued the warrant or who has jurisdiction in the port where the vessel lies or in the place nearest to that port.

GENERAL PROVISIONS

17. Where, in pursuance of —

(a) any extradition treaty between Brunei Darussalam and a foreign State for the mutual surrender of persons accused or convicted of crime;

(b) any arrangement between the United Kingdom and a foreign State for the mutual surrender of persons accused or convicted of crime; the operation whereof has

Criminal surrendered by foreign State not triable for previous crime.

been extended to Brunei Darussalam as in section 4(2) provided,

any person accused or convicted of committing in Brunei Darussalam any of the crimes described in the First Schedule is surrendered by a foreign State, such person shall not, until he has been restored or had an opportunity of returning to such foreign State, be triable or tried for any offence committed prior to the surrender in Brunei Darussalam other than such of the said crimes as may be provided by the facts on which the surrender is grounded.

Property may be delivered up.

18. Everything found in the possession of a fugitive criminal at the time of his apprehension which may be material as evidence in making proof of the extradition crime in respect of which he is surrendered may, on the order of a magistrate, be delivered up with the fugitive criminal on his surrender, subject to all rights of third persons in respect thereto.

Forms.

19. The forms set forth in the Second Schedule, or forms as near thereto as circumstances admit, may be used in all matters to which such forms refer and when used shall be deemed to be valid and sufficient in law.

Power of taking evidence in Brunei Darussalam for foreign criminal matters.

20. (1) The Attorney General may, by order under his hand and seal, require a magistrate to take evidence for the purposes of any criminal matter pending in any court or tribunal in any foreign State, and the magistrate, upon the receipt of such order, shall take the evidence of every witness appearing before him for the purpose in like manner as if such witness appeared on a preliminary inquiry into the case of the person accused of an offence triable by the High Court and shall certify at the foot of the depositions so taken that such evidence was taken before him and shall transmit the same to the Attorney General: such evidence may be taken in the presence or absence of the accused person, if any, and the fact of such presence or absence shall be stated in such depositions.

(2) Any person may, after payment or tender to him of a reasonable sum for his costs and expenses in this behalf, be compelled for the purposes of this section to attend and give evidence and answer questions and produce documents in like

manner and subject to the like conditions as he may for the purposes of a preliminary inquiry into the case of a person accused of an offence triable by the High Court and every such person shall in respect of all evidence and answers given by him be legally bound to state the truth.

(3) Nothing in this section shall apply in the case of any criminal matter of a political character.

21. For the purposes of this Act every constituent part of a foreign State and every colony, dependency or protectorate, and every vessel of, that country shall be deemed to be within the jurisdiction of and to be part of such foreign State.

Foreign
country
includes
dependencies,
etc.

FIRST SCHEDULE

(Section 2)

List of Crimes

Murder and attempt to murder;

Culpable homicide not amounting to murder;

Counterfeiting and altering money and uttering counterfeit or altered money;

Forgery, counterfeiting and altering, and uttering what is forged or counterfeited or altered;

Criminal breach of trust and theft;

Cheating and thereby dishonestly inducing delivery of property;

Offences punishable under the laws relating to bankruptcy with imprisonment for a term which may extend to one year or over;

Criminal misappropriation;

Rape;

Abduction;

Kidnapping;

Housebreaking;

Mischief by fire;

Robbery;

Extortion or attempt to commit extortion;

Piracy by law of nations;

Sinking or destroying a vessel at sea, or attempting or conspiring to do so;

Assault on board a ship on the high seas with intent to destroy life or to cause grievous hurt;

Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master;

Buying or disposing of any person as a slave or habitually dealing in slaves;

Wrongly confinement;

Giving, fabricating or using false evidence;

Dishonestly receiving stolen property;

Any offence not before mentioned which is punishable under the following provisions of law or any of them or under any law amending or substituted for the same:

The Penal Code —

Sections 161 to 165, inclusive (bribery);

Sections 231 to 254, inclusive (coin);

Sections 312 to 318, inclusive, 323 to 333, inclusive, 335 to 353 to 357, inclusive, 372, 373, 373A and 377 (offences affecting the human body);

Unlawful Carnal knowledge of girl under sixteen years of age.

Sections 427 to 440, inclusive (mischief);

Section 477 (fraudulent cancellation; etc., of document);

Section 494 (bigamy);

Any malicious act done with intent to endanger the safety of any person in a railway train;

Any offence against any Act for the time being in force relating to dangerous drugs and any attempt to commit such an offence;

Any other offence added from time to time to this schedule in manner provided by section 3;

Abetment of any offence included for the time being in this schedule, and the commission in respect thereof of any offence described in sections 212, 213, 216, or 511 of the Penal Code.

SECOND SCHEDULE

(Section 19)

Forms

Form 1

Order of Attorney General to the Magistrate

To _____, a magistrate.

Whereas, a requisition has been made to me the Attorney General, Brunei Darussalam, by _____, the diplomatic representative of _____,

foreign State in relation to which the Extradition Act applies for the surrender of _____, late of _____, accused (or convicted) of the commission of the crime of _____ within the jurisdiction of _____ :

Now I, _____, Attorney General, Brunei Darussalam, do hereby by this may order under my hand and seal, signify to you that such requisition has been made and require you to issue your warrant for the apprehension of such fugitive, provided that the conditions of the Extradition Act relating to the issue of such warrant are, in your judgment, complied with.

Given under the hand and seal of the undersigned, Attorney General, Brunei Darussalam this _____ day of _____, 19 _____.

Form 2

Warrant of Apprehension by Order of Attorney General

To the Commissioner of Police _____ and all other police officers of Brunei Darussalam.

Whereas the Attorney General has _____, by order under his hand and seal, signified to me that requisition has been duly made to him for the surrender of _____, late of _____ accused [or convicted] of the commission of the crime of _____ within the jurisdiction of _____ :

This is therefore to command you forthwith to apprehend the said _____ pursuant to the Extradition Act, wherever he may be found in Brunei Darussalam, and to bring him before me or some other Magistrate in Brunei Darussalam to show cause why he should not be surrendered in pursuance of the said Act, for which this shall be your warrant.

Given under my hand and seal at _____, this _____ day of _____, 19 _____.

(Magistrate)

Form 3

Warrant of Apprehension without Order of Attorney General

To the Commissioner of Police _____ and all other police officers of Brunei Darussalam.

Whereas it has been shown to the undersigned, a Magistrate that _____, late of _____, is accused [or convicted] of the commission of the crime of _____ within the jurisdiction of _____ :

This is therefore to command you forthwith to apprehend the said _____ pursuant to the Extradition Act, wherever he may be found in Brunei

Darussalam, and to bring him before me or some other Magistrate in Brunei Darussalam, to be further dealt with according to law, for which this shall be your warrant.

Given under my hand and seal at _____, this _____ day of _____, 19____.

(Magistrate)

Form 4

Warrant of Committal

To _____, *police officer, and to the officer in charge of the prison at*

Whereas on this _____ day of _____, 19____, _____, late of _____ is brought before me, a Magistrate, to show cause why he should not be surrendered in pursuance of the Extradition Act, on the ground of his being accused [or convicted] of the commission of the crime of _____ within the jurisdiction of _____: And whereas no sufficient cause has been shown to me why he should not be surrendered in pursuance of the said Act:

This is therefore to command you, the said police officer, forthwith to convey and deliver the said _____ into the custody of the officer in charge of the prison at _____ and you, the said officer in charge of the prison, to receive the said _____ into your custody and him there safely to keep until he is thence delivered pursuant to the provisions of the said Act, for which this shall be your warrant.

Given under my hand and seal at _____, this _____ day of _____, 19____.

(Magistrate)

Form 5

Warrant of Attorney General for Surrender of Fugitive

To the officer in charge of the prison at _____ and to

Whereas _____, late of _____ accused [or convicted] of the commission of the crime of _____ within the jurisdiction of _____, was delivered into the custody of you, the officer in charge of the prison at _____, by warrant dated _____ pursuant to the Extradition Act:

Now I do hereby, in pursuance of the said Act, order you, the said officer in charge of the prison, to deliver the said _____ into the custody of the said _____, and I command you, the said _____, to receive the said _____ into your custody and to convey him _____ and there

place him in the custody of any person or persons appointed by the authorities of _____ to receive him, for which this shall be your warrant.

Given under my hand and seal of the undersigned, Attorney General, Brunei Darussalam, this _____ day of _____, 19 ____ .

SUBSIDIARY LEGISLATION

Foreign States to which the Act applies by order under section 4(2)

1. Albania	19. Iraq	B.R.O.N. 16.2.35
2. Austria	20. Latvia	B.R.O.N. 1.6.35
3. Belgium	21. Lithuania	B.R.O.N. 22/38
4. Bolivia	22. Luxemburg	B.R.O.N. 25/38
5. Chile	23. Monaco	B.R.O.N. 26/38
6. Colombia	24. Nicaragua	B.R.O.N. 32/38
7. Cuba	25. Norway	B.R.O.N. 56/38
8. Czechoslovakia	26. Panama	B.R.O.N. 151/51
9. Denmark	27. Paraguay	S 43/61
10. Ecuador	28. Peru	S 127/66
11. El Salvador	29. Poland	S 197/73
12. Estonia	30. Portugal	
13. Finland	31. Romania	
14. Greece	32. Spain	
15. Guatemala	33. Switzerland	
16. Haiti	34. Yugoslavia	
17. Hungary	35. Federal Republic of Germany	
18. Iceland	36. Sweden	