

Extradition Act

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Date of entry into force:01 January 1966

2. Interpretation.

(1)In this Act, unless the context otherwise requires,-

"Conviction" and "convicted" do not include a conviction which under foreign law is a conviction for contumacy; but "accused person" includes a person convicted under foreign law for contumacy;

"Court" means a District Court presided over by a District Court Judge;

"Deposition" includes any affidavit or statement made on oath; and also includes any statement made before any Court or judicial officer, if under the law of the country in which it is made a person making such a statement falsely is liable to punishment;

"Extradition treaty", or "treaty", means any treaty or agreement for the time being in force between New Zealand and any foreign country or countries for the surrender of offenders;

"Extradition offence", in relation to any foreign country, means any act or omission which, if it occurred in New Zealand, would be one of the crimes described in the First Schedule of this Act, and which amounts to one of the offences described in the extradition treaty with that country and is punishable in that country; and also has the extended meaning given by subsection (2) of this section;

"Foreign country" includes any territory for whose international relations the Government of a foreign country is responsible and to which the extradition treaty with that country extends;

"Minister" means the Minister of Justice;

"Oath", in relation to any country, includes affirmation, where affirmation is allowed by the law of the country;

"Offender" means a person accused or convicted of an extradition offence committed within the jurisdiction of a foreign country; and references to an offender of any country have a corresponding meaning;

"Warrant", in relation to any country, includes any judicial document authorising the arrest of a person accused or convicted of an offence.

(2) For the purposes of this Act, the expression "extradition offence", in relation to any foreign country, shall also include any act or omission which, if it occurred in New Zealand, would be one of the crimes of -

(a) Conspiring to commit any extradition offence (being a conspiracy to which section 310 of the Crimes Act 1961 applies); or

(b) Attempting to commit any extradition offence, or inciting, counselling, or attempting to procure any person to commit any extradition offence that is not committed (being any case to which section 311 of the Crimes Act 1961 applies); or

(c) Being accessory after the fact to any extradition offence (being any case to which section 312 of the Crimes Act 1961 applies); or

(d) Aiding, inciting, counselling, or procuring the doing or omission of an act outside New Zealand which, in New Zealand, would be murder, or inciting, counselling, or attempting to procure the doing or omission of any such act that is not in fact committed (being any case to which section 68 of the Crimes Act 1961 applies); or

(e) Aiding, inciting, counselling, or procuring the doing or omission of an act outside New Zealand which, in New Zealand, would be a crime other than murder (being any case to which subsection (3) of section 69 of the Crimes Act applies) and which is an extradition offence - and which amounts to one of the offences described in the extradition treaty with that country and is punishable in that country.

(3) For the purposes of this Act, any vessel or aircraft recognised by the law of any country as belonging to that country shall be deemed to be within the jurisdiction of and to be part of that country.

3. Application of this Act.

(1) Where a treaty has been concluded (whether before or after the commencement of this Act) between New Zealand and any foreign country in respect of the surrender of offenders, the Governor-General may by Order in Council apply this Act to that foreign country.

(2) Every such Order in Council shall recite the terms of the treaty, and shall cease to have effect when the treaty ceases to be in force.

(3) Where by virtue of any such Order in Council this Act applies to any foreign country, the treaty shall be read subject to subsections (1) to (6) of section 5 of this Act.

(4) Except as provided in subsection (3) of this section, this Act shall be read subject to the terms of the treaty and shall be so construed as to give effect to the treaty.

(5) While any such Order in Council continues to have effect it shall be conclusive evidence of the terms of the treaty and of the fact that this Act applies to the foreign country.

5. Restrictions on surrender.

(1) An offender shall not be surrendered to a foreign country -

(a) If the offence in respect of which his surrender is requested is one of a political character; or

(b) If he proves to the satisfaction of the Court or of the Minister, or, where he is brought before [the High Court] or a Judge on habeas corpus, to the satisfaction of [the High Court] or Judge, that the request for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

(2) An offender shall not be surrendered to a foreign country unless provision is made by the law of that country, or by the extradition treaty, that the offender will not, until he has left or has had an opportunity of leaving the foreign country, be detained or tried in that country for any offence committed before his surrender other than an extradition offence disclosed by the facts on which the surrender is grounded.

(3) An offender who has been acquitted, on account of his insanity, of any offence within the jurisdiction of New Zealand, and who, consequent on such acquittal, is detained in any [hospital under [[Part VII of the Criminal Justice Act 1985]]], shall not be surrendered until in accordance with law he ceases to be so detained.

(4) An offender who has been convicted of any offence within the jurisdiction of New Zealand, and who, consequent on his conviction, is detained in a penal institution or detained under [Part IV of the Mental Health Act 1969], shall not be surrendered until in accordance with law he ceases to be so detained.

(5) Where, in any case to which subsection (3) or subsection (4) of this section does not apply, an offender has been accused of an offence within the jurisdiction of New Zealand, not being the offence for which his surrender is requested, he shall not be surrendered until the proceedings against him have been disposed of.

(6) An offender shall not be surrendered until after the expiration of 15 days from the date of his being committed to custody to await his surrender or, in any case where a writ of habeas corpus is issued, until after [the High Court] has decided, on the return to the writ, that he is not to be discharged from custody, whichever event last happens.

(7) In every extradition treaty made between New Zealand and a foreign country after the commencement of this Act provision shall be made [either to the effect that no New Zealand citizen shall be surrendered or] to the effect that the Minister may in his discretion refuse to surrender an offender who is a New Zealand citizen.

6. Request for surrender.

(1) Every request for the surrender of an offender who is in or suspected of being in New Zealand shall be made to [the Minister of Foreign Affairs], for transmission to the Minister of Justice,-

(a) By a diplomatic or consular representative, or a Minister, of the country which seeks his surrender; or

(b) By such other means as is prescribed in the treaty.

(2) Where a request is so made, the Minister of Justice may, by writing, notify a [District Court Judge] that it has been made and request him to issue a warrant for the arrest of the offender.

(3) If the Minister of Justice is of opinion that the offence to which any request under subsection (1) of this section relates is one of a political character, he may if he thinks fit refuse to notify a [District Court Judge] as aforesaid, and may also at any time order an offender accused or convicted of the offence to be discharged from custody.

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