



ANALYSIS

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1976, No. 2

An Act to amend the Fugitive Offenders Act 1881 of the United Kingdom Parliament in its application to New Zealand as part of the law of New Zealand

[15 July 1976]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Fugitive Offenders Amendment Act 1976.

2. Act to be read with Fugitive Offenders Act 1881 (U.K.)—(1) This Act shall, for the purposes of the law of New Zealand, be read together with and deemed part of the Fugitive Offenders Act 1881 of the United Kingdom Parliament (hereinafter referred to as the principal Act).

(2) It is hereby declared that the Acts Interpretation Act 1924, as far as it is applicable and with the necessary modifications, shall apply with respect to the principal Act as if it were an Act of the General Assembly of New Zealand.

3. Interpretation—For the purposes of the principal Act, as amended by this Act in its application to New Zealand as part of the law of New Zealand,—

“The Commonwealth” means the Commonwealth of Nations:

“Part of the Commonwealth” or “Commonwealth country” means a country that is a member of the Commonwealth; and includes any territory for whose international relations a country that is a member of the Commonwealth is responsible; and also includes the Republic of Ireland as if that country were a member of the Commonwealth.

4. Fugitive Offenders Act 1881 (U.K.) to be in force in New Zealand—For the avoidance of doubt, it is hereby declared that—

- (a) The principal Act is and always has been in force in New Zealand as part of the law of New Zealand:
- (b) The Order in Council made by His Majesty pursuant to the principal Act on the 12th day of October 1925 applying Part II thereof to New Zealand, and published in the *Gazette* on the 14th day of January 1926 at page 77, is and always has been in force in New Zealand as part of the law of New Zealand.

5. Amendments of principal Act—In the application to New Zealand as part of the law of New Zealand of the principal Act and the Order in Council referred to in section 4 (b) of this Act—

- (a) Every reference therein to Her Majesty’s dominions shall be read as if it were a reference to the Commonwealth; and
- (b) Every reference therein to a British possession (including a reference to a possession) shall be read as if it were a reference to a Commonwealth country; and
- (c) The principal Act shall have effect as amended in the manner specified in the Schedule to this Act.

6. Evidence—In the application of the principal Act to New Zealand as part of the law of New Zealand, section 29 shall have effect as amended—

- (a) By omitting the first paragraph, and substituting the following paragraph:

“For the purpose of obtaining the return to New Zealand from any other Commonwealth

country of a person accused of an offence, a magistrate may (in the absence of that person) take depositions and accept in evidence statements made on oath (including affidavits).”:

- (b) By omitting from the second paragraph the words “Depositions (whether taken in the absence of the fugitive or otherwise)”, and substituting the words “Depositions taken and statements (including affidavits) made on oath either before a magistrate or in any proceedings in a Commonwealth country outside New Zealand (whether taken or made in the absence of the fugitive or otherwise)”:
- (c) By inserting in the third paragraph, after the words “such depositions”, the words “statements (including affidavits)”:
- (d) By omitting from the fourth paragraph the words “Warrants and depositions”, and substituting the words “Warrants, depositions, and statements (including affidavits) made on oath either before a magistrate or in any proceedings”.

7. Restrictions on return—The principal Act in its application to New Zealand as part of the law of New Zealand shall have effect as amended by inserting, after the heading “*Miscellaneous*” and before section 30, the following section:

“29A. (1) Notwithstanding anything in this Act, a fugitive or a person accused of an offence shall not be returned under this Act from New Zealand to another Commonwealth country if the offence in respect of which his return is sought is an offence of a political character.

“(2) Notwithstanding anything in this Act, a fugitive or a person accused of an offence shall not be returned under this Act from New Zealand to another Commonwealth country if—

- “(a) In any case to which Part I of this Act applies, it appears to the Minister of Justice, or to any court before which the fugitive is brought, or to any court or Judge on an application for a writ of habeas corpus; or
- “(b) In any case to which Part II of this Act applies, it appears to any court before which the accused person is brought, or to any court or Judge on an application for a writ of habeas corpus—

that—

“(c) The return of the fugitive or accused person, although purporting to have been sought in respect of an offence for which, but for this subsection, he would be liable to be returned, was sought for the purpose of—

“(i) Prosecuting or punishing him for an offence of a political character; or

“(ii) Prosecuting or punishing him on account of his race, religion, nationality, or political opinions; or

“(d) If the fugitive or accused person is returned, he may be prejudiced at his trial, or punished, detained, or restricted in his personal liberty, by reason of his race, religion, nationality, or political opinions.”

8. Repeals—Sections 11, 20, 21, 23, 25, 27, 32, 36, and 38 of the principal Act shall cease to have effect as part of the law of New Zealand.

9. Validation—Every warrant issued or endorsed or executed in New Zealand under the principal Act before the passing of this Act and every order made in New Zealand under the principal Act before the passing of this Act which would have been validly issued or endorsed or executed or made if this Act had been in force when it was issued or endorsed or executed or made is hereby declared to be and always to have been validly issued or endorsed or executed or made, and any proceedings instituted under the principal Act before the passing of this Act may be continued and dealt with under the principal Act as amended by this Act:

Provided that nothing in this section shall affect the rights of the parties under any order made in any Court or by any Judge before the passing of this Act in proceedings on an application for habeas corpus.

Section 5 (c)

SCHEDULE

AMENDMENTS OF PRINCIPAL ACT IN ITS APPLICATION TO NEW ZEALAND

Section of Principal Act Amended	Amendment
Section 3	By omitting the words "and (3) In a British possession the governor of that possession".
Section 4	By omitting from the second paragraph all words after the words "to a Secretary of State", and substituting the words "and, if he is in some other part of the Commonwealth, to the Minister of Justice or Attorney-General of that part, and the Secretary of State or Minister of Justice or Attorney-General may, if he thinks fit, discharge the person apprehended under that warrant".
Section 5	By omitting from the second paragraph the words "and if in a British possession to the governor of that possession", and substituting the words "and if in some other part of the Commonwealth to the Minister of Justice or Attorney-General of that part".
Section 6	By omitting the words "(2) if the fugitive is so committed in a British possession the governor of that possession", and substituting the words "(2) if the fugitive is so committed in some other part of the Commonwealth, the Minister of Justice or Attorney-General of that part". By omitting from the second paragraph the words "and on payment or tender of a reasonable amount for expenses".
Section 7	By omitting the words "a British possession, to the governor of the possession", and substituting the words "some other part of the Commonwealth, to the Minister of Justice or Attorney-General of that part".
Section 8	By omitting the words "a British possession the governor of that possession", and substituting the words "some other part of the Commonwealth the Minister of Justice or Attorney-General of that part".
Section 9	By omitting from the first paragraph the words "with hard labour", and also the words "and for the purposes of this section rigorous imprisonment, and any confinement in a prison combined with labour, by whatever name it is called, shall be deemed to be imprisonment with hard labour".

SCHEDULE—*continued*AMENDMENTS OF PRINCIPAL ACT IN ITS APPLICATION TO NEW ZEALAND—*continued*

Section of Principal Act Amended	Amendment
Section 18	By omitting the word “governor”, and substituting the words “Minister of Justice or Attorney-General”.
Section 29 ..	By omitting from the fourth paragraph all words after the words “the oath of some witness”, and substituting the words “or if they purport to be signed by or sealed with the official seal of the Minister of Justice or some other Minister or the Attorney-General, or with the official seal of a Ministry or Department of State, of the Commonwealth country in which the same are issued, taken, or made”. By inserting in the last paragraph, before the word “seal”, the words “signature or”.
Section 33 ..	By omitting from the proviso the words “a British possession the governor of such possession”, and substituting the words “some other part of the Commonwealth, the Minister of Justice or Attorney-General of that part”.
Section 35 ..	By omitting the words “a British possession the governor of that possession”, and substituting the words “any other part of the Commonwealth the Minister of Justice or Attorney-General of that part”.
Section 39 ..	By repealing the definitions of the terms “British possession”, “legislature”, “governor”, “offence punishable by indictment”, and “deposition”. By repealing the definition of the term “superior court”, and substituting the following definition: “‘Superior court’, in relation to a Commonwealth country, means any court that has jurisdiction to try an accused person on indictment; and includes any other court recognised in that country as a superior court.”

This Act is administered in the Department of Justice.