

**Reprint
as at 5 December 2013**



Extradition Act 1999

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Commencement see section 1(2)

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Justice.

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An Act to consolidate and amend the law relating to the extradition of persons to and from New Zealand

1 Short Title and commencement

- (1) This Act may be cited as the Extradition Act 1999.
- (2) This Act comes into force on 1 September 1999.

Part 1

Preliminary provisions

Interpretation

2 Interpretation

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

Attorney-General means the Attorney-General of New Zealand

country includes any State, territory, province, or other part of a country

deposition includes—

- (a) an affidavit or statement made on oath;
- (b) an affidavit or statement made by affirmation where that is allowed or required by the law of the country in which the affidavit or statement is made;
- (c) a statement made before any court or judicial authority if, under the law of the country in which it is made, a person making such a statement falsely is liable to punishment

designated country means a country in respect of which there is in force an Order in Council made under section 40 that provides that Part 4 applies to that country

exempted country means any country to which Part 3 applies and in respect of which there is in force an Order in Council made under section 17

extraditable person has the meaning given to it in section 3

extradition country means,—

- (a) in this Part, Part 2, and Parts 7 to 12, any country to which Part 3 or Part 4 applies:
- (b) in Part 3, any country to which that Part applies under section 13:
- (c) in Part 4, any country to which that Part applies under section 39:
- (d) in Part 6, a country that surrenders a person to New Zealand;—

but does not include New Zealand

extradition offence has the meaning given to it in section 4

extradition treaty or treaty—

- (a) means any treaty or agreement for the time being in force between New Zealand and any country or countries for the surrender of persons accused or convicted of offences; and
- (b) includes a treaty described in paragraph (a) that applies in respect of part only of a country

hospital means a hospital as defined in section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992

Minister means the Minister of Justice

offence includes an offence relating to revenue (including taxation and customs and excise duties) or foreign exchange controls

penalty does not include any penalty consisting of the payment of money or the forfeiture of property

prison means a prison established or deemed to be established under the Corrections Act 2004

provisional arrest warrant means,—

- (a) in relation to Part 3, a warrant issued under section 20:
- (b) in relation to Part 4, a warrant issued under section 42

sentence of imprisonment includes, in relation to New Zealand, a sentence of preventive detention

warrant includes any judicial document authorising the arrest of a person.

- (2) References in this Act to **the law of any country** include references to the law of any part of that country.

- (3) In this Act, a reference to an **offence of a political character** does not include—
- (a) an offence—
 - (i) that is constituted by conduct of a kind referred to in a multilateral treaty to which New Zealand is a party; and
 - (ii) for which parties have an obligation to extradite or prosecute; or
 - (b) any offence in relation to which New Zealand has agreed in writing with another country that the offence will not be treated as a political offence for the purposes of extradition between New Zealand and that country.
- (4) For the purposes of section 33(1) and section 54(1) and 54(3), a person is not liable to be detained in a prison if the person is—
- (a) subject to a suspended sentence of imprisonment that has not been activated; or
 - (b) on parole, home detention, or compassionate release, or is subject to release conditions, under Part 1 of the Parole Act 2002; or
 - (ba) subject to a sentence of home detention imposed under section 80A of the Sentencing Act 2002; or
 - (c) *[Repealed]*
 - (d) at large under section 62 of the Corrections Act 2004; or
 - (e) subject to a community-based sentence (within the meaning of section 4(1) of the Sentencing Act 2002).

Compare: 1965 No 44 s 2

Section 2(1) **penal institution**: repealed, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 2(1) **prison**: inserted, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 2(4): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 2(4)(b): substituted, on 30 June 2002, by section 125 of the Parole Act 2002 (2002 No 10).

Section 2(4)(ba): inserted, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 2(4)(c): repealed, on 30 June 2002, by section 125 of the Parole Act 2002 (2002 No 10).

Section 2(4)(d): amended, on 1 June 2005, pursuant to section 206 of the Corrections Act 2004 (2004 No 50).

Section 2(4)(e): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

3 Meaning of extraditable person

In this Act, a person is an **extraditable person** in relation to an extradition country if—

- (a) the person is accused of having committed an extradition offence against the law of that country; or
- (b) the person has been convicted of an extradition offence against the law of that country and—
 - (i) there is an intention to impose a sentence on the person as a consequence of the conviction; or
 - (ii) the whole or a part of a sentence imposed on the person as a consequence of the conviction remains to be served.

4 Meaning of extradition offence

- (1) In this Act, **extradition offence** means, subject to an extradition treaty,—
 - (a) in relation to an extradition country, an offence punishable under the law of the extradition country for which the maximum penalty is imprisonment for not less than 12 months or any more severe penalty, and which satisfies the condition in subsection (2);
 - (b) in relation to a request by New Zealand, an offence punishable under the law of New Zealand for which the maximum penalty is imprisonment for not less than 12 months or any more severe penalty.
- (2) The condition referred to in subsection (1)(a) is that if the conduct of the person constituting the offence in relation to the extradition country, or equivalent conduct, had occurred within the jurisdiction of New Zealand at the relevant time it would, if proved, have constituted an offence punishable under the law of New Zealand for which the maximum penalty is imprisonment for not less than 12 months or any more severe penalty.
- (3) For the purposes of determining whether the condition in subsection (2) is satisfied in relation to a particular application

for surrender of a person, the relevant time referred to in subsection (2) is the time at which the conduct is alleged to have occurred.

- (4) In determining the maximum penalty for an offence against the law of any foreign country for which no statutory penalty is imposed, regard must be had to the level of penalty that can be imposed by a court for the offence.

Section 4(1)(a): amended, on 19 December 2002, by section 3(1)(a) of the Extradition Amendment Act (No 2) 2002 (2002 No 64).

Section 4(1)(a): amended, on 19 December 2002, by section 3(1)(b) of the Extradition Amendment Act (No 2) 2002 (2002 No 64).

Section 4(1)(b): amended, on 19 December 2002, by section 3(2) of the Extradition Amendment Act (No 2) 2002 (2002 No 64).

5 Interpretation provisions relating to offences

- (1) A reference in this Act to **conduct constituting an offence** is a reference to the acts or omissions, or both, by virtue of which the offence has, or is alleged to have, been committed.
- (2) In making a determination for the purposes of section 4(2), the totality of the acts or omissions alleged to have been committed by the person must be taken into account and it does not matter whether under the law of the extradition country and New Zealand—
- (a) the acts or omissions are categorised or named differently; or
 - (b) the constituent elements of the offence differ.
- (3) An offence may be an extradition offence although—
- (a) it is an offence against a law of the extradition country relating to revenue (including taxation and customs and excise duties) or foreign exchange controls; and
 - (b) New Zealand does not impose a tax, duty, or other impost of that kind.
- (4) For the purposes of this Act, any vessel or aircraft recognised by the law of any country as belonging to that country is deemed to be within the jurisdiction of and to be part of that country.
- (5) If a person has been convicted in his or her absence of an offence against the law of an extradition country, whether or not the conviction is a final conviction, then, for the purposes of

this Act, the person is deemed not to have been convicted of that offence but is deemed to have been accused of that offence.

Compare: 1965 No 44 s 2(3); Extradition Act 1988 s 10(1), (2), (3) (Aust)

Application of Act

6 Application of Act

- (1) An extraditable person who is in New Zealand and who is sought by an extradition country may be surrendered in accordance with either Part 3 or Part 4—
 - (a) whether the conduct in respect of which surrender is sought occurred before or after—
 - (i) the commencement of this Act; or
 - (ii) the application of the provisions of this Act to that country; and
 - (b) whether or not any New Zealand court has jurisdiction in respect of that conduct.
- (2) This section is subject to the other provisions of this Act.

Compare: 1965 No 44 s 4

Restrictions on surrender

7 Mandatory restrictions on surrender

A mandatory restriction on surrender exists if—

- (a) the offence for which the surrender is sought is an offence of a political character; or
- (b) the surrender of the person, although purportedly in respect of an extradition offence, is actually sought for the purpose of prosecuting or punishing the person on account of his or her race, ethnic origin, religion, nationality, sex, or other status, or political opinions, or for an offence of a political character; or
- (c) on surrender, the person may be prejudiced at his or her trial or punished, detained, or restricted in his or her personal liberty by reason of his or her race, ethnic origin, religion, nationality, sex, or other status, or political opinions; or
- (d) the conduct for which the surrender is sought would have constituted an offence under military law only and

not an offence under the ordinary criminal law of the extradition country; or

- (e) the person has been acquitted or pardoned by a competent tribunal or authority in the extradition country or New Zealand, or has undergone the punishment provided by the law of that country or New Zealand, in respect of the extradition offence or another offence constituted by the same conduct as constitutes the extradition offence; or
- (f) the person is detained in a hospital as a **special patient** within the meaning of that term in section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
- (g) the person is detained in a facility as a special care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

Compare: Fugitive Offenders Act 1881 s 29A(1), (2) (Imp); 1965 No 44 s 5(1)(a), (b), (3), (4)

Section 7(f): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 7(g): added, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

8 Discretionary restrictions on surrender

- (1) A discretionary restriction on surrender exists if, because of—
 - (a) the trivial nature of the case; or
 - (b) if the person is accused of an offence, the fact that the accusation against the person was not made in good faith in the interests of justice; or
 - (c) the amount of time that has passed since the offence is alleged to have been committed or was committed,— and having regard to all the circumstances of the case, it would be unjust or oppressive to surrender the person.
- (2) A discretionary restriction on surrender exists if the person has been accused of an offence within the jurisdiction of New Zealand (other than an offence for which his or her surrender is sought), and the proceedings against the person have not been disposed of.

Compare: Fugitive Offenders Act 1881 s 19 (Imp); 1965 No 44 s 5(5)

9 Application of sections 7 and 8

Parts 3 and 4 set out the circumstances in which the mandatory and discretionary restrictions on surrender set out in sections 7 and 8 are to be considered, and who makes the decision in any particular case as to whether a restriction applies.

*Act binds the Crown***10 Act binds the Crown** This

Act binds the Crown.

*Construction of treaties***11 Construction of extradition treaties**

- (1) If there is an extradition treaty in force between New Zealand and an extradition country, the provisions of this Act must be construed to give effect to the treaty.
- (2) Despite subsection (1), no treaty may be construed to override—
 - (a) section 7; or
 - (b) section 24(2)(d) or section 45(5); or
 - (c) subsection (2)(b) or subsection (3)(a) of section 30 (including where those provisions are applied under section 49); or
 - (d) any provision conferring a particular function or power on the Minister or a court.
- (3) This section is subject to section 105.

Part 2
Object of this Act**12 Object of this Act**

The object of this Act is to provide for the surrender of an accused or convicted person from New Zealand to an extradition country or from an extradition country to New Zealand, and in particular—

- (a) to enable New Zealand to carry out its obligations under extradition treaties; and

- (b) to provide a means for New Zealand to give effect to requests for extradition from Commonwealth countries; and
- (c) to provide a means for New Zealand to give effect to requests for extradition from non-Commonwealth countries with which New Zealand does not have an extradition treaty; and
- (d) to provide a simplified procedure for New Zealand to give effect to requests for extradition from Australia and certain other countries; and
- (e) to facilitate the making of requests for the extradition of persons to New Zealand.

Part 3
**Extradition from New Zealand to
certain treaty countries and certain
Commonwealth and other countries**

Application of this Part

13 Countries to which this Part applies

This Part applies to—

- (a) any Commonwealth country other than a Commonwealth country to which Part 4 applies; and
- (b) any country if an Order in Council is in force under section 15 or section 16 applying this Part to that country; and
- (c) any country in respect of which an Order in Council is in force or has effect under section 104; and
- (d) any country to which the provisions of this Part are applied in particular circumstances under section 60.

14 No treaty required for Commonwealth countries

- (1) If this Part applies to a Commonwealth country, it applies—
 - (a) without the need for an extradition treaty between New Zealand and that country; and
 - (b) without the need for an Order in Council to be made applying this Part to that country.
- (2) Nothing in this section prevents—

- (a) a treaty being made between New Zealand and a Commonwealth country; or
- (b) an Order in Council being made under section 15 or section 17 in relation to that country.

15 Orders in Council in respect of treaties

- (1) If, after the commencement of this Act, an extradition treaty is concluded between New Zealand and another country (including a treaty that amends or is in substitution for an earlier extradition treaty in force between New Zealand and that country), the Governor-General may, by Order in Council, apply this Part to that country (or, if the treaty applies in respect of part only of the country, to that part of the country).
- (2) An Order in Council made under subsection (1) must recite the terms of the treaty.
- (3) An Order in Council made under subsection (1) ceases to have effect when the treaty ceases to be in force.
- (4) An Order in Council made under subsection (1) is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Compare: 1965 No 44 s 3(1), (2)

Section 15(1): amended, on 18 June 2002, by section 3 of the Extradition Amendment Act 2002 (2002 No 21).

Section 15(4): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

16 Extradition to non-Commonwealth countries in absence of treaty

- (1) If—
 - (a) there is no extradition treaty in force between New Zealand and a particular country; and
 - (b) there is no Order in Council in force under section 15 in relation to that country; and
 - (c) the country is not a Commonwealth country or a designated country,—the Governor-General may, by Order in Council, made on the recommendation of the Minister, apply this Part to that country

subject to such limitations, conditions, exceptions, or qualifications as may be specified in the order.

- (2) The Minister must not recommend the making of an Order in Council under subsection (1) unless the Minister is satisfied that the country is able to return to New Zealand persons accused or convicted of a similar range of extradition offences to those to which the proposed order would relate.
- (3) An Order in Council made under subsection (1) is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 16(3): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Exempted countries

17 Exempted countries

- (1) The Governor-General may from time to time, by Order in Council, made on the recommendation of the Minister, declare that a country to which this Part applies under section 13 is also a country to which section 25 applies (an **exempted country**).
- (2) Before recommending the making of an Order in Council under subsection (1), the Minister must consider whether, with respect to the requirements to produce evidence, the country to be exempted is able to deal with extradition requests from New Zealand in any manner that has similar effect to that permitted by section 25 in relation to requests to New Zealand from the country to be exempted.

Extradition proceedings

18 Request for surrender

- (1) A request by an extradition country for the surrender of a person who—
 - (a) is an extraditable person in relation to that country; and
 - (b) is, or is suspected of being, in New Zealand or on his or her way to New Zealand,—must be transmitted to the Minister of Justice.
- (2) The request must be made—

- (a) by a diplomatic or consular representative, or a Minister, of the country that seeks the person's surrender; or
 - (b) by such other means as is prescribed in a treaty (if any) in force between New Zealand and the extradition country or in any undertakings between New Zealand and the extradition country.
- (3) The request must be accompanied by duly authenticated supporting documents.
- (4) In this section, **supporting documents**, in relation to an extradition offence, means,—
- (a) if the offence is an offence of which the person is accused,—
 - (i) a warrant for the arrest of the person for the offence issued in the extradition country by a court or a Judge or other person having authority under the law of the extradition country to issue it; or
 - (ii) a copy of such a warrant:
 - (b) if the offence is an offence of which the person has been convicted, such documents as provide evidence of—
 - (i) the conviction; and
 - (ii) the sentence imposed or the intention to impose a sentence (where relevant); and
 - (iii) the extent to which a sentence imposed has not been carried out (where relevant):
 - (c) in the case of any offence, a written deposition setting out—
 - (i) a description of, and the penalty applicable in respect of, the offence; and
 - (ii) the conduct constituting the offence.

Compare: 1965 No 44 s 6(1); Extradition Act 1988 s 19(3) (Aust)

Section 18(1): amended, on 19 December 2002, by section 4(1) of the Extradition Amendment Act (No 2) 2002 (2002 No 64).

Section 18(4)(a)(i): substituted, on 19 December 2002, by section 4(2) of the Extradition Amendment Act (No 2) 2002 (2002 No 64).

19 Minister may request issue of arrest warrant

- (1) If a request is made under section 18, the Minister may, in writing, notify a District Court Judge that it has been made

and request that the Judge issue a warrant for the arrest of the person whose surrender is sought.

- (2) After receiving a request under subsection (1), the District Court Judge may issue a warrant in the prescribed form for the arrest of the person if the Judge is satisfied on the basis of information presented to him or her that—
- (i) the person is, or is suspected of being, in New Zealand or on his or her way to New Zealand; and
 - (ii) there are reasonable grounds to believe that the person is an extraditable person in relation to the extradition country and the offence for which the person is sought is an extradition offence.
- (3) The Minister may, if the Minister thinks fit, refuse to notify a District Court Judge under this section.

Compare: 1965 No 44 s 6(2)

20 Provisional arrest warrant may be issued

- (1) A District Court Judge may issue a provisional warrant in the prescribed form for the arrest of a person if the Judge is satisfied on the basis of the information presented to him or her that—
- (a) a warrant for the arrest of a person has been issued in an extradition country by a court or a Judge or other person having authority under the law of the extradition country to issue it; and
 - (b) the person is, or is suspected of being, in New Zealand or on his or her way to New Zealand; and
 - (c) there are reasonable grounds to believe that the person is an extraditable person in relation to the extradition country and the offence for which the person is sought is an extradition offence; and
 - (d) it is necessary or desirable for an arrest warrant to be issued urgently.
- (2) A warrant may be issued under this section even though no request for surrender has been made.

Compare: 1965 No 44 s 7(1)(b)

Section 20(1)(a): substituted, on 19 December 2002, by section 5 of the Extradition Amendment Act (No 2) 2002 (2002 No 64).

21 Notice to Minister

- (1) If a District Court Judge issues a provisional warrant under section 20, the applicant for the warrant must report the issue of the warrant to the Minister.
- (2) The applicant must include in the report to the Minister a copy of the warrant issued in the extradition country and the other documentary evidence produced to the court by the applicant.
- (3) On receipt of the report under subsection (1), the Minister may, if the Minister thinks fit, order that the proceedings be discontinued.
- (4) If the Minister orders that the extradition proceedings be discontinued, the Minister may cancel any warrant of arrest and order the discharge of any person arrested under the warrant.
- (5) The Minister must notify the court of any action taken by the Minister under subsection (3) or subsection (4).

Compare: 1965 No 44 s 7(2), (3)

22 Powers of court

- (1) In proceedings under this Part, except as expressly provided in this Act or in regulations made under section 102,—
 - (a) the court has the same jurisdiction and powers, and must conduct the proceedings in the same manner, as if the proceedings were a committal hearing of an information for an indictable offence alleged to have been committed within the jurisdiction of New Zealand; and
 - (b) the following provisions apply to the proceedings, so far as applicable and with the necessary modifications:
 - (i) Parts 5 and 5A and sections 203, 204, and 206 of the Summary Proceedings Act 1957;
 - (ii) Parts 1 (except sections 9 to 12), 2, and 4 of the Bail Act 2000;
 - (iii) the Criminal Procedure (Mentally Impaired Persons) Act 2003.
- (2) Despite section 5 of the Summary Proceedings Act 1957, a District Court presided over by Justices or 1 or more Community Magistrates does not have jurisdiction to conduct proceedings under this Part.

- (3) Despite section 46(1) and (2) of the Summary Proceedings Act 1957 (as applied by section 157 of that Act) and section 28(2) of the Bail Act 2000, a decision under this Part to remand a person in custody or on bail may be made only by a Judge.
- (4) The enactments (other than this Act, its provisions, Parts, and regulations made under it) specified in this section must be read as they read immediately before the commencement date as defined in section 394 of the Criminal Procedure Act 2011.
- Compare: 1965 No 44 s 8(1), (4)
- Section 22(1)(a): amended, on 29 June 2009, by section 18 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).
- Section 22(1)(b): substituted, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).
- Section 22(1)(b)(iii): substituted, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).
- Section 22(3): substituted, on 19 December 2002, by section 6 of the Extradition Amendment Act (No 2) 2002 (2002 No 64).
- Section 22(3): amended, on 29 June 2009, by section 18 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).
- Section 22(4): inserted, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

23 Procedure following arrest

- (1) A person arrested on a warrant issued after a request under section 19 or issued under section 20 must, unless sooner discharged, be brought before a court as soon as possible.
- (2) The person—
- (a) is not bailable as of right; and
 - (b) may not go at large without bail.
- (3) If the court remands the person on bail, the court may impose any conditions of bail that the court thinks fit in addition to any conditions that the court may impose under subsections (1) to (3) of section 31 of the Bail Act 2000 (as applied by section 49 of that Act).
- (4) If the person has been arrested on a provisional arrest warrant issued under section 20, the following provisions apply:
- (a) the hearing of the proceedings must not proceed until the court receives from the Minister a notice in writing stating that a request for the surrender of the person has been transmitted to the Minister under section 18:

- (b) pending the receipt of the notice from the Minister, the proceedings may from time to time be adjourned:
 - (c) if the court does not receive the notice—
 - (i) within the time prescribed in an extradition treaty that is in force between the extradition country and New Zealand; or
 - (ii) if no time is prescribed in a treaty, or no treaty is in force, within such reasonable time as the court may fix,—
the court must discharge the person:
 - (d) the court may from time to time, in its discretion, extend any time fixed by it under paragraph (c)(ii).
- (5) In subsection (3),—
- (a) section 31 of the Bail Act 2000 must be read as it read immediately before section 7 of the Bail Amendment Act 2011 came into force; and
 - (b) section 49 of the Bail Act 2000 must be read as it read immediately before the commencement date as defined in section 394 of the Criminal Procedure Act 2011.

Compare: 1965 No 44 s 8(2), (3)

Section 23(3): substituted, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

Section 23(5): inserted, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

24 Determination of eligibility for surrender

- (1) Subject to section 23(4), if a person is brought before a court under this Part, the court must determine whether the person is eligible for surrender in relation to the offence or offences for which surrender is sought.
- (2) Subject to subsections (3) and (4), the person is eligible for surrender in relation to an extradition offence for which surrender is sought if—
 - (a) the supporting documents (as described in section 18(4)) in relation to the offence have been produced to the court; and
 - (b) if—
 - (i) this Act applies in relation to the extradition country subject to any limitations, conditions,

- exceptions, or qualifications that require the production to the court of any other documents; or
- (ii) the terms of an extradition treaty in force between New Zealand and the extradition country require the production to the court of any other documents—
- those documents have been produced to the court; and
- (c) the court is satisfied that the offence is an extradition offence in relation to the extradition country; and
- (d) the court is satisfied that the evidence produced or given at the hearing would, according to the law of New Zealand, but subject to this Act,—
- (i) in the case of a person accused of an extradition offence, justify the person's trial if the conduct constituting the offence had occurred within the jurisdiction of New Zealand; or
- (ii) in the case of a person alleged to have been convicted of an extradition offence, prove that the person was so convicted.
- (3) The person is not eligible for surrender if the person satisfies the court—
- (a) that a mandatory restriction on the surrender of the person applies under section 7; or
- (b) except in relation to a matter referred to in section 30(2)(ab), that the person's surrender would not be in accordance with the provisions of the treaty (if any) between New Zealand and the extradition country.
- (4) The court may determine that the person is not eligible for surrender if the person satisfies the court that a discretionary restriction on the surrender of the person applies under section 8.
- (5) Subsections (3) and (4) are subject to section 105.
- (6) Without limiting the circumstances in which the court may adjourn a hearing, if—
- (a) a document or documents containing a deficiency or deficiencies of relevance to the proceedings are produced; and
- (b) the court considers the deficiency or deficiencies to be minor in nature,—

the court may adjourn the hearing for such period as it considers reasonable to allow the deficiency or deficiencies to be remedied.

Compare: 1965 No 44 s 10; Extradition Act 1988 s 19(2), (4) (Aust)

Section 24(3)(b): amended, on 19 December 2002, by section 7 of the Extradition Amendment Act (No 2) 2002 (2002 No 64).

25 Record of case may be submitted by exempted country at hearing

- (1) For the purposes of any determination under section 24(2)(d)(i), a record of the case may be submitted by or on behalf of an exempted country.
- (2) A record of the case must be prepared by an investigating authority or a prosecutor in an exempted country and must contain—
 - (a) a summary of the evidence acquired to support the request for the surrender of the person; and
 - (b) other relevant documents, including photographs and copies of documents.
- (3) The record of the case is admissible as evidence if it is accompanied by—
 - (a) an affidavit of an officer of the investigating authority, or of the prosecutor, as the case may be, stating that the record of the case was prepared by, or under the direction of, that officer or that prosecutor and that the evidence has been preserved for use in the person's trial; and
 - (b) a certificate by a person described in subsection (3A) stating that, in his or her opinion, the record of the case discloses the existence of evidence that is sufficient under the law of the exempted country to justify a prosecution in that country.
- (3A) A person referred to in subsection (3)(b) is—
 - (a) the Attorney-General or principal law officer of the exempted country, or his or her deputy or delegate; or
 - (b) any other person who has, under the law of the exempted country, control over the decision to prosecute.
- (4) Nothing in this section—

- (a) prevents an exempted country from satisfying the test in section 24(2)(d)(i) in accordance with the provisions of this Act that are applicable to countries that are not exempted; or
 - (b) limits the evidence that may be admitted at any hearing to determine whether a defendant is eligible for surrender.
- (5) A court to which a certificate under subsection (3)(b) is produced must take judicial notice of the signature on it of a person described in subsection (3A).

Section 25(3)(b): substituted, on 19 December 2002, by section 8(1) of the Extradition Amendment Act (No 2) 2002 (2002 No 64).

Section 25(3A): inserted, on 19 December 2002, by section 8(2) of the Extradition Amendment Act (No 2) 2002 (2002 No 64).

Section 25(5): substituted, on 19 December 2002, by section 8(3) of the Extradition Amendment Act (No 2) 2002 (2002 No 64).

26 Procedure following court's determination of whether person eligible for surrender

- (1) If the court determines under section 24 that the person is eligible for surrender, it must—
- (a) issue a warrant for the detention of the person in a prison or other place authorised in accordance with section 27 of this Act or section 184T(3) of the Summary Proceedings Act 1957 pending the surrender of the person to the extradition country or the person's discharge according to law; and
 - (b) record in writing the extradition offence or extradition offences in relation to which the court has determined that the person is eligible for surrender; and
 - (c) send to the Minister a copy of the warrant of detention and the record made under paragraph (b), together with a copy of the application and any other evidence taken before the court in the case and any other information before it that has not already been sent to the Minister, and such report on the case as the court thinks fit; and
 - (d) inform the person that—
 - (i) subject to section 71, the person will not be surrendered until the expiration of 15 days after the date of the issue of the warrant of detention; and

- (ii) during that time the person has the right to make an application for a writ of habeas corpus; and
 - (iii) the person has the right to lodge an appeal under Part 8.
- (2) If the court issues a warrant under subsection (1), the court may grant bail to the person.
- (3) If the court grants bail to the person, the court may impose any conditions of bail that the court thinks fit in addition to any conditions that the court may impose under subsections (1) to (3) of section 31 of the Bail Act 2000 (as applied by section 52 of that Act).
- (4) If the court is not satisfied under section 24 that the person is eligible for surrender, it must discharge the person unless under section 70(1) it orders that the person continue to be detained, or issues a warrant for the arrest and detention of the person, pending the determination of an appeal under Part 8.
- (5) Enactments other than this Act and its provisions that are specified in subsection (1)(a) must be read as they read immediately before the commencement date as defined in section 394 of the Criminal Procedure Act 2011.
- (6) In subsection (3),—
 - (a) section 31 of the Bail Act 2000 must be read as it read immediately before section 7 of the Bail Amendment Act 2011 came into force; and
 - (b) section 52 of the Bail Act 2000 must be read as it read immediately before the commencement date as defined in section 394 of the Criminal Procedure Act 2011.

Compare: 1965 No 44 s 10

Section 26(1)(a): amended, on 29 June 2009, by section 18 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 26(1)(a): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 26(3): substituted, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

Section 26(5): inserted, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 26(6): inserted, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

27 Detention in place other than prison

If the court orders the detention of the person at any time under this Part, but is of the opinion that, because of the circumstances of the case, it would be dangerous to the life or pose a significant risk to the health of the person to detain the person in a prison, it may order that the person be held in custody—

- (a) at the place where the person is for the time being; or
- (b) at any other place to which the court considers that the person can be removed without danger to the person's life or risk to the person's health—

until such time as the person can, without such danger or risk, be detained in a prison or is surrendered or is discharged according to law.

Section 27 heading: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 27: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Surrender by consent

28 Surrender by consent

- (1) A person may at any time notify the court that he or she consents to being surrendered to the extradition country for the extradition offence or extradition offences for which surrender is sought.
- (2) If the person notifies the court of his or her consent to surrender under subsection (1), then, despite section 24 but subject to subsection (3), the court must—
 - (a) issue a warrant for the detention of the person in a prison or other place authorised in accordance with section 27 of this Act or section 1 84T(3) of the Summary Proceedings Act 1957 pending surrender; and
 - (b) record in writing the extradition offence or extradition offences in respect of which the person has consented to surrender; and
 - (c) send to the Minister a copy of the warrant of detention and the record made under paragraph (b), together with a copy of the application and any other evidence taken before the court in the case and any other information

- before it that has not already been sent to the Minister, and such report on the case as the court thinks fit.
- (3) The court must not take the action in subsection (2) unless—
- (a) the person was before the court when he or she consented to surrender for the offence or offences; and
 - (b) the person has been legally represented in the proceedings; and
 - (c) the court is satisfied that the person has freely consented to the surrender in full knowledge of its consequences.
- (4) Nothing in subsections (1) to (3) prevents a person from giving notice to the Minister after the court orders the detention of the person under section 26 that the person consents to surrender.
- (5) If the court issues a warrant under subsection (2), the court may grant bail to the person.
- (6) If the court grants bail to the person, the court may impose any conditions of bail that the court thinks fit in addition to any conditions that the court may impose under subsections (1) to (3) of section 31 of the Bail Act 2000 (as applied by section 52 of that Act).
- (7) Enactments other than this Act and its provisions that are specified in subsection (2)(a) must be read as they read immediately before the commencement date as defined in section 394 of the Criminal Procedure Act 2011.
- (8) In subsection (6),—
- (a) section 31 of the Bail Act 2000 must be read as it read immediately before section 7 of the Bail Amendment Act 2011 came into force; and
 - (b) section 52 of the Bail Act 2000 must be read as it read immediately before the commencement date as defined in section 394 of the Criminal Procedure Act 2011.

Compare: Extradition Act 1988 s 18 (Aust)

Section 28(2)(a): amended, on 29 June 2009, by section 18 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 28(2)(a): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 28(6): substituted, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

Section 28(7): inserted, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 28(8): inserted, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

*Consent to surrender for offences that are not
extradition offences*

29 Consent to surrender for offences that are not extradition offences

(1) If—

(a) either—

(i) the court determines under section 24 that a person is eligible for surrender to an extradition country in relation to an extradition offence or extradition offences; or

(ii) a person consents under section 28 to being surrendered to an extradition country in relation to an extradition offence or extradition offences; and

(b) the extradition country has requested that the person also be surrendered for an offence that is not an extradition offence or offences that are not extradition offences,—

the court must ask the person whether he or she consents to being surrendered to the country in respect of the offence or any of the offences that are not extradition offences.

(2) If the person gives his or her consent under this section to being surrendered for an offence or offences referred to in subsection (1)(b), the court must notify the Minister in writing of the offence or offences in respect of which the person has consented.

(3) The court must not notify the Minister under subsection (2) unless—

(a) the person was before the court when he or she consented to surrender for the offence or offences; and

(b) the person has been legally represented in the proceedings; and

(c) the court is satisfied that the person has freely consented to the surrender for the offence or offences in full knowledge of its consequences.

Compare: Extradition Act 1988 s 20 (Aust)

*Surrender and temporary surrender***30 Minister must determine whether person to be surrendered**

- (1) If the court issues a warrant for the detention of a person under section 26(1)(a) or section 28(2)(a), the Minister must determine in accordance with this section whether the person is to be surrendered.
- (2) The Minister must not determine that the person is to be surrendered—
 - (a) if the Minister is satisfied that a mandatory restriction on the surrender of the person applies under section 7; or
 - (ab) if the Minister is satisfied that a mandatory restriction on the surrender of the person applies under the provisions of the treaty (if any) between New Zealand and the extradition country; or
 - (b) if it appears to the Minister that there are substantial grounds for believing that the person would be in danger of being subjected to an act of torture in the extradition country; or
 - (c) if the person is a New Zealand citizen, and—
 - (i) an extradition treaty in force between New Zealand and the extradition country; or
 - (ii) an Order in Council made under section 16 in relation to the extradition country; or
 - (iii) if there is no applicable treaty or Order in Council, any undertakings or arrangement in relation to extradition between New Zealand and the extradition country,—
provide that no New Zealand citizen may be surrendered.
- (3) The Minister may determine that the person is not to be surrendered if—
 - (a) it appears to the Minister that the person may be or has been sentenced to death by the appropriate authority in the extradition country, and the extradition country is unable to sufficiently assure the Minister that—
 - (i) the person will not be sentenced to death; or

- (ii) if that sentence is or has been imposed, it will not be carried out; or
 - (b) it appears to the Minister that a discretionary restriction on the surrender of the person applies under section 8; or
 - (c) the person is a New Zealand citizen and—
 - (i) if there is a treaty in force between New Zealand and the extradition country, it does not preclude the surrender of New Zealand citizens; or
 - (ii) if there is an Order in Council made under section 16 in relation to the extradition country, it does not preclude the surrender of New Zealand citizens; or
 - (iii) if there is no applicable treaty or Order in Council in relation to the extradition country, any undertakings or arrangement in relation to extradition between New Zealand and the extradition country do not preclude the surrender of New Zealand citizens—

but the Minister is satisfied that, having regard to the circumstances of the case, it would not be in the interests of justice to surrender the person; or
 - (d) without limiting section 3 2(4), it appears to the Minister that compelling or extraordinary circumstances of the person including, without limitation, those relating to the age or health of the person, exist that would make it unjust or oppressive to surrender the person; or
 - (e) for any other reason the Minister considers that the person should not be surrendered.
- (4) Subsection (3)(c) applies even if the person is a citizen of both New Zealand and the extradition country.
- (5) The Minister must not determine that the person is to be surrendered unless by virtue of—
- (a) the law of the extradition country; or
 - (b) a provision of an extradition treaty in force between New Zealand and the extradition country; or
 - (c) an undertaking given by the extradition country to New Zealand—

the person, after being surrendered to the country, will not, unless the person has left or had the opportunity of leaving the country,—

- (d) be detained or tried in that country for any offence committed, or alleged to have been committed, before the person's surrender other than—
 - (i) an extradition offence to which the request for the person's surrender relates; or
 - (ii) any other offence carrying the same or a lesser maximum penalty of which the person could be convicted on proof of the conduct constituting any extradition offence to which the request for the person's surrender relates; or
 - (iii) an extradition offence in relation to the country (not being an offence for which the country requested the surrender of the person) in respect of which the Minister consents to the person being so detained or tried; or
 - (iv) an offence (not being an extradition offence) for which the person has consented to surrender under section 29; or
- (e) be detained in that country for the purpose of being surrendered to another country for trial or punishment for any offence that is alleged to have been committed, or was committed, before the person's surrender to the first-mentioned country, other than an offence in respect of which the Minister consents to the person being so detained and surrendered.

- (6) For the purposes of determining under this section whether the person is to be surrendered, the Minister may seek any undertakings from the extradition country that the Minister thinks fit.

Compare: Fugitive Offenders Act 1881 s 29A(3), (4) (Imp); 1965 No 44 ss 5(1)(c), (2), 5A; Extradition Act 1988 s 22(3), (4) (Aust)

Section 30(2)(ab): inserted, on 19 December 2002, by section 9 of the Extradition Amendment Act (No 2) 2002 (2002 No 64).

31 Surrender order

- (1) If the Minister determines under section 30 that the person is to be surrendered, the Minister must, subject to section 32(2)(b)

and unless the Minister makes a temporary surrender order, make a surrender order in respect of the person.

- (2) The Minister must not make a surrender order in respect of a person—
- (a) until the expiration of 15 days after the date of the issue of the warrant of detention of that person under section 26; or
 - (b) if an appeal, or an application for review or habeas corpus, in respect of a determination under this Act, or any appeal from such an appeal or application, is pending, until after the date that the proceedings are finally determined and the result is that the person is eligible to be surrendered,—
- whichever is the later.
- (3) Nothing in subsection (2) applies to—
- (a) a person in respect of whom an order is made under section 28(2); or
 - (b) a person who has given notice to the Minister after the court ordered the detention of the person under section 26 that the person consents to surrender; or
 - (c) a person who in accordance with section 71 has waived—
 - (i) the right to make an application for a writ of habeas corpus within 15 days after the date of the issue of the warrant; and
 - (ii) the right, in relation to every offence for which the court has determined that the person is eligible to be surrendered, to lodge an appeal under Part 8; or
 - (d) a person who the court has determined is eligible for surrender for 2 or more offences and who in accordance with section 71 has waived—
 - (i) the right to make an application for habeas corpus within 15 days after the date of the issue of the warrant; and
 - (ii) the right, in relation to only 1 or some of those offences, to lodge an appeal under Part 8,—

if the extradition country withdraws its request for the surrender of the person for the offence or offences to which the waiver does not relate.

- (4) If the Minister makes a surrender order in respect of a person described in any of paragraphs (a) to (e) of section 2(4), the Minister may arrange for any approvals, authorities, and permissions that may be needed to be obtained before surrender, including the variation, cancellation, or suspension of the sentence, or of any conditions of the sentence.

32 Further provisions relating to surrender order

- (1) Subsection (2) applies if—

- (a) the extradition offence for which the person's surrender is requested is an offence of which the person has been convicted in the extradition country; and
- (b) the Minister has determined under section 30 that the person is to be surrendered—

but the person is liable to be detained in a prison because of a sentence of imprisonment imposed for an offence against the law of New Zealand.

- (2) If this subsection applies, the Minister may—

- (a) make an order for the surrender of the person that is to come into effect when the person ceases to be liable to be detained; or
- (b) decline to make a surrender order.

- (3) Subsection (4) applies if—

- (a) the Minister has determined under section 30 that in all other respects the person is to be surrendered; but
- (b) in the Minister's opinion, compelling or extraordinary circumstances of the person including, without limitation, those relating to the age or health of the person, exist that would make it unjust or oppressive to surrender the person before the expiration of a particular period.

- (4) If this subsection applies, the Minister may make an order for the surrender of the person that is to come into effect after the expiration of a period specified in the order.

- (5) The Minister may, at any time after making an order under subsection (4), vary any period specified in the order, or may cancel the order.

Compare: 1965 No 44 s 11(1); Extradition Act 1988 s23 (Aust)

Section 32(1): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

33 Temporary surrender to extradition country

- (1) Subsection (2) applies if—

- (a) the offence for which the person's surrender is requested is an offence of which the person is accused; and
- (b) the Minister has determined under section 30 that the person is to be surrendered—

but the person is liable to be detained in a prison because of a sentence of imprisonment imposed for an offence against the law of New Zealand.

- (2) If this subsection applies, the Minister may make a temporary surrender order in respect of the person if the Minister is satisfied that—

- (a) it is in the interests of justice that an order be made under this section; and
- (b) the extradition country has given satisfactory undertakings relating to—
 - (i) there taking place a trial of the person in the extradition country for any extradition offence of which the person is accused and in respect of which the person's surrender is requested; and
 - (ii) the return of the person to New Zealand; and
 - (iii) the custody of the person while travelling to and from and while in the extradition country; and
 - (iv) other matters (if any) that the Minister thinks appropriate.

- (3) If a person who is subject to a sentence of imprisonment is released from a New Zealand prison under a temporary surrender order made under this section, so long as the person is in custody in connection with the request (including custody outside New Zealand), the person is deemed to be continuing to serve that sentence.

- (4) If, while a person is in the extradition country under the temporary surrender order, the person ceases to be liable to be detained in New Zealand, the Minister must inform the extradition country that the undertakings referred to in subsection (2)(b) are no longer required to be complied with.

Compare: 1992 No 86 s41; Extradition Act 1988 s 24(1), (4) (Aust)

Section 33(1): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 33(3): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

34 Request for return after temporary surrender

- (1) If—

- (a) a person is surrendered to an extradition country under a temporary surrender order; and
- (b) the person is returned to New Zealand in accordance with the undertakings referred to in section 33(2)(b)(ii); and
- (c) the extradition country makes a request at any time before the person has ceased to be liable to be detained in a prison in New Zealand, that, when he or she ceases to be so liable, the person be surrendered to serve any sentence that was imposed as a result of the person having been temporarily surrendered to that country,—
the Minister may, subject to subsection (2), make a surrender order in relation to the person.

- (2) Before making an order under subsection (1), the Minister must determine in accordance with the grounds set out in subsections (2) to (6) of section 30 that the person is to be surrendered.

- (3) If a surrender order is made under this section, the order takes effect in accordance with section 67 on the same day that the person ceases to be liable to be detained in a prison in New Zealand in respect of the sentence of imprisonment.

Compare: Extradition Act 1988 s 25 (Aust)

Section 34(1)(c): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 34(3): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Discharge of person

**35 Discharge of person if Minister declines to order
surrender**

If the Minister determines under section 30 that the person is not to be surrendered, or declines to order the surrender of the person under section 32(2)(b) or section 33, the person must be discharged from custody forthwith unless the person is subject to any other order for detention.

Compare: Extradition Act 1988 s 22(5) (Aust)

36 Discharge of person if not surrendered within 2 months

- (1) This section applies if a person is not surrendered and conveyed out of New Zealand under a surrender order or a temporary surrender order made under this Part within 2 months—
 - (a) after the date of the issue of the warrant for the detention of the person under section 26 or section 28(2) pending surrender, if no appeal or application for review or habeas corpus, in respect of a determination under this Act, or any appeal from such an appeal or application, is pending; or
 - (b) if an appeal, or an application for review or habeas corpus, in respect of a determination under this Act, or any appeal from such an appeal or application, is pending, after the date that the proceedings are finally determined; or
 - (c) if a surrender order is made under section 32(2)(a) or section 32(4), after the date that the order takes effect.
- (2) If this section applies, the person may apply to a Judge of the High Court to be discharged.
- (3) If an application to be discharged is made under subsection (2), the Judge may, on proof that reasonable notice of the intention to make the application has been given to the Minister, unless sufficient cause is shown against the discharge,—
 - (a) discharge the surrender order or temporary surrender order, as the case may be; and
 - (b) order the discharge of the person from the place where the person is detained, if the person is not liable to be detained under any other order for detention.

- (4) Despite subsection (1), no order may be made under this section for the discharge of a person if—
- (a) it appears to the court that another request has been made under this Act for the surrender of the person, that request having been received—
 - (i) on or before the date on which the warrant referred to in subsection (1)(a) was issued; or
 - (ii) if an appeal or application referred to in subsection (1)(b) was made, on or before the date that the proceedings were finally determined; and
 - (b) a final decision on the surrender of the person in relation to that request has not been made.
- (5) For the purposes of subsection (4), **request** includes a warrant produced for endorsement under Part 4.

Compare: 1965 No 44 s 12

Section 36(4): added, on 19 December 2002, by section 10 of the Extradition Amendment Act (No 2) 2002 (2002 No 64).

Section 36(5): added, on 19 December 2002, by section 10 of the Extradition Amendment Act (No 2) 2002 (2002 No 64).

37 Discharge of person if not resurrendered

- (1) If a person has been surrendered under a temporary surrender order made under section 33, nothing in section 36 prevents an order being made under section 34.
- (2) Subsection (3) applies if an order is made under section 34 and the person is not surrendered and conveyed out of New Zealand under this Part within 2 months after the date that the person ceases to be liable to be detained under the sentence of imprisonment imposed by a New Zealand court.
- (3) If this subsection applies, the person may apply to a Judge of the High Court to be discharged.
- (4) If an application to be discharged is made under subsection (3), the Judge may, on proof that reasonable notice of the intention to make the application has been given to the Minister, unless sufficient cause is shown against the discharge,—
 - (a) discharge the surrender order; and
 - (b) order the discharge of the person from the place where the person is detained, if the person is not liable to be detained under any other order for detention.

Discharge of person does not preclude further proceedings

38 Discharge of person under this Part does not preclude further proceedings

To avoid doubt, the discharge of a person under any provision of this Part or under any enactment repealed by this Act does not of itself preclude further proceedings under this Act, whether or not they are based on the same conduct, to extradite the person under this Act.

Part 4
Extradition from New Zealand to Australia and designated countries

Application of this Part

39 Application of this Part

This Part applies to—

- (a) Australia; and
- (b) any designated country.

Designated countries

40 Designated countries

- (1) The Governor-General may from time to time, by Order in Council, made on the recommendation of the Minister, declare that any Commonwealth or non-Commonwealth country specified in the order is a designated country and apply this Part to that country subject to such limitations, conditions, exceptions, or qualifications as may be specified in the order.
- (2) If, after the commencement of this Act, an extradition treaty is concluded between New Zealand and another country (including a treaty that amends or is in substitution for an earlier extradition treaty in force between New Zealand and that country), the Governor-General may, by Order in Council, made on the recommendation of the Minister, declare that the country (or, if the treaty applies in respect of part only of the country, that part of the country) is a designated country.

- (3) The Minister must not recommend the making of an Order in Council under subsection (1) or subsection (2) unless the Minister is satisfied that—
- (a) the circumstances in which a person may be arrested in the country in relation to—
 - (i) an alleged offence against the law of that country; or
 - (ii) an offence against the law of that country of which the person has been convicted—
(being an offence for which the maximum penalty is imprisonment for not less than 12 months or any more severe penalty) are similar in effect to the circumstances in which such a person could be arrested in New Zealand if the alleged offence occurred within the jurisdiction of New Zealand or the person had been convicted in New Zealand; and
 - (b) a person who is accused or convicted of an offence in New Zealand that is an extradition offence in relation to New Zealand and the other country may, if found in that country or within the jurisdiction of that country, be returned to New Zealand; and
 - (c) if a person accused or convicted of an extradition offence in the country is surrendered by New Zealand, that person cannot be detained or tried in that country for any offence committed, or alleged to have been committed, before the person's surrender, other than the offence to which the request for the person's surrender relates or any offence carrying the same or a lesser maximum penalty of which the person could be convicted upon proof of the facts upon which that request was based, unless—
 - (i) the person has left, or has had an opportunity of leaving, that country; or
 - (ii) the Minister consents to the person being tried or detained for any other specified offence; and
 - (d) if a person accused or convicted of an offence in the country (in this subsection **the designated country**) is surrendered by New Zealand, that person cannot be detained in the designated country for the purpose of being

surrendered to any other country for trial or punishment for any offence committed, or alleged to have been committed, before the person's surrender to the designated country, including the offence to which the original request relates and any other offence of which the person could be convicted on proof of the facts on which that request was based, unless—

- (i) the person has left, or has had an opportunity of leaving, the designated country; or
 - (ii) the Minister consents to the person's detention in the designated country and the person's surrender to any other specified country in respect of any specified offence.
- (4) Subsection (3) does not limit the Minister's discretion to consider any other matters that the Minister thinks fit in relation to recommending or not recommending the making of an Order in Council under subsection (1) or subsection (2).
- (5) An Order in Council made under subsection (1) or subsection (2) may provide that if a person whose surrender is sought is a New Zealand citizen a court must not refer the proceedings to the Minister under section 48(1)(a).
- (6) If an extradition treaty is in force between New Zealand and the country,—
- (a) the Order in Council made under subsection (2) must recite the terms of the treaty; and
 - (b) the Order in Council ceases to have effect when the treaty ceases to be in force.
- (7) An Order in Council made under this section is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 40(2): amended, on 18 June 2002, by section 4 of the Extradition Amendment Act 2002 (2002 No 21).

Section 40(7): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

*Extradition proceedings***41 Endorsement of warrant issued in extradition country**

- (1) If a warrant for the arrest of a person issued in an extradition country by a court or a Judge or other person having lawful authority under the law of the extradition country to issue it is produced to a District Court Judge, and the Judge is satisfied that—
- (a) the person is, or is suspected of being, in New Zealand or on his or her way to New Zealand; and
 - (b) there are reasonable grounds to believe that—
 - (i) the person is an extraditable person in relation to the extradition country; and
 - (ii) the offence for which the arrest of the person is sought is an extradition offence,— the Judge may endorse the warrant in the prescribed form to authorise its execution in New Zealand.
- (2) A warrant endorsed under subsection (1) is sufficient authority for any constable to execute the warrant in accordance with this Part.

Compare: Fugitive Offenders Act 1881 s 13 (Imp); Extradition Act 1988 s 28 (Aust)

Section 41(1): amended, on 19 December 2002, by section 11 of the Extradition Amendment Act (No 2) 2002 (2002 No 64).

Section 41(2): amended, on 1 October 2008, pursuant to section 1 16(a)(ii) of the Policing Act 2008 (2008 No 72).

42 Issue in New Zealand of provisional arrest warrant

- (1) A District Court Judge may issue a provisional warrant in the prescribed form for the arrest of a person if the Judge is satisfied on the basis of the information presented to him or her that—
- (a) a warrant for the arrest of a person has been issued in an extradition country by a court or a Judge or other person having lawful authority under the law of the extradition country to issue it; and
 - (b) the person is, or is suspected of being, in New Zealand or on his or her way to New Zealand; and
 - (c) there are reasonable grounds to believe that the person is an extraditable person in relation to the extradition

- country and the offence for which the person is sought is an extradition offence; and
- (d) it is necessary or desirable for an arrest warrant to be issued urgently.
- (2) A warrant may be issued under subsection (1) even though—
- (a) a warrant authorising the arrest of the person has not been produced to the Judge for endorsement under section 41; or
 - (b) such a warrant has been produced, but the Judge requires further information or evidence before endorsing it under section 41.

Compare: Fugitive Offenders Act 1881 s 16 (Imp); Extradition Act 1988 s 29 (Aust)

Section 42(1)(a): amended, on 19 December 2002, by section 12 of the Extradition Amendment Act (No 2) 2002 (2002 No 64).

43 Powers of court

- (1) In proceedings under this Part, except as expressly provided in this Act or in regulations made under section 102,—
- (a) the court has the same jurisdiction and powers under the Criminal Procedure Act 2011 as if the proceedings were in respect of a charge for a category 2 offence committed within the jurisdiction of New Zealand;
 - (b) the following provisions apply to the proceedings, so far as applicable and with the necessary modifications:
 - (i) sections 14, 35, 157 to 175, subpart 3 of Part 5, and sections 365 and 379 of the Criminal Procedure Act 2011 and any relevant rules of court (including those relating to service) made under that Act;
 - (ii) Parts 1 (except sections 9 to 12), 2, and 3 of the Bail Act 2000;
 - (iii) sections 38 to 44 of the Criminal Procedure (Mentally Impaired Persons) Act 2003.
- (2) A District Court presided over by 1 or more Justices or 1 or more Community Magistrates does not have jurisdiction to conduct proceedings under this Part.
- (3) Despite section 168 of the Criminal Procedure Act 2011, and section 27(2) of the Bail Act 2000, a decision under this Part

to remand a person in custody or on bail may be made only by a Judge.

- (4) Sections 167 to 169 of the Criminal Procedure Act 2011 and sections 28, 30 to 33, 35, 37 to 39, 44, 45, and 52 of the Bail Act 2000 apply, so far as applicable and with the necessary modifications, to a person who is detained under any of sections 46, 53, or 54.

Compare: Fugitive Offenders Act 1881 s 5 (Imp)

Section 43: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

44 Procedure following arrest

- (1) A person arrested on a warrant endorsed under section 41 or on a provisional arrest warrant must, unless sooner discharged, be brought before a court as soon as possible.
- (2) The person—
- (a) is not bailable as of right; and
 - (b) may not go at large without bail.
- (3) If the court remands the person on bail, the court may impose any conditions of bail that the court thinks fit in addition to any conditions that the court may impose under section 30(1), (2), and (4) of the Bail Act 2000.
- (4) If a person has been arrested on a provisional arrest warrant and no warrant issued in the extradition country has been endorsed under section 41, the following provisions apply:
- (a) pending the endorsement of a warrant under section 41, the proceedings may from time to time be adjourned:
 - (b) the court may, and must if a reasonable time has elapsed for the endorsement of the warrant, order that the person be discharged.

Compare: Fugitive Offenders Act 1881 s 16 (Imp); Extradition Act 1988 ss32, 33 (Aust)

Section 44(3): substituted, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

Section 44(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

45 Determination of eligibility for surrender

- (1) Subject to section 44(4), if a person is brought before a court under this Part, the court must determine whether the person is eligible for surrender in relation to the offence or offences for which surrender is sought.
- (2) Subject to subsections (3) and (4), the person is eligible for surrender if—
 - (a) a warrant for the arrest of the person described in section 41(1) and endorsed under that section has been produced to the court; and
 - (b) the court is satisfied that—
 - (i) the person is an extraditable person in relation to the extradition country; and
 - (ii) the offence is an extradition offence in relation to the extradition country.
- (3) The person is not eligible for surrender if the person satisfies the court—
 - (a) that a mandatory restriction on the surrender of the person applies under section 7; or
 - (b) that the person's surrender would not be in accordance with the provisions of the treaty (if any) between New Zealand and the extradition country.
- (4) The court may determine that the person is not eligible for surrender if the person satisfies the court that a discretionary restriction on the surrender of the person applies under section 8.
- (5) In the proceedings under this section,—
 - (a) the person to whom the proceedings relate is not entitled to adduce, and the court is not entitled to receive, evidence to contradict an allegation that the person has engaged in conduct that constitutes the offence for which surrender is sought; and
 - (b) nothing in this section requires evidence to be produced or given at the hearing to establish the matters described in subparagraphs (i) and (ii) of section 24(2)(d).
- (6) Without limiting the circumstances in which the court may adjourn a hearing, if—
 - (a) a document or documents containing a deficiency or deficiencies of relevance to the proceedings are produced; and

(b) the court considers the deficiency or deficiencies to be of a minor nature,—
the court may adjourn the hearing for such period as it considers reasonable to allow the deficiency or deficiencies to be remedied.

Compare: Extradition Act 1988 s 34(4) (Aust)

46 Procedure following court's determination of whether person eligible for surrender

- (1) If the court is satisfied that the person is eligible for surrender, the court must—
- (a) issue a warrant for the detention of the person in a prison or other place authorised in accordance with section 52 of this Act or section 169 of the Criminal Procedure Act 2011 pending the surrender of the person to the extradition country or the person's discharge according to law; and
 - (b) inform the person that,—
 - (i) subject to section 71, the person 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 make an application for a writ of habeas corpus; and
 - (iii) the person has the right to lodge an appeal under Part 8.
- (2) If the court issues a warrant under subsection (1), the court may grant bail to the person.
- (3) If the court grants bail to the person, the court may impose any conditions of bail that the court thinks fit in addition to any conditions that the court may impose under section 30(1), (2), and (4) of the Bail Act 2000.
- (4) If the court is not satisfied that the person is eligible for surrender, it must discharge the person, unless under section 70(1) it orders that the person continue to be detained, or issues a warrant for the arrest and detention of the person, pending the determination of an appeal under Part 8.

Section 46(1)(a): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 46(1)(a): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 46(3): substituted, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

Section 46(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

47 Court must make surrender order immediately if case not referred to Minister

- (1) If the court does not refer the person's case to the Minister under section 48(1) or section 48(4), the court must, immediately after issuing the warrant for the detention of the person under section 46(1)(a), make a surrender order in respect of the person.
- (2) A surrender order made under subsection (1) does not take effect—
 - (a) until the expiration of 15 days after the date of the issue of the warrant of detention; or
 - (b) if an appeal, or an application for review or habeas corpus, in respect of a determination under this Act, or any appeal from such an appeal or application, is pending, until after the date that the proceedings are finally determined and the result is that the person is eligible to be surrendered,—
whichever is the later.
- (3) Nothing in subsection (2) applies to—
 - (a) a person in respect of whom the court makes an order under section 53(2)(a); or
 - (b) a person who in accordance with section 71 has waived—
 - (i) the right to make an application for a writ of habeas corpus within 15 days after the date of the issue of the warrant; and
 - (ii) the right, in relation to every offence for which the court has determined the person is eligible to be surrendered, to lodge an appeal under Part 8; or
 - (c) a person who the court has determined is eligible for surrender for 2 or more offences and who in accordance with section 71 has waived—

- (i) the right to make an application for habeas corpus within 15 days after the date of the issue of the warrant; and
 - (ii) the right, in relation to only 1 or some of those offences, to lodge an appeal under Part 8,— if the extradition country ceases to seek the surrender of the person for the offence or offences to which the waiver does not relate.
- (4) If the court makes a surrender order in respect of a person described in any of paragraphs (a) to (e) of section 2(4), the court may arrange for any approvals, authorities, and permissions that may be needed to be obtained before surrender, including the variation, cancellation, or suspension of the sentence, or of any conditions of the sentence.

48 Referral of case to Minister in certain circumstances

- (1) If the court is satisfied that the grounds for making a surrender order otherwise exist but—
- (a) the person is a New Zealand citizen; or
 - (b) it appears to the court that—
 - (i) there are substantial grounds for believing that the person would be in danger of being subjected to an act of torture in the extradition country; or
 - (ii) the person has been sentenced to death or may be sentenced to death by the appropriate authority in the extradition country; or
 - (c) in the case of a person whose surrender is sought for an extradition offence of which the person has been convicted, the person is liable to be detained in a prison because of a sentence of imprisonment imposed for an offence against the law of New Zealand; or
 - (d) it appears to the court that another request has been made under this Act for the surrender of the person, and a final decision on the surrender of the person in relation to that request has not been made,— the court must refer the case to the Minister in accordance with subsection (5).
- (1A) For the purposes of subsection (1)(d), **request** includes a warrant produced for endorsement under this Part.

- (2) Subsection (1)(a) applies even if the person is a citizen of both New Zealand and the extradition country.
- (3) The court is not required to refer the case to the Minister under subsection (1)(a) if—
- (a) Australia is the extradition country; or
 - (b) the extradition country is a designated country and the relevant Order in Council under section 40 contains a provision described in section 40(5).
- (4) If—
- (a) it appears to the court in any proceedings under section 45 that—
 - (i) any of the restrictions on the surrender of the person under section 7 or section 8 apply or may apply; or
 - (ii) because of compelling or extraordinary circumstances of the person, including, without limitation, those relating to the age or health of the person, it would be unjust or oppressive to surrender the person before the expiration of a particular period; but
 - (b) in every other respect the court is satisfied that the grounds for making a surrender order exist,— the court may refer the case to the Minister in accordance with subsection (5).
- (5) If the court refers the case to the Minister under subsection (1) or subsection (4), the court must send to the Minister a copy of the warrant of detention together with a copy of all other documents before the court in the case, and such report on the case as the court thinks fit.

Section 48(1)(c): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 48(1)(c): amended, on 19 December 2002, by section 14(1) of the Extradition Amendment Act (No 2) 2002 (2002 No 64).

Section 48(1)(d): inserted, on 19 December 2002, by section 14(2) of the Extradition Amendment Act (No 2) 2002 (2002 No 64).

Section 48(1A): inserted, on 19 December 2002, by section 14(3) of the Extradition Amendment Act (No 2) 2002 (2002 No 64).

49 Minister must determine if person to be surrendered if case referred

- (1) If a case is referred to the Minister under section 48(1)(a) or (b), or section 48(4), or section 53, the Minister must determine in accordance with the grounds set out in subsections (2) to (4) of section 30 whether the person is to be surrendered, as if the case had been referred to the Minister under section 26.
- (2) For the purposes of determining under this section whether the person is to be surrendered, the Minister may seek any undertakings from the extradition country that the Minister thinks fit.

50 Surrender order

- (1) If the Minister determines under section 49 that the person is to be surrendered to an extradition country in relation to an extradition offence or extradition offences, the Minister must, subject to section 5 1(2)(b) and unless the Minister makes a temporary surrender order, make a surrender order in respect of the person.
- (2) The Minister must not make a surrender order in respect of a person whose case has been referred to the Minister under section 48—
 - (a) until the expiration of 15 days after the date of the issue of the warrant of detention of that person under section 46(1)(a); or
 - (b) if an appeal, or an application for review or habeas corpus, in respect of a determination under this Act, or any appeal from such an appeal or application, is pending, until after the date that the proceedings are finally determined and the result is that the person is eligible to be surrendered,—
whichever is the later.
- (3) Nothing in subsection (2) applies to—
 - (a) a person in respect of whom the court makes an order under section 53(2)(b); or
 - (b) a person who has given notice to the Minister after the court ordered the detention of the person under section 46 that the person consents to surrender; or

- (c) a person who in accordance with section 71 has waived—
 - (i) the right to make an application for a writ of habeas corpus within 15 days after the date of the issue of the warrant; and
 - (ii) the right, in relation to every offence for which the court has determined the person is eligible to be surrendered, to lodge an appeal under Part 8; or
 - (d) a person who the court has determined is eligible for surrender for 2 or more offences and who in accordance with section 71 has waived—
 - (i) the right to make an application for habeas corpus within 15 days after the date of the issue of the warrant; and
 - (ii) the right, in relation to only 1 or some of those offences, to lodge an appeal under Part 8,— if the extradition country ceases to seek the surrender of the person for the offence or offences to which the waiver does not relate.
- (4) If the Minister makes a surrender order in respect of a person described in any of paragraphs (a) to (e) of section 2(4), the Minister may arrange for any approvals, authorities, and permissions that may be needed to be obtained before surrender, including the variation, cancellation, or suspension of the sentence, or of any conditions of the sentence.

51 Further provisions relating to surrender order

- (1) Subsection (2) applies if the extradition offence for which the person's surrender is requested is an offence of which the person has been convicted in the extradition country, but the person is liable to be detained in a prison because of a sentence of imprisonment imposed for an offence against the law of New Zealand.
- (2) If this subsection applies, the Minister may—
 - (a) make an order for the surrender of the person that is to come into effect when the person ceases to be liable to be detained; or
 - (b) decline to make a surrender order.

- (3) Subsection (4) applies if—
- (a) the Minister has determined under section 49 that in all other respects the person is to be surrendered; but
 - (b) in the Minister's opinion, compelling or extraordinary circumstances of the person including, without limitation, those relating to the age or health of the person, exist that would make it unjust or oppressive to surrender the person before the expiration of a particular period.
- (4) If this subsection applies, the Minister may make an order for the surrender of the person that is to come into effect after the expiration of a period specified in the order.
- (5) The Minister may, at any time after making an order under subsection (4), vary the period specified in the order, or may cancel the order.

Section 5 1(1): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

52 Detention in place other than prison

If the court orders the detention of the person at any time under this Part, but is of the opinion that, because of the circumstances of the case, it would be dangerous to the life or pose a significant risk to the health of the person to detain the person in a prison, the court may order that the person be held in custody—

- (a) at the place where the person is for the time being; or
- (b) at any other place to which the court considers that the person can be removed without danger to the person's life or risk to the person's health—

until such time as the person can, without such danger or risk, be detained in a prison or is surrendered or is discharged according to law.

Section 52 heading: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 52: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Surrender by consent

53 Surrender by consent

- (1) A person may at any time notify the court that he or she consents to being surrendered to the extradition country for the extradition offence or extradition offences for which surrender is sought.
- (2) If the person notifies the court of his or her consent to surrender under subsection (1), then, despite section 45 but subject to subsections (3) and (4) of this section, the court must—
 - (a) make a surrender order in respect of the person; or
 - (b) if the court is required to refer the case to the Minister under section 48(1),—
 - (i) issue a warrant for the detention of the person in a prison or other place authorised in accordance with section 52 of this Act or section 169 of the Criminal Procedure Act 2011 pending surrender; and
 - (ii) record in writing the offence or offences in respect of which the person has consented to surrender; and
 - (iii) send to the Minister a copy of the warrant of detention and the record made under subparagraph (ii), together with a copy of the warrant and all other documents before the court in the case, and such report on the case as the court thinks fit.
- (3) The court must not take the action in subsection (2) unless—
 - (a) the person was before the court when he or she consented to surrender for the offence or offences; and
 - (b) the person has been legally represented in the proceedings; and
 - (c) the court is satisfied that the person has freely consented to the surrender for the offence or offences in full knowledge of its consequences.
- (4) Nothing in subsections (1) to (3) prevents a person whose case is referred to the Minister under section 48(1) from giving notice to the Minister after the court orders the detention of the person under section 46 that the person consents to surrender.

- (5) If the court issues a warrant for the detention of a person under subsection (2)(b)(i), then subsections (2) and (3) of section 46 apply as if the person had been found eligible for surrender.

Compare: Extradition Act 1988 s 33A (Aust)

Section 53(2)(b)(i): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 53(2)(b)(i): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Temporary surrender

54 Temporary surrender to extradition country

- (1) Subsection (2) applies if—

- (a) the offence for which the person's surrender is sought is an offence of which the person is accused; and
- (b) a court is satisfied that the person is eligible for surrender in relation to the offence or offences for which extradition is sought—

but the person is liable to be detained in a prison because of a sentence of imprisonment imposed for an offence against the law of New Zealand.

- (2) If this subsection applies, the court must—

- (a) issue a warrant for the detention of the person in a prison or other place authorised in accordance with section 52 of this Act or section 169 of the Criminal Procedure Act 2011 pending the surrender of the person to the extradition country or the person's discharge according to law; and
- (b) record in writing the extradition offence or extradition offences in relation to which the court has determined that the person is eligible for surrender; and
- (c) send to the Minister a copy of the warrant of detention and the record made under paragraph (b), together with a copy of all other documents before the court in the case, and such report of the case as the court thinks fit,—

and subsections (4), (5), (6), and (7) apply.

- (3) If,—

- (a) in a case referred to the Minister under section 48, the Minister determines under section 49 that the person is to be surrendered; and

- (b) the offence for which the person's surrender is sought is an offence of which the person is accused— but the person is liable to be detained in a prison because of a sentence of imprisonment imposed for an offence against the law of New Zealand, subsections (4), (6), and (7) apply.
- (4) The Minister may make a temporary surrender order in respect of the person if—
- (a) the Minister is satisfied that it is in the interests of justice that an order be made under this section; and
 - (b) the Minister is satisfied that the extradition country has given satisfactory undertakings relating to—
 - (i) there taking place a trial of the person in the extradition country for any extradition offence of which the person is accused and in respect of which the person's surrender is sought; and
 - (ii) the return of the person to New Zealand; and
 - (iii) the custody of the person while travelling to and from and while in the extradition country; and
 - (iv) other matters (if any) that the Minister thinks appropriate; and
 - (c) in a case to which subsection (2) applies, the Minister determines in accordance with the grounds set out in subsections (2) to (4) of section 30 that the person is to be surrendered.
- (5) For the purposes of making a determination under subsection (4)(c), the Minister may seek any undertakings from the extradition country that the Minister thinks fit.
- (6) If a person who is subject to a sentence of imprisonment is released from a New Zealand prison under a temporary surrender order made under this section, so long as the person is in custody in connection with the request (including custody outside New Zealand), the person is deemed to be continuing to serve that sentence.
- (7) If, while a person is in the extradition country under the temporary surrender order, the person ceases to be liable to be detained in New Zealand, the Minister must inform the extradition country that the undertakings referred to in subsection (4)(b) are no longer required to be complied with.

Compare: 1992 No 86 s 41; Extradition Act 1988 s 36(1), (5) (Aust)

Section 54(1): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 54(2)(a): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 54(2)(a): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 54(3): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 54(6): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

55 Request for return after temporary surrender

(1) If—

- (a) a person is surrendered to an extradition country under a temporary surrender order; and
- (b) the person is returned to New Zealand in accordance with the undertakings referred to in section 54(4)(b)(ii); and
- (c) the extradition country makes a request at any time before the person has ceased to be liable to be detained in a prison in New Zealand, that, when he or she ceases to be so liable, the person be surrendered to serve any sentence that was imposed as a result of the person having been temporarily surrendered to that country,—

the Minister may, subject to subsection (2), make a surrender order in relation to the person.

- (2) Before making an order under subsection (1), the Minister must determine in accordance with the grounds set out in subsections (2) to (4) of section 30 that the person is to be surrendered.
- (3) For the purposes of making a determination under subsection (2), the Minister may seek any undertakings from the extradition country that the Minister thinks fit.
- (4) If a surrender order is made under this section, the order takes effect in accordance with section 67 on the same day that the person ceases to be liable to be detained in a prison in New Zealand in respect of the sentence of imprisonment.

Compare: Extradition Act 1988 s 37 (Aust)

Section 55(1)(c): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 55(4): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Discharge of person

**56 Discharge of person if Minister declines to order
surrender**

If the Minister determines under section 49 that the person is not to be surrendered, or declines to order the surrender of the person under section 51 (2)(b) or section 54, the person must be discharged from custody forthwith unless the person is subject to any other order for detention.

57 Discharge of person if not surrendered within 2 months

- (1) This section applies if a person is not surrendered and conveyed out of New Zealand under a surrender order or a temporary surrender order made under this Part within 2 months—
 - (a) after the date of the issue of the warrant under section 46(1)(a) or section 53(2)(b)(i) pending surrender, if no appeal or application for review or habeas corpus in respect of a determination under this Act, or any appeal from such an appeal or application, is pending; or
 - (b) if an appeal, or an application for review or habeas corpus, in respect of a determination under this Act, or any appeal from such an appeal or application, is pending, after the date that the proceedings are finally determined; or
 - (c) if a surrender order is made under section 51 (2)(a) or section 51(4), after the date that the order takes effect.
- (2) If this section applies, the person may apply to a Judge of the High Court to be discharged.
- (3) If an application to be discharged is made under subsection (2), the Judge may, on proof that reasonable notice of the intention to make the application has been given to the Minister, unless sufficient cause is shown against the discharge,—
 - (a) discharge the surrender order or temporary surrender order, as the case may be; and
 - (b) order the discharge of the person from the place where the person is detained, if the person is not liable to be detained under any other order for detention.

- (4) Despite subsection (1), no order may be made under this section for the discharge of a person if the case has been referred to the Minister under section 48 and—
- (a) it appears to the court that another request has been made under this Act for the surrender of the person, that request having been received—
 - (i) on or before the date on which the warrant referred to in subsection (1)(a) was issued; or
 - (ii) if an appeal or application referred to in subsection (1)(b) was made, on or before the date that the proceedings were finally determined; and
 - (b) a final decision on the surrender of the person in relation to that request has not been made.
- (5) For the purposes of subsection (4), **request** includes a warrant produced for endorsement under this Part.

Section 57(4): added, on 19 December 2002, by section 15 of the Extradition Amendment Act (No 2) 2002 (2002 No 64).

Section 57(5): added, on 19 December 2002, by section 15 of the Extradition Amendment Act (No 2) 2002 (2002 No 64).

58 Discharge of person if person not resurrendered

- (1) If a person has been surrendered under a temporary surrender order made under section 54, nothing in section 57 prevents an order being made under section 55.
- (2) Subsection (3) applies if an order is made under section 55 and the person is not surrendered and conveyed out of New Zealand under this Part within 2 months after the date that the person ceases to be liable to be detained under the sentence of imprisonment imposed by a New Zealand court.
- (3) If this subsection applies, the person may apply to a Judge of the High Court to be discharged.
- (4) If an application to be discharged is made under subsection (3), the Judge may, on proof that reasonable notice of the intention to make the application has been given to the Minister, unless sufficient cause is shown against the discharge,—
 - (a) discharge the surrender order; and
 - (b) order the discharge of the person from the place where the person is detained, if the person is not liable to be detained under any other order for detention.

Discharge of person does not preclude further proceedings

59 Discharge of person under this Part does not preclude further proceedings

To avoid doubt, the discharge of a person under any provision of this Part or under any enactment repealed by this Act does not of itself preclude further proceedings under this Act, whether or not they are based on the same conduct, to extradite the person under this Act.

Part 5

Extension of Act for individual requests

60 Extension of Act for individual requests

- (1) This section applies to a request from a non-Commonwealth country for the surrender of a person who is accused or convicted of an offence committed within the jurisdiction of that country if—
- (a) either—
 - (i) no extradition treaty is in force between New Zealand and that country; or
 - (ii) if there is a treaty in force between New Zealand and that country, the offence concerned is not an extradition offence under the treaty; and
 - (b) Part 3 has not been applied to that country by an Order in Council made under section 16; and
 - (c) Part 4 has not been applied to that country by an Order in Council made under section 40(1); and
 - (d) the person is, or is suspected of being, in New Zealand or on his or her way to New Zealand; and
 - (e) the offence is an offence punishable under the law of that country for which the maximum penalty is imprisonment for not less than 12 months or any more severe penalty; and
 - (f) if the conduct constituting the offence in relation to that country, or equivalent conduct, had occurred within the jurisdiction of New Zealand at the time when it occurred within the jurisdiction of that country, it would, if proved, have constituted an offence punishable under

- the law of New Zealand for which the maximum penalty is imprisonment for not less than 12 months or any more severe penalty.
- (2) A request to which this section applies must be made to the Minister and must be accompanied by the duly authenticated supporting documents described in section 18.
- (3) Subject to subsection (4), the Minister must consider the following matters in order to decide whether the request should be dealt with under this Act:
- (a) any undertakings given by the country making the request that a person who is accused or convicted of an offence in New Zealand that is an extradition offence in relation to New Zealand and the other country may, if found in that country or within the jurisdiction of that country, be returned to New Zealand; and
 - (b) the seriousness of the offence; and
 - (c) the object of this Act as specified in section 12; and
 - (d) any other matters that the Minister considers relevant.
- (4) If a request to which this section applies is made—
- (a) by a country that is a party to a multilateral treaty; and
 - (b) in respect of an offence that is a multilateral treaty offence in relation to that multilateral treaty,— the Minister is not required to consider the matters set out in paragraphs (a) to (c) of subsection (3).
- (5) For the purposes of subsection (4),—
- multilateral treaty** means a multilateral treaty to which New Zealand is a party and that requires parties to treat specified conduct as offences or crimes and that includes provisions relating to the extradition of persons for those offences or crimes
- multilateral treaty offence** means conduct that is required under a multilateral treaty to be treated as an offence or a crime in the requesting country and New Zealand, and that is an offence or crime under the law of the requesting country and New Zealand.
- (6) If the Minister decides that the request should be dealt with under this Act, the person who is the subject of the request is liable to be arrested and surrendered in the manner provided by Part 3 as if the Minister had received a request under section

18, and the provisions of this Act apply so far as applicable and with the necessary modifications.

- (7) Without limiting subsection (6), a provisional arrest warrant in relation to a person who is, or is suspected of being, in New Zealand or on his or her way to New Zealand may be issued in accordance with Part 3 even if a request to which this section applies has not yet been made.

Section 60(7): substituted, on 19 December 2002, by section 16 of the Extradition Amendment Act (No 2) 2002 (2002 No 64).

Part 6

Extradition to New Zealand

61 Request for surrender of person to New Zealand

- (1) If a person who is accused or has been convicted of an extradition offence against the law of New Zealand is suspected of being in another country or on his or her way to another country, a request to that country by New Zealand for the surrender of the person may, subject to subsection (3), be made only by or with the authority of,—
- (a) in the case of a request to an extradition country to which Part 3 applies, the Minister; or
 - (b) in the case of a request to an extradition country to which Part 4 applies, the Commissioner of Police or his or her delegate; or
 - (c) if the law of the extradition country to which the request is to be made has the effect of requiring a request to be authorised by a particular person, that person.
- (2) The request under subsection (1) may be made—
- (a) directly to the competent authorities in that country; or
 - (b) through the Minister of Foreign Affairs and Trade to a diplomatic or consular representative, or a Minister, of that country.
- (3) Nothing in subsection (1) or subsection (2) prevents—
- (a) a treaty or arrangement that is made with a country from prescribing a procedure for making requests that is different or supplementary to the procedure set out in subsections (1) and (2); or

- (b) a request being made in a manner permitted by the law of the other country if no different or supplementary procedure described in paragraph (a) applies.
- (4) If subsection (3)(a) applies, the different or supplementary procedure must be used.

Compare: 1965 No 44 s 13

62 Request for information about time spent in custody overseas

- (1) If a request is made for the surrender of a person to New Zealand, the Minister or other authorised person may, at the time of making the request or at any later time, ask the competent authority in the country to which the request is or was made to provide, at the time of the surrender of the person or as soon as possible after that, a duly authenticated certificate recording—
- (a) the date on which the person was admitted to a prison or any other place to be held in custody in relation to the request; and
 - (b) the total period during which the person was detained in custody during the process leading to the surrender of the person to New Zealand in relation to the offence or offences.
- (2) A certificate obtained under subsection (1) is presumed to be accurate in the absence of any evidence to the contrary.
- (3) If—
- (a) no certificate is received within a reasonable time after the person is surrendered; and
 - (b) the Minister is satisfied from the information that the Minister has in relation to the person surrendered that an accurate calculation can be made of the date and time period referred to in paragraphs (a) and (b) of subsection (1),—
- the Minister may issue a certificate setting out that date and time period.
- (4) For the purposes of section 9 1(3) of the Parole Act 2002, a certificate given by the Minister under subsection (3) has the same effect as a certificate obtained under subsection (1).

- (5) If, after the Minister has given a certificate under subsection (3),—
- (a) a certificate requested under subsection (1) is obtained from the extradition country; and
 - (b) the date and time period specified in that certificate is different from that specified in the Minister's certificate,—

then, unless the Minister otherwise directs, the certificate from the extradition country is a substitute certificate for the purpose of section 91(3) of the Parole Act 2002.

Section 62(1)(a): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 62(4): amended, on 30 June 2002, by section 125 of the Parole Act 2002 (2002 No 10).

Section 62(5): amended, on 30 June 2002, by section 125 of the Parole Act 2002 (2002 No 10).

63 Surrendered person to be brought into New Zealand

If a person is surrendered to New Zealand in relation to an extradition offence against the law of New Zealand of which the person is accused or for which the person has been convicted (whether or not pursuant to a request under section 61), the person must be brought into New Zealand and delivered to the appropriate authorities to be dealt with according to law.

Compare: Extradition 1988 s 41 (Aust)

64 Surrendered person not to be tried for previous offence in certain circumstances

- (1) If a person accused or convicted of an extradition offence in New Zealand is surrendered by an extradition country, that person cannot be detained or tried in New Zealand for any offence committed, or alleged to have been committed, before the person's surrender, other than the offence to which the request for the person's surrender relates or any offence carrying the same or a lesser maximum penalty of which the person could be convicted upon proof of the facts upon which that request was based, unless—
- (a) the person has left, or has had an opportunity of leaving, New Zealand or, in a case where the person was

- surrendered to New Zealand for a limited period, has been returned to the country; or
- (b) the competent authority in the extradition country that surrendered the person consents to the person being tried or detained for any other specified offence.
- (2) If a person accused or convicted of an offence in New Zealand is surrendered by an extradition country (in this subsection referred to as the **surrendering country**), that person cannot be detained in New Zealand for the purpose of being surrendered to any other country for trial or punishment for any offence committed or alleged to have been committed before the person's surrender to New Zealand, including the offence to which the original request relates and any other offence of which the person could be convicted on proof of the facts on which that request was based, unless—
- (a) the person has left, or has had an opportunity of leaving, New Zealand or, in a case where the person was surrendered to New Zealand for a limited period, has been returned to the country; or
- (b) the competent authority in the surrendering country consents to the person's detention in New Zealand and the person's surrender to any other specified country in respect of any specified offence.

Compare: 1965 No 44 s 14; Extradition Act 1988 s 42 (Aust)

65 Return of surrendered person if proceedings not commenced within 6 months

If—

- (a) a person accused or convicted of an extradition offence in New Zealand is surrendered by an extradition country; and
- (b) proceedings against the person for the offence in respect of which the person was surrendered are not begun within 6 months after the date of the person's arrival in New Zealand on being surrendered—

the Minister may make a removal order under section 96.

Compare: Fugitive Offenders Act 1881 s 18 (Imp); 1992 No 86 s 15(4)

66 Person temporarily surrendered to New Zealand

- (1) If a person is temporarily surrendered by a country to New Zealand subject to a condition, or pursuant to an undertaking given by the Minister, that the person will be kept in custody while the person is in New Zealand, then—
- (a) the person must while in New Zealand be kept in such custody as the Minister directs in writing; and
 - (b) a direction given under paragraph (a) is sufficient authority for the detention of the person in accordance with the terms of the direction; and
 - (c) if a person is directed to be detained in a prison, the Corrections Act 2004, so far as applicable and with the necessary modifications, applies with respect to the person as if the person were a person sentenced to imprisonment for an offence against the law of New Zealand and liable to be detained under such a sentence.
- (2) If a person is temporarily surrendered by a country to New Zealand subject to a condition, or pursuant to an undertaking given by the Minister, that the person will be returned to the country, the Minister must arrange for the person to be returned at a time in accordance with the condition or undertaking.
- (3) If the person is being held in custody for the purpose of subsection (1) or subsection (2), and the country from which the person was surrendered requests the release of the person from custody, the Minister must order that the person be released from custody unless the person is otherwise liable to be held in custody.

Compare: 1992 No 86 s 15(1)–(3); Extradition Act 1988 s 44 (Aust)

Section 66(1)(c): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Part 7

Procedure relating to surrender orders

67 Form and execution of surrender order or temporary surrender order

A surrender order or a temporary surrender order must be in the prescribed form (if any) and must—

- (a) specify all the offences in relation to which the person is being surrendered; and

- (b) either—
- (i) require the person in whose custody the person to be surrendered is being held (if the person is being held in custody) to release the person to be surrendered into the custody of a constable or an officer or security officer within the meaning of section 3(1) of the Corrections Act 2004; or
 - (ii) if the person to be surrendered is on bail, authorise any constable to take the person into custody; and
- (c) authorise the constable, or other officer, as the case may be, to transport the person in custody and, if necessary or convenient, to detain the person in custody, for the purpose of enabling the person to be placed in the custody of a person who is, in the opinion of the Minister, duly authorised to receive the person to be surrendered in the name of and on behalf of the extradition country; and
- (d) authorise the duly authorised person referred to in paragraph (c) to take the person to be surrendered into custody and transport the person out of New Zealand as soon as practicable to the extradition country, to be dealt with there according to law.

Compare: Extradition Act 1988 s 26(1) (Aust)

Section 67(b)(i): amended, on 1 October 2008, pursuant to section 116(a)(iv) of the Policing Act 2008 (2008 No 72).

Section 67(b)(i): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 67(b)(ii): amended, on 1 October 2008, pursuant to section 116(a)(iv) of the Policing Act 2008 (2008 No 72).

Section 67(c): amended, on 1 October 2008, pursuant to section 116(a)(iv) of the Policing Act 2008 (2008 No 72).

Part 8

Appeals against determinations in respect of eligibility for surrender

68 Appeal on question of law only

- (1) This section applies if a District Court determines under section 24 or 45 that a person is or is not eligible for surrender

in relation to any offence or offences for which surrender is sought, and either party considers the determination erroneous in point of law.

- (2) If this section applies, the party may appeal against the determination to the High Court on a question of law only.
- (3) To lodge an appeal the party must, within 15 days after the determination, file in the office of the court to which the appeal is being taken a notice of appeal in the prescribed form.

Section 68: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

69 Application to appeal of Bail Act 2000 and Criminal Procedure Act 2011

- (1) Section 59 of the Bail Act 2000 (which relates to the surrender of an appellant released on bail) applies with any necessary modifications to an appeal under this Part as if it were an appeal under subpart 8 of Part 6 of the Criminal Procedure Act 2011 against the determination by a District Court of a charge for an offence.
- (2) Subpart 8 of Part 6 of the Criminal Procedure Act 2011 applies as far as applicable with the necessary modifications to every appeal under this Part.

Section 69: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

70 Custody pending determination of appeal

- (1) If—
 - (a) a District Court makes a determination under section 24 or section 45; and
 - (b) immediately after the court makes the determination, either party informs the court that the party intends to appeal against the determination,—the court may order that the person who is the subject of the determination continue to be detained or, as the case may be, issue a warrant for the arrest and detention of the person, pending the determination of the appeal.
- (2) If—
 - (a) a District Court makes a determination under section 24 or section 45; and

- (b) either party files a notice of appeal against the determination,—
any District Court or the High Court may order that the person who is the subject of the determination continue to be detained or, as the case may be, issue a warrant for the arrest and detention of the person, pending the determination of the appeal.
- (3) If a person is detained under an order made under this section or arrested and detained under a warrant issued under this section,—
- (a) if the proceedings are under Part 3, sections 22, 23(1) to 23(3), 26(2) and 26(3), and 27 apply to the detention of the person with any necessary modifications as if the appeal proceedings were proceedings under section 24 to determine whether or not the person is eligible for surrender:
- (b) if the proceedings are under Part 4, sections 43, 44(1) to 44(3), 46(2) and 46(3), and 52 apply to the detention of the person with any necessary modifications as if the appeal proceedings were proceedings under section 45 to determine whether or not the person is eligible for surrender.

71 Waiver of rights to apply for habeas corpus or to lodge appeal

Without limiting section 28 or section 53, a person whose surrender is sought may, by a waiver in the prescribed form, waive the following rights:

- (a) the right to make an application for a writ of habeas corpus within 15 days after the issue of a warrant of detention; and
- (b) the right, in relation to any offence or offences for which the court has determined that the person is eligible for surrender, to lodge an appeal under this Part.

72 Powers of court on appeal

- (1) The High Court must hear and determine the question or questions of law arising on any case transmitted to it, and do 1 or more of the following things:

- (a) reverse, confirm, or amend the determination in respect of which the case has been stated:
 - (b) remit the determination to the District Court for reconsideration together with the opinion of the High Court on the determination:
 - (c) remit the determination to the District Court with a direction that the proceedings to determine whether the person is eligible for surrender be reheard:
 - (d) make any other order in relation to the determination that it thinks fit.
- (2) In hearing and determining the question or questions of law arising on any case transmitted to it, the court—
- (a) must not have regard to any evidence of a fact or opinion that was not before the District Court when it made the determination appealed against; and
 - (b) may in the same proceeding hear and determine any application for a writ of habeas corpus made in respect of the detention of the person whose surrender is sought.

73 Further provisions relating to powers of court on appeal

- (1) Without limiting section 72, if the appeal is against a determination that a person is eligible for surrender, and the court reverses the determination in respect of which the case has been stated, the court must also either—
- (a) discharge the person; or
 - (b) remit the determination to the District Court with a direction that the proceedings to determine whether the person is eligible for surrender be reheard.
- (2) Without limiting section 72, if the appeal is against a determination that a person is eligible for surrender in respect of 2 or more offences, and the court determines that the determination includes an error of law that relates to only 1 or some of those offences, the court may amend the determination and—
- (a) discharge the person in respect of that offence or those offences; or
 - (b) remit the determination to the District Court with a direction that the proceedings to determine whether the person is eligible for surrender be reheard in respect of that offence or those offences.

- (3) Despite subsections (1) and (2), if an appeal is against a determination that a person is eligible for surrender, and the court determines that there has been an error of law, it may nevertheless decline to reverse or amend the determination in respect of which the case has been stated if it considers that no substantial wrong or miscarriage of justice has occurred and that the determination ought to be upheld.
- (4) Without limiting section 72, if the appeal is against a determination that a person is not eligible for surrender, and the court determines that the determination includes an error of law, the court may,—
 - (a) if the proceedings are under Part 3, exercise the powers of a District Court under subsections (1) to (3) of section 26 as if it were a District Court, though paragraph (d) of section 26(1) does not apply:
 - (b) if the proceedings are under Part 4, exercise the powers of a District Court under subsections (1) to (3) of section 46 as if it were a District Court, though paragraph (b) of section 46(1) does not apply and, if the court makes a surrender order under section 47(1), subsections (2) and (3) of section 47 do not apply:
 - (c) if it remits the determination to the District Court, issue a warrant for the arrest and detention of the person pending the District Court's reconsideration of the determination or rehearing of the proceedings to determine whether the person is eligible for surrender; and section 70(3) applies to any warrant issued under this paragraph as if the warrant were issued under section 70.

Part 9

Provisions relating to evidence

74 Evidence on behalf of person whose surrender is sought regarding restrictions on surrender

- (1) In any proceedings under this Act, a Judge or court may receive evidence tendered by or on behalf of a person whose surrender is sought that is relevant to the restrictions on surrender in sections 7 and 8 if the Judge or court considers the

evidence is reliable, whether or not the evidence is otherwise admissible in a court of law.

- (2) Subsection (1) does not apply to evidence gathered in New Zealand.

Compare: 1965 No 44 s 9

75 Depositions and official documents taken or made overseas

- (1) Without limiting section 25, in any proceedings under this Act,—

- (a) depositions, and copies of depositions, taken outside New Zealand whether in the presence or absence of the person whose surrender is sought; and
- (b) official certificates of conviction or other facts, and judicial documents stating the fact of conviction or other facts relevant to the extradition proceedings, given or made outside New Zealand—

are, if duly authenticated, admissible as evidence.

- (2) Nothing in subsection (1) authorises the reception of any such depositions, certificates, or judicial documents in evidence against any person on his or her trial for any offence.

Compare: 1965 No 44 s 15(1)

76 Admissibility of documentary hearsay evidence

Without limiting section 25, in any proceedings under this Act where direct oral evidence of a fact or opinion would be admissible, a statement made in any deposition, official certificate, or judicial document taken, given, or made outside New Zealand and tending to establish that fact or opinion is, if duly authenticated, admissible as evidence of that fact or opinion.

77 Admission of documents under other enactment or rule of law in New Zealand not affected

Nothing in section 25 or sections 74 to 76 prevents the admission in evidence of any document in accordance with any other enactment or rule of law applicable in New Zealand.

Compare: 1992 No 86 s 63(3)

78 Authentication of overseas documents

- (1) For the purposes of this Act, any warrant, deposition, exhibit, official certificate, or judicial document issued, taken, given, received, or made outside New Zealand, and any copy of any such document, is duly authenticated if—
- (a) it is authenticated in the manner for the time being provided by the law of New Zealand in respect of documents executed outside New Zealand; or
 - (b) it is authenticated in the manner provided for in an extradition treaty in force between New Zealand and the country in which it was issued, taken, given, received, or made; or
 - (c) it purports to be signed or certified by a Judge, Magistrate, or official of the country in which it was issued, taken, given, received, or made, and—
 - (i) it is verified by the oath of a witness, or of an official of the Government of the country in which it was issued, taken, given, received, or made; or
 - (ii) it purports to be sealed with an official or public seal of the country in which it was issued or of a Minister of State, or of a department or official of the Government, of the country in which it was issued, taken, given, received, or made.
- (2) Every court must take judicial notice of every signature or seal referred to in subsection (1).

Compare: 1965 No 44 s 16

79 Evidence taken in New Zealand for use overseas

- (1) For the purpose of any request made by New Zealand for the surrender of a person from another country, a District Court may, in the absence of the person accused or convicted of an offence, take evidence in the same manner, so far as applicable, as the procedure set out for the taking of oral evidence under sections 95 to 99 of the Criminal Procedure Act 2011.
- (2) For the purposes of taking evidence under subsection (1), the District Court Judge has the same jurisdiction and powers as if the proceedings were the taking of oral evidence under subpart 8 of Part 3 of the Criminal Procedure Act 2011.

- (3) Nothing in this section authorises the reception of any evidence referred to in subsection (1) in evidence against any person on his or her trial for any offence.

Section 79: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

80 Effect of certain certificates

- (1) For the purposes of section 7(a), a certificate signed by the Minister stating that the offence for which the surrender of any person is sought is an offence of a political character is conclusive evidence of its contents.
- (2) A certificate signed by the Secretary of Foreign Affairs and Trade—
- (a) reciting the terms of an arrangement in force between New Zealand and another country; or
 - (b) reciting the terms of an undertaking given by another country—
- is sufficient evidence of the terms of that arrangement or undertaking.
- (3) A certificate signed by the Secretary of Foreign Affairs and Trade stating that—
- (a) New Zealand or another specified country is a party to a specified treaty; or
 - (b) the treaty entered into force for New Zealand or that other country, as the case may be, on a specified date; or
 - (c) as at the date of the certificate, the treaty remains in force for New Zealand or that other country— is, for the purposes of any proceedings under this Act, sufficient evidence of the facts stated in the certificate.
- (4) A court or a person acting judicially to which or to whom any certificate under subsection (2) or subsection (3) is produced must take judicial notice of the signature on it of the Secretary of Foreign Affairs and Trade.

Compare: Extradition Act 1988 s 52 (Aust)

81 Order in Council evidence of terms of treaty

An Order in Council made under section 15 or section 16 or section 40 that recites the terms of the extradition treaty to

which it relates is, while it continues in force, conclusive evidence of those terms.

Compare: 1965 No 44 s 3(5)

Part 10

Search and seizure

82 Search and seizure on arrest

- (1) If a person is arrested on a warrant issued or endorsed under this Act, a constable may search, without further warrant, the person arrested and may seize any thing, including any sum of money, found on the person or in the person's possession if the constable believes on reasonable grounds that the thing on the person or in the person's possession may be evidence as to the commission of any offence in relation to which the warrant to arrest was issued or endorsed or for which the surrender of the person is sought by the extradition country concerned.
- (2) If there is no suitable searcher available at the place where the search is to take place, the person to be searched may be taken to another place to be searched.
- (3) Nothing in this section limits or affects any power under section 11 of the Search and Surveillance Act 2012.

Compare: Extradition Act 1988 s 13(1) (Aust)

Section 82(1): amended, on 1 October 2008, pursuant to section 1 16(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 82(3): replaced, on 1 October 2012, by section 240(2) of the Search and Surveillance Act 2012 (2012 No 24).

83 Search warrants

- (1) This section applies if—
 - (a) a request for the surrender of a person has been made under Part 3; or
 - (b) a warrant has been endorsed under Part 4; or
 - (c) a provisional arrest warrant has been issued under this Act.
- (2) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) who, on an application made in the manner provided in subpart 3 of Part 4 of that Act, is satisfied that there are reasonable grounds for believ-

ing that there is, in or on any place or thing, any thing that may be evidence as to the commission of an extradition offence for which surrender is sought, may issue a search warrant.

- (3) This section does not limit or affect the ability of a foreign country to make a request for assistance under the Mutual Assistance in Criminal Matters Act 1992.
- (4) The provisions of Part 4 of the Search and Surveillance Act 2012 (except subpart 6) apply.

Section 83(2): amended, on 1 October 2012, by section 240(3) of the Search and Surveillance Act 2012 (2012 No 24).

Section 83(4): inserted, on 1 October 2012, by section 240(4) of the Search and Surveillance Act 2012 (2012 No 24).

84 Form and content of search warrant

[Repealed]

Section 84: repealed, on 1 October 2012, by section 240(5) of the Search and Surveillance Act 2012 (2012 No 24).

85 Powers conferred by warrant

[Repealed]

Section 85: repealed, on 1 October 2012, by section 240(5) of the Search and Surveillance Act 2012 (2012 No 24).

86 Power to stop vehicles

[Repealed]

Section 86: repealed, on 1 October 2012, by section 240(5) of the Search and Surveillance Act 2012 (2012 No 24).

87 Person executing warrant to produce evidence of authority

[Repealed]

Section 87: repealed, on 1 October 2012, by section 240(5) of the Search and Surveillance Act 2012 (2012 No 24).

88 Notice of execution of warrant

[Repealed]

Section 88: repealed, on 1 October 2012, by section 240(5) of the Search and Surveillance Act 2012 (2012 No 24).

*Return of property***89 Return of property**

- (1) Subsection (2) applies if a person is ordered to be surrendered under this Act.
- (2) The court may direct that any thing, including a sum of money, that may be evidence of the offence the person is alleged to have committed or has committed (including any thing seized under section 82 or section 85) be delivered with the person on the person's surrender to the extradition country.
- (3) The court may refuse to direct that any particular thing referred to in subsection (2) be delivered with the person if the court is satisfied that the thing is required for the investigation of an offence within the jurisdiction of New Zealand, or the possession of the thing by the person would be unlawful in New Zealand.
- (4) If the person cannot be surrendered by reason of his or her death or escape from custody, any thing referred to in subsection (2) must, if the court directs, be delivered up to the extradition country.
- (5) Subsection (6) applies if a person is discharged under this Act without being surrendered.
- (6) Subject to subsection (7), the court may direct that any thing seized under section 82 or section 85, including a sum of money, be returned to the person.
- (7) The court may refuse to direct that any particular thing referred to in subsection (6) be returned to the person if the court is satisfied that the thing is required for the investigation of an offence within the jurisdiction of New Zealand, or the possession of the thing by the person would be unlawful in New Zealand.

Part 11**Provisions relating to presence of persons
in New Zealand and removal of persons
from New Zealand****90 Transit**

- (1) This section applies to a person (**the transferee**) who is being transported in custody to any country to which Part 3 or Part 4

- applies (**the extraditing country**) from any other country for the purpose of being surrendered to the extraditing country.
- (2) A transferee may be transported through New Zealand for the purpose of being surrendered to the extraditing country.
- (3) If the aircraft or ship that transports a transferee lands or calls at any place in New Zealand,—
- (a) the person holding the transferee in custody before the landing or call is made may hold the transferee in custody at the place or in Police custody for a period not exceeding 24 hours; and
- (b) a court may, on the application of a constable, order that the transferee be held in custody for such period or periods as the court considers reasonably necessary to facilitate the transporting of the transferee.
- (4) If—
- (a) a person is being held in custody in accordance with an order made by a court under subsection (3); and
- (b) the person's transportation is not, in the opinion of the Minister, continued within a reasonable time,— the Minister must make a removal order under section 96.

Compare: 1992 No 86 s 42(1)–(3); Extradition Act 1988 s 48 (Aust)

Section 90(3)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

91 Immigration visa not required

- (1) If a person is—
- (a) surrendered or temporarily surrendered to New Zealand in relation to an extradition offence; or
- (b) a person to whom section 90 applies,— that person is not required to hold a visa under the Immigration Act 2009 if, and for so long as, the person is in New Zealand in accordance with the provisions of this Act.
- (2) If a person is returned to New Zealand to continue serving a sentence of imprisonment after being temporarily surrendered to an extradition country under Part 3 or Part 4, the status of the person for the purposes of the Immigration Act 2009 is not affected by the fact that the person was temporarily surrendered.

Section 91 heading: amended, at 2am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 91(1): amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 91(2): amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

92 Return of person Section

93 applies if—

- (a) a person accused or convicted of an extradition offence in New Zealand is surrendered by an extradition country and, on the completion of proceedings for the offence, the person is acquitted; or
- (b) a person who was surrendered to New Zealand in relation to an extradition offence and was sentenced to a term of imprisonment or any other punishment in respect of that offence ceases to be serving the sentence; or
- (c) a person who is surrendered to New Zealand in relation to an extradition offence is discharged without conviction.

93 Minister must make removal order or issue certificate

- (1) If this section applies, the Minister must make a removal order under section 96 in respect of the person unless, the Minister is satisfied that, because of special circumstances in relation to the person, it would be inappropriate to order the removal of the person.
- (2) If the Minister does not make a removal order in respect of the person, the Minister must issue a certificate under section 94.

94 Certificate giving temporary authority for person to remain in New Zealand

- (1) A certificate issued by the Minister under this section—
 - (a) may be issued for a period, not exceeding 3 months, specified in the certificate; and
 - (b) may, from time to time, be renewed for a further period not exceeding 3 months; and
 - (c) may, if the Minister thinks fit, order that the person named in the certificate be taken into custody.

- (2) The certificate is, while it remains in force, sufficient authority for the person named in the certificate to remain in New Zealand.
- (3) If the Minister issues a certificate, the Minister may, if he or she thinks fit, refer the person's case to the Minister of Immigration for consideration under section 61 of the Immigration Act 2009, and in that case that section applies for the purposes of this section as if the person were a person required to hold a visa under that Act to be in New Zealand.
- (4) Except as provided in subsection (3), nothing in the Immigration Act 2009 applies to the person named in the certificate while the certificate is in force.
- (5) If,—
 - (a) where the Minister referred the person's case to the Minister of Immigration under subsection (3), the Minister of Immigration declines to grant a visa; and
 - (b) there do not appear to the Minister to be any other grounds on which the person should remain in New Zealand,—

the Minister must cancel the certificate issued under this section, and must make a removal order under section 96 in respect of the person.

Section 94(3): substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 94(4): amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 94(5)(a): amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

95 Further provisions relating to certificate

- (1) If the certificate issued under section 94 orders that the person be taken into custody, the certificate is sufficient authority for a constable to arrest the person and take the person into custody.
- (2) A person who is taken into custody under this section must, unless sooner released, be brought before a District Court Judge as soon as possible and, after that, every 21 days while the certificate is in force, to determine in accordance with subsection (3) whether the person should be detained in custody or released pending the decisions referred to in section 94(5).

- (3) If a person is brought before a District Court Judge under subsection (2), the Judge may, if the Judge is satisfied that the person is the person named in the certificate,—
- (a) issue a warrant for the detention of the person in custody if the Judge is satisfied that, if not detained, the person is likely to abscond; or
 - (b) order the release of the person subject to such conditions (if any) that the Judge thinks fit.
- (4) A warrant for the detention of the person issued under subsection (3)(a) may authorise the detention of the person in a prison or any other place in which the person could be detained under section 26(1)(a) if the person were subject to proceedings under Part 3.

Section 95(1): amended, on 1 October 2008, pursuant to section 1 16(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 95(4): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

96 Removal order

- (1) A removal order made by the Minister under this section—
- (a) may either—
 - (i) require the person in whose custody the person is being held (if the person is being held in custody) to release the person into the custody of a constable; or
 - (ii) if the person is not in custody, authorise any constable to take the person into custody; and
 - (b) must specify that the person is to be taken by a constable and placed on board any craft for the purpose of effecting the person's removal from New Zealand; and
 - (c) may authorise the detention in custody of the person while awaiting removal from New Zealand.
- (2) The removal order must be served on the person named in the order in the manner prescribed by regulations made under this Act.
- (3) If the removal order authorises the detention of the person in custody, the person may be detained—

- (a) in a prison or any other place in which the person could be detained under section 26(1)(a) if the person were subject to proceedings under Part 3; or
 - (b) at a seaport or airport.
- (4) If a person is not able to be conveyed out of New Zealand within 48 hours after service of the removal order, the person must be brought before a District Court Judge to determine in accordance with subsection (5) whether the person should be detained in custody or released pending that person's removal from New Zealand.
- (5) If a person is brought before a District Court Judge under subsection (4), the Judge may, if the Judge is satisfied that the person is the person named in the order,—
- (a) issue a warrant for the detention of the person in custody if the Judge is satisfied that, if not detained, the person is likely to abscond; or
 - (b) order the release of the person subject to such conditions (if any) that the Judge thinks fit.
- (6) A warrant for the detention of the person issued under subsection (5)(a) may authorise the detention of the person in a prison or any other place in which the person could be detained under section 26(1)(a) if the person were subject to proceedings under Part 3.
- (7) A removal order made under this section continues in force until it is executed or is cancelled.
- (8) Nothing in the Immigration Act 2009 applies to the person named in the removal order while the order is in force.

Section 96(1)(a)(i): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 96(1)(a)(ii): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 96(1)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 96(3)(a): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 96(6): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 96(8): amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

97 New Zealand citizens

Nothing in this Part authorises the removal of a New Zealand citizen from New Zealand.

Part 12
Miscellaneous provisions**98 Persons in custody**

- (1) If, under this Act or any order made under this Act, a person is required to be detained in custody, any constable may detain the person and convey him or her for the purpose of detention—
- (a) to the prison manager of a prison; or
 - (b) if an order is made to detain the person in any other place, to the person in charge of the place that is specified in the order.
- (2) The laws relating to the conditions of imprisonment of persons awaiting trial for offences against the law of New Zealand, the treatment of such persons during imprisonment, and the transfer of such persons between institutions apply, so far as applicable and with the necessary modifications, to a person detained in a prison under this Act pending surrender, other than temporary surrender.
- (3) If a person is detained in a prison or is otherwise detained in custody pending surrender under this Act, the person is deemed for the purposes of section 184 of the Corrections Act 2004 to be a person committed to an institution, until he or she is conveyed out of New Zealand.
- (4) This section is subject to section 66.

Compare: Extradition Act 1988 s 53 (Aust)

Section 98(1): amended, on 1 October 2008, pursuant to section 1 16(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 98(1)(a): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 98(2): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 98(3): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

99 Priority of requests

- (1) If 2 or more countries seek and obtain an order for the surrender of the same person under Part 3 or Part 4, the Minister must determine to which (if any) of those countries the person is to be surrendered.
- (2) In making a determination under subsection (1), the Minister must have regard to all the circumstances of the case and, in particular, to—
 - (a) the relative seriousness of the offences for which surrender is sought:
 - (b) the respective dates on which surrender was sought:
 - (c) the citizenship or nationality, and the place of ordinary residence, of the person:
 - (d) the time and place of the commission of the offence or each of the offences:
 - (e) the possibility of subsequent surrender of the person by any of the countries to another jurisdiction:
 - (f) the provisions of any extradition treaty or arrangements with, or any undertakings given by, any of the countries seeking the surrender.
- (3) Despite subsection (1), if a request for the surrender of a person is received from the International Criminal Court and from 1 or more countries, the priority of the requests must be determined by the Minister in accordance with sections 61 to 64 of the International Crimes and International Criminal Court Act 2000.

Section 99(3): added, on 1 July 2002, by section 184 of the International Crimes and International Criminal Court Act 2000 (2000 No 26).

Provisions in treaties

100 Provisions relating to extradition offences that may be specified in treaties

If, after the commencement of this Act, an extradition treaty is made between New Zealand and another country, any offence that is specified as an extradition offence for the purposes of that treaty (whether the offences in the treaty are specified individually or more generally described) must be an offence punishable under the law of New Zealand and the other coun-

try for which the maximum penalty is imprisonment for not less than 12 months or any more severe penalty.

101 Provision relating to surrender of New Zealand citizens An extradition treaty made between New Zealand and another country after the commencement of this Act must—

- (a) state whether or not New Zealand citizens may be surrendered; and
- (b) if it states that New Zealand citizens may be surrendered, provide that the surrender of a person may be refused in a particular case on the grounds that the person is a New Zealand citizen.

Compare: 1965 No 44 s 5(7)

101A Treaties deemed to incorporate crimes

- (1) An extradition treaty between New Zealand and an extradition country must be construed to give effect to every specified provision (being a provision relating to the inclusion of offences within certain treaties by operation of law).
- (2) For the purposes of subsection (1), each of the following provisions is a specified provision:
 - (a) sections 7 and 7A of the Aviation Crimes Act 1972:
 - (b) section 35 and section 35A of the Misuse of Drugs Act 1975:
 - (c) sections 10 and 10A of the Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980:
 - (d) section 8 of the Crimes of Torture Act 1989:
 - (e) section 14 of the Maritime Crimes Act 1999:
 - (f) section 10 of the Crimes (Bribery of Foreign Public Officials) Amendment Act 2001:
 - (g) section 101B of this Act:
 - (ga) section 69 of the Terrorism Suppression Act 2002:
 - (h) section 21 of the Mercenary Activities (Prohibition) Act 2004:
 - (i) section 145C of the Films, Videos, and Publications Classification Act 1993:
 - (j) section 13 of the Cultural Property (Protection in Armed Conflict) Act 2012.

Section 101A: inserted, on 3 May 2001, by section 12 of the Crimes (Bribery of Foreign Public Officials) Amendment Act 2001 (2001 No 28).

Section 101A(2)(b): amended, on 22 June 2005, by section 23 of the Misuse of Drugs Amendment Act 2005 (2005 No 81).

Section 101A(2)(g): added, by section 5 of the Extradition Amendment Act 2002 (2002 No 21).

Section 101A(2)(g): brought into force, so far as it implements the TOC convention, on 29 September 2003, by clause 2 of the Extradition Amendment Act Commencement Order 2003 (SR 2003/23 8).

Section 101A(2)(g): brought into force, so far as it implements the migrants protocol and trafficking protocol, on 1 January 2004, by clause 3 of the Extradition Amendment Act Commencement Order 2003 (SR 2003/23 8).

Section 101A(2)(ga): added, on 5 December 2002, by section 76 of the Terrorism Suppression Act 2002 (2002 No 34).

Section 101A(2)(h): added, on 22 October 2004, by section 22 of the Mercenary Activities (Prohibition) Act 2004 (2004 No 69).

Section 101A(2)(i): added, on 22 February 2005, by section 34(2) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 101A(2)(j): inserted, on 1 July 2013, by section 45 of the Cultural Property (Protection in Armed Conflict) Act 2012 (2012 No 118).

101B Certain crimes with transnational aspects deemed to be included in extradition treaties

- (1) For the purposes of this Act and any Order in Council in force under section 15 or section 104, the following offences are deemed to be offences described in any extradition treaty concluded before the commencement of section 6 of the Extradition Amendment Act 2002 and for the time being in force between New Zealand and any foreign country that is a party to a convention or protocol referred to in subsection (5):
- (a) every offence against any of sections 98A, 98C, 98D, 100, 101, 102, 103, 104, 105, 116, 117, and 243 of the Crimes Act 1961:
 - (b) every offence against any of sections 29A, 30, 30A, 31(1), 31(2), and 32 of the Passports Act 1992:
 - (c) any offence against any enactment if—
 - (i) it is punishable by imprisonment for a term of 4 years or more; and
 - (ii) the offence for which extradition is requested is alleged to involve an organised criminal group (as defined in article 2(a) of the TOC convention); and

- (iii) the person whose extradition is sought is, or is suspected of being, in or on his or her way to the requested country.
- (2) A person whose surrender is sought from New Zealand in respect of an act that amounts to an offence deemed by subsection (1) to be an offence described in an extradition treaty is liable to be surrendered in accordance with this Act and the applicable extradition treaty, whether the act occurred before or after the commencement of section 6 of the Extradition Amendment Act 2002.
- (3) Subsection (2) does not apply in respect of an act that, had it occurred within the jurisdiction of New Zealand, would not, at the time that it occurred, have constituted an offence under New Zealand law.
- (4) A certificate under the hand of the Minister of Foreign Affairs and Trade that a foreign country is a party to the TOC convention, the migrants protocol, or the trafficking protocol is, in the absence of proof to the contrary, sufficient evidence of that fact.
- (5) For the purposes of this section,—
- foreign country** includes a territory—
- (a) for whose international relations the Government of a foreign country is responsible; and
- (b) to which the extradition treaty and (as the case may be) the migrants protocol, TOC convention, or the trafficking protocol, extend

migrants protocol means the Protocol against the Smuggling of Migrants, by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organised Crime, done at New York on 15 November 2000

TOC convention means the United Nations Convention against Transnational Organised Crime, done at New York on 15 November 2000

trafficking protocol means the Protocol to Prevent, Suppress and Punish Trafficking of Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organised Crime, done at New York on 15 November 2000.

Section 101B: inserted, by section 6 of the Extradition Amendment Act 2002 (2002 No 21).

Section 101B: brought into force, so far as it implements the TOC convention, on 29 September 2003, by clause 2 of the Extradition Amendment Act Commencement Order 2003 (SR 2003/238).

Section 101B: brought into force, so far as it implements the migrants protocol and trafficking protocol, on 1 January 2004, by clause 3 of the Extradition Amendment Act Commencement Order 2003 (SR 2003/23 8).

Section 101B(1)(a): amended, on 5 December 2013, by section 4 of the Extradition Amendment Act 2013 (2013 No 116).

Regulations

102 Regulations

- (1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
- (a) prescribing the form of warrants, notices, endorsements, and orders for the purposes of this Act:
 - (b) prescribing additional matters to be included in the record of the case under section 25:
 - (c) prescribing the fees, travelling allowances, and expenses payable to interpreters and to persons giving evidence in proceedings under this Act:
 - (d) prescribing the costs and charges payable by any party in proceedings under this Act:
 - (e) prescribing the practice and procedure of District Courts in relation to proceedings under this Act, including (without limitation),—
 - (i) the pre-hearing disclosure of information:
 - (ii) the powers of the court when information required to be disclosed by the regulations is not disclosed or not disclosed in accordance with the requirements specified in the regulations or by the court:
 - (iii) requiring the person whose surrender is sought to give notice of his or her intention to put a restriction on surrender in issue in the proceedings:
 - (iv) the circumstances in which the court may appoint an expert witness, the procedure to be followed after the expert witness is appointed, the rights

- of the parties in relation to the evidence given by the expert witness, and the manner in which the expert witness is to be remunerated:
- (f) prescribing the manner of serving removal orders under Part 11, and other documents for the purposes of this Act:
 - (g) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.
- (2) Regulations made under subsection (1)(e) may provide for different practice and procedure in relation to proceedings under Part 3 than in relation to proceedings under Part 4.

103 Rules relating to appeals

Rules regulating the practice and procedure in appeals to the High Court under this Act may be made in the manner in which rules of court are made under the Judicature Act 1908.

Transitional and savings provisions

104 Orders in Council in effect on commencement of Act

- (1) Every Order in Council made under section 3 of the Extradition Act 1965 that continued to have effect immediately before the commencement of this Act continues to have effect, and may be amended or revoked, as if it had been made under section 15.
- (2) Every Order in Council made under the provisions of the Extradition Acts 1870 to 1935 of the United Kingdom Parliament and specified in Schedule 1 continues to have effect, and may be amended, as if it had been made under section 15.
- (3) The Governor-General may, by Order in Council, declare that an Order in Council referred to in subsection (2) ceases to have effect as part of the law of New Zealand.
- (4) This section does not limit section 105.

105 Certain conditions in Extradition Act 1965 continue to apply

- (1) Subsection (2) applies to any Order in Council referred to in subsection (1) or subsection (2) of section 104 that has not

been amended and has not ceased to have effect since the commencement of this Act.

- (2) If this subsection applies,—
- (a) this Act applies in relation to the extradition country to which the Order in Council relates subject to the conditions to which the extradition country was subject—
 - (i) under subsections (1) to (6) of section 5, section 5A, and section 9(1)(f) of the Extradition Act 1965; or
 - (ii) by virtue of the operation of section 5(7) of that Act; and
 - (b) sections 7, 8, and 30(3)(d) (including where section 30(3)(d) is applied under section 49) of this Act do not apply in relation to the extradition country to the extent that they are inconsistent with any provision of the relevant extradition treaty.

106 Warrants, orders, and proceedings under Fugitive Offenders Act 1881 (Imp) or Extradition Act 1965

- (1) A warrant issued or endorsed in New Zealand under the Fugitive Offenders Act 1881 of the United Kingdom Parliament, and in force immediately before the commencement of this Act in respect of a person from a Commonwealth country to which Part 3 or Part 4 applies on the commencement of this Act, has effect as if it had been issued in accordance with the applicable Part of this Act by a person having authority under that Part to issue such a warrant.
- (2) An order of a court made before the commencement of this Act in relation to a person referred to in subsection (1) has effect as if it had been made under Part 3 or Part 4, as the case may be.
- (3) Any proceedings instituted before the commencement of this Act in relation to a person referred to in subsection (1) under the Fugitive Offenders Act 1881 of the United Kingdom Parliament may be continued and dealt with under the applicable Part of this Act.
- (4) A warrant issued in New Zealand under the Extradition Act 1965, and in force immediately before the commencement of this Act in respect of a person from a foreign country, has effect

as if it had been issued in accordance with Part 3 by a person having authority under that Part to issue such a warrant.

- (5) An order of a court made before the commencement of this Act in relation to a person referred to in subsection (4) has effect as if it had been made under Part 3.
- (6) Any proceedings instituted before the commencement of this Act in relation to a person referred to in subsection (4) under the Extradition Act 1965 may be continued and dealt with under Part 3.
- (7) An order for the surrender of a person made before the commencement of this Act under the Extradition Act 1965 has effect as if it had been made under Part 3.
- (8) Nothing in this section limits the Interpretation Act 1999.

Section 106(8): amended, on 1 November 1999, pursuant to section 3 8(1) of the Interpretation Act 1999 (1999 No 85).

107 Immigration Act 2009 not affected

Except as provided in Part 11, this Act does not limit or affect the Immigration Act 2009.

Section 107 heading: amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 107: amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

108 Citizenship Act 1977 not affected

This Act does not limit or affect the Citizenship Act 1977.

109 Arrest of deserters from other armed forces

This Act does not limit or affect section 89A or section 92A or section 93B or section 93C of the Armed Forces Discipline Act 1971.

Section 109: substituted, on 1 July 2004, by section 26 of the Visiting Forces Act 2004 (2004 No 59).

Amendments and repeals

110 United Kingdom Orders in Council that cease to have effect in New Zealand

- (1) The Order made by His Majesty in Council on 12 October 1925, applying Part 2 of the Fugitive Offenders Act 1881 of the

United Kingdom Parliament to New Zealand ceases to have effect as part of the law of New Zealand.

- (2) The Orders in Council made under the provisions of the Extradition Acts 1870 to 1935 of the United Kingdom Parliament and specified in Schedule 2 cease to have effect as part of the law of New Zealand.

111 Acts amended

The Acts specified in Schedule 3 are amended in the manner indicated in that schedule.

112 Repeals

- (1) The following enactments are repealed:
- (a) Extradition Act 1965:
 - (b) Extradition Amendment Act 1969:
 - (c) Fugitive Offenders Amendment Act 1976:
 - (d) Extradition Amendment Act 1998.
- (2) The following enactments of the United Kingdom Parliament cease to have effect as part of the law of New Zealand:
- (a) Fugitive Offenders Act 1881 (44 and 45 Vict, c 69):
 - (b) Fugitive Offenders (Protected States) Act 1915 (5 and 6 Geo 5, c 39).
- (3) Subject to this Act, sections 17 to 22 of the Interpretation Act 1999 apply with respect to the enactments referred to in subsection (2) as if those enactments were Acts of the Parliament of New Zealand.

Section 112(3): amended, on 1 November 1999, pursuant to section 38(1) of the Interpretation Act 1999 (1999 No 85).

Schedule 1

s 104(2)

**United Kingdom Orders in Council
relating to extradition having effect in
New Zealand at commencement of this
Act***Albania*

1927 No 605—The Albania (Extradition) Order in Council 1927 (SR & O and SI Rev 1948, Vol IX, 2; *Gazette* 1927, Vol III, p 2874; 1928, Vol II, p 1433).

Argentina

1894 No 76—Order in Council directing that the Extradition Acts shall apply in the case of the Argentine Republic (SR & O and SI Rev 1948, Vol IX, 10; *Gazette* 1894, Vol I, p 669).

Belgium

1902 No 208—Order in Council directing that the Extradition Acts shall apply in the case of Belgium (SR & O and SI Rev 1948, Vol IX, 32; *Gazette* 1902, Vol I, p 1158).

1907 No 544—Order in Council directing that the Extradition Acts shall apply in the case of Belgium, and of the Supplementary Convention of 5 March 1907 (SR & O and SI Rev 1948, Vol IX, 42; *Gazette* 1907, Vol II, p 2924).

1911 No 793—Order in Council directing that the Extradition Acts shall apply in the case of Belgium (SR & O and SI Rev 1948, Vol IX, 44; *Gazette* 1911, Vol II, p 3406).

Bolivia

1898 No 1065—Order in Council directing that the Extradition Acts shall apply in the case of Bolivia (SR & O and SI Rev 1948, Vol IX, 50; *Gazette* 1899, Vol I, p 11).

Chile

1898 No 597—Order in Council directing that the Extradition Acts shall apply in the case of Chile (SR & O and SI Rev 1948, Vol IX, 64; *Gazette* 1898, Vol II, p 1669).

Colombia

1889—Order in Council directing that the Extradition Acts shall apply in the case of Colombia (SR & O and SI Rev 1948, Vol IX, 71; *Gazette* 1890, Vol I, p 351).

Cuba

1905 No 558—Order in Council directing that the Extradition Acts shall apply in the case of the Republic of Cuba (SR & O and SI Rev 1948, Vol IX, 78; *Gazette* 1905, Vol II, p 1898).

Czechoslovakia

1926 No 1466—The Czechoslovakia (Extradition) Order in Council 1926 (SR & O and SI Rev 1948, Vol IX, 84; *Gazette* 1927, Vol I, p 359; 1927, Vol III, p 2915).

Ecuador

1886—Order in Council directing that the Extradition Acts shall apply in the case of the Republic of Ecuador (SR & O and SI Rev 1948, Vol IX, 110; *Gazette* 1886, Vol II, p 1248).

El Salvador

1882—Order in Council directing that the Extradition Acts shall apply in the case of Salvador (SR & O and SI Rev 1948, Vol IX, 356; *Gazette* 1883, Vol I, p 352).

Estonia

1926 No 840—The Estonia (Extradition) Order in Council 1926 (SR & O and SI Rev 1948, Vol IX, 118; *Gazette* 1926, Vol II, p 2602; 1927, Vol II, p 1455).

Finland

1925 No 448—The Finland (Extradition) Order in Council 1925 (SR & O and SI Rev 1948, Vol IX, 125; *Gazette* 1925, Vol II, p 2176; 1925, Vol III, p 3411).

France, Tunis

1878—Order in Council directing that the Extradition Acts shall apply in the case of France (SR & O and SI Rev 1948, Vol IX, 132; *Gazette* 1878, Vol II, p 1137).

1890—Order in Council directing that the Extradition Acts shall apply in the case of Tunis (SR & O and SI Rev 1948, Vol IX, 412; *Gazette* 1890, Vol II, p 876).

1909 No 1458—Order in Council directing that the Extradition Acts shall apply in the case of France in accordance with a Treaty of 14 August 1876, as supplemented by additional Conventions of 13 February 1896, and 17 October 1908; and in the case of Tunis in accordance with Agreements of 31 December 1889, and 29 July 1909 (SR & O and SI Rev 1948, Vol IX, 143; *Gazette* 1910, Vol I, p 749).

Greece

1912 No 193—Order in Council directing that the Extradition Acts shall apply in the case of Greece in accordance with a Treaty of 24 September 1910 (SR & O and SI Rev 1948, Vol IX, 154; *Gazette* 1912, Vol I, p 1418).

Guatemala

1886—Order in Council directing that the Extradition Acts shall apply in the case of Guatemala (SR & O and SI Rev 1948, Vol IX, 161; *Gazette* 1887, Vol II, p 933).

1914 No 1323—Order in Council directing that the Extradition Acts shall apply in the case of Guatemala in accordance with a Treaty of 4 July 1885, as amended by a Protocol of 30 May 1914 (SR & O and SI Rev 1948, Vol IX, 168; *Gazette* 1914, Vol II, p 4082).

Haiti

1876—Order in Council directing that the Extradition Acts shall apply in the case of Hayti (SR & O and SI Rev 1948, Vol IX, 169).

Hungary

1 874—Order in Council directing that the Extradition Act 1870 shall apply in the case of Austria and Hungary (SR & O and SI Rev 1948, Vol IX, 18; *Gazette* 1874, Vol I, p 416).

1902 No 737—Order in Council directing that the Extradition Acts shall apply in the case of Austria and Hungary (SR & O and SI Rev 1948, Vol IX, 25; *Gazette* 1902, Vol II, p 2633).

1938 No 139—The Hungary (Extradition: New Zealand) Order in Council 1938 (SR & O and SI Rev 1948, Vol IX, 180; *Gazette* 1938, Vol I, p 902; SR 1940/10).

Iceland

1940 No 86—The Iceland (Extradition: New Zealand) Order in Council 1940 (SR & O and SI Rev 1948, Vol IX, 188; SR 1940/69).

Iraq

1934 No 925—The Iraq (Extradition: Commonwealth of Australia and New Zealand) Order in Council 1934 (SR & O and SI Rev 1948, Vol IX, 198; *Gazette* 1934, Vol III, p 3358).

Italy

1 873—Order in Council directing that the Extradition Act 1870 shall apply in the case of the Kingdom of Italy (SR & O and SI Rev 1948, Vol IX, 216; *Gazette* 1873, Vol I, pp 445, 507).

Latvia

1925 No 1029—The Latvia (Extradition) Order in Council 1925 (SR & O and SI Rev 1948, Vol IX, 222; *Gazette* 1926, Vol I, pp 429, 610).

Liberia

1894 No 1 14—Order in Council directing that the Extradition Acts shall apply in the case of the Republic of Liberia (SR & O and SI Rev 1948, Vol IX, 229; *Gazette* 1894, Vol I, p 825).

Lithuania

1927 No 504—The Lithuania (Extradition) Order in Council 1927 (SR & O and SI Rev 1948, Vol IX, 235; *Gazette* 1927, Vol II, p 2537; 1928, Vol II, p 2485).

Luxembourg

1881—Order in Council directing that the Extradition Acts shall apply in the case of Luxemburg (SR & O and SI Rev 1948, Vol IX, 242; *Gazette* 1881, Vol I, p 863).

Mexico

1889—Order in Council directing that the Extradition Acts shall apply in the case of Mexico (SR & O and SI Rev 1948, Vol IX, 249; *Gazette* 1889, Vol II, p 810).

Monaco

1892—Order in Council directing that the Extradition Acts shall apply in the case of Monaco (SR & O and SI Rev 1948, Vol IX, 256; *Gazette* 1892, Vol II, p 1215).

Netherlands

1899 No 83—Order in Council directing that the Extradition Acts shall apply in the case of the Netherlands (SR & O and SI Rev 1948, Vol IX, 263; *Gazette* 1899, Vol I, p 762).

Nicaragua

1906 No 382—Order in Council directing that the Extradition Acts shall apply in the case of the Republic of Nicaragua (SR & O and SI Rev 1948, Vol IX, 273; *Gazette* 1906, Vol II, p 2099).

Panama

1907 No 648—Order in Council directing that the Extradition Acts shall apply in the case of Panama (SR & O and SI Rev 1948, Vol IX, 280; *Gazette* 1907, Vol II, p 3136).

Paraguay

1911 No 662—Order in Council directing that the Extradition Acts shall apply in the case of Paraguay (SR & O and SI Rev 1948, Vol IX, 287; *Gazette* 1911, Vol II, p 3158).

Peru

1907 No 383—Order in Council directing that the Extradition Acts shall apply in the case of Peru (SR & O and SI Rev 1948, Vol IX, 294; *Gazette* 1907, Vol II, p 2324).

Poland

1934 No 1413—The Poland (Extradition: Commonwealth of Australia and New Zealand) Order in Council 1934 (SR & O and SI Rev 1948, Vol IX, 321; *Gazette* 1935, Vol III, p 3365).

Portugal

1894 No 102—Order in Council directing that the Extradition Acts shall apply in the case of Portugal (SR & O and SI Rev 1948, Vol IX, 331; *Gazette* 1894, Vol I, p 822).

1933 No 678—The Portugal (Extradition) Order in Council 1933 (SR & O and SI Rev 1948, Vol IX, 338; *Gazette* 1933, Vol II, p 2081; 1933, Vol III, p 2484).

Romania

1894 No 1 19—Order in Council directing that the Extradition Acts shall apply in the case of Roumania (SR & O and SI Rev 1948, Vol IX, 341; *Gazette* 1894, Vol II, p 1264).

Russia

1887—Order in Council directing that the Extradition Acts shall apply in the case of Russia (SR & O and SI Rev 1948, Vol IX, 349; *Gazette* 1887, Vol I, p 720).

San Marino

1900 No 168—Order in Council directing that the Extradition Acts shall apply in the case of San Marino (SR & O and SI Rev 1948, Vol IX, 362; *Gazette* 1900, Vol II, p 1302).

Servia

1901 No 586—Order in Council directing that the Extradition Acts shall apply in the case of Servia (SR & O and SI Rev 1948, Vol IX, 457; *Gazette* 1901, Vol II, p 2036).

Spain

1878—Order in Council directing that the Extradition Acts shall apply in the case of Spain (SR & O and SI Rev 1948, Vol IX, 376; *Gazette* 1879, Vol I, p 324).

1889—Order in Council directing that the Extradition Acts shall apply in the case of Spain in accordance with a Treaty of 4 June 1878, as amended by a Declaration of 19 February 1889 (SR & O and SI Rev 1948, Vol IX, 385; *Gazette* 1889, Vol II, pp 939, 947).

Switzerland

1881—Order in Council directing that the Extradition Acts shall apply in the case of Switzerland (SR & O and SI Rev 1948, Vol IX, 393; *Gazette* 1881, Vol I, p 412).

1905 No 616—Order in Council directing that the Extradition Acts shall apply in the case of Switzerland (SR & O and SI Rev 1948, Vol IX, 404; *Gazette* 1905, Vol II, p 1996).

1935 No 1249—The Switzerland (Extradition: Commonwealth of Australia and New Zealand) Order in Council 1935 (SR & O and SI Rev 1948, Vol IX, 408; *Gazette* 1936, Vol I, p 278).

Thailand

1911 No 1151—Order in Council directing that the Extradition Acts shall apply in the case of Siam (SR & O and SI Rev 1948, Vol IX, 370; *Gazette* 1912, Vol I, p 193).

Uruguay

1885—Order in Council directing that the Extradition Acts shall apply in the case of Uruguay (SR & O and SI Rev 1948, Vol IX, 447; *Gazette* 1885, Vol I, p 724).

1891—Order in Council directing that the Extradition Acts shall apply in the case of Uruguay in accordance with a Treaty of 26 March 1884 as amended by a Protocol of 20 March 1891 (SR & O and SI Rev 1948, Vol IX, 455; *Gazette* 1892, Vol I, p 522).

Schedule 2

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**United Kingdom Orders in Council
relating to extradition that have ceased
to have effect in New Zealand**

Austria

1935 No 847—The Austria (Extradition: Commonwealth of Australia and New Zealand) Order in Council 1935 (SR & O and SI Rev 1948, Vol IX, 29; *Gazette* 1935, Vol III, p 2845).

Brazil

1 873—Order in Council directing that the Extradition Act 1870 shall apply in the case of Brazil (SR & O and SI Rev 1948, Vol IX, 57; *Gazette* 1874, Vol I, p 175).

German Colonies

1895 No 58—Order in Council directing that the Extradition Acts shall apply in the case of certain dependencies of Germany (SR & O Rev 1904, Vol V, 107; *Gazette* 1895, Vol I, p 772).

Germany

1872—Order in Council directing that the Extradition Act 1870 shall apply in the case of Germany (SR & O and SI Rev 1948, Vol IX, 148; *Gazette* 1872, Vol I, p 739; 1920, Vol III, p 3059).

Schedule 3
Acts amended

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Abolition of the Death Penalty Act 1989 (1989 No 119)*Amendment(s) incorporated in the Act(s).***Aviation Crimes Act 1972 (1972 No 137) (RS Vol 23, p 213)***Amendment(s) incorporated in the Act(s).***Crimes Amendment Act 1995 (1995 No 49)***Amendment(s) incorporated in the Act(s).***Crimes Amendment Act (No 3) 1985 (1985 No 160)***Amendment(s) incorporated in the Act(s).***Crimes (Internationally Protected Persons and Hostages)
Amendment Act 1998 (1998 No 36)***Amendment(s) incorporated in the Act(s).***Crimes (Internationally Protected Persons, United Nations and
Associated Personnel, and Hostages) Act 1980 (1980 No 44)***Amendment(s) incorporated in the Act(s).***Crimes of Torture Act 1989 (1989 No 106)***Amendment(s) incorporated in the Act(s).***Criminal Justice Act 1985 (1985 No 120)***Amendment(s) incorporated in the Act(s).***District Courts Amendment Act 1998 (1998 No 76)***Amendment(s) incorporated in the Act(s).***Imperial Laws Application Act 1988 (1988 No 112) (RS Vol 30,
p 1)***Amendment(s) incorporated in the Act(s).***Legal Services Act 1991 (1991 No 71)***Amendment(s) incorporated in the Act(s).*

Misuse of Drugs Act 1975 (1975 No 116) (RS Vol 26, p 567) *Amendment(s) incorporated in the Act(s).*

Misuse of Drugs Amendment Act 1998 (1998 No 14) *Amendment(s) incorporated in the Act(s).*

Summary Proceedings Act 1957 (1957 No 87) (RS Vol 9, p 583) *Amendment(s) incorporated in the Act(s).*

Reprints notes

1 General

This is a reprint of the Extradition Act 1999 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 Legal status

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, will have the status of an official version once issued by the Chief Parliamentary Counsel under section 17(1) of that Act.

3 Editorial and format changes

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 Amendments incorporated in this reprint

Extradition Amendment Act 2013 (2013 No 116)
Legislation Act 2012 (2012 No 119): section 77(3)
Cultural Property (Protection in Armed Conflict) Act 2012 (2012 No 118): section 45
Search and Surveillance Act 2012 (2012 No 24): section 240
Criminal Procedure Act 2011 (2011 No 81): section 413
Immigration Act 2009 (2009 No 51): section 406(1)
Policing Act 2008 (2008 No 72): sections 116(a)(ii), (iv), 130(1)
Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41): section 18
Sentencing Amendment Act 2007 (2007 No 27): section 58
Misuse of Drugs Amendment Act 2005 (2005 No 81): section 23
Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2): section 34(2)
Mercenary Activities (Prohibition) Act 2004 (2004 No 69): section 22
Visiting Forces Act 2004 (2004 No 59): section 26
Corrections Act 2004 (2004 No 50): section 206

Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115):
section 51

Extradition Amendment Act Commencement Order 2003 (SR 2003/23 8).

Extradition Amendment Act (No 2) 2002 (2002 No 64)

Terrorism Suppression Act 2002 (2002 No 34): section 76

Extradition Amendment Act 2002 (2002 No 21)

Parole Act 2002 (2002 No 10): section 125

Sentencing Act 2002 (2002 No 9): section 186

Crimes (Bribery of Foreign Public Officials) Amendment Act 2001 (2001 No
28): section 12

Bail Act 2000 (2000 No 38): section 74(2)

International Crimes and International Criminal Court Act 2000 (2000 No 26):
section 184

Interpretation Act 1999 (1999 No 85): section 38(1)
