

NIUE

EXTRADITION ACT 2007

[19th December 2007]

.....
Arrangement of Provisions

1. Title
2. Interpretation
3. Extradition treaties
4. Provisional arrest
5. Request for surrender
6. Endorsement of extradition country's arrest warrant
7. Procedure following arrest
8. Consent to surrender by extraditable person
9. Determination of eligibility to surrender
10. Mandatory restrictions
11. Discretionary restrictions
12. Procedure following determination of eligibility to surrender
13. Review of decision
14. Surrender warrant
15. Discharge of offender
16. Person extradited not to be tried for other offences
17. Requests by Niue
18. Person surrendered not to be tried for other offences
19. Directions by Court
20. Search and seizure
21. Search and seizure warrants
22. Delivery of property
23. Procedure
24. Official documents and their authentication
25. Regulations
26. Repeal

.....
2007, Act No.291

PART I

1. Title

This Act is the Extradition Act 2007.

2. Interpretation

In this Act -

"Court" means the High Court;

"extradition country" means -

- (i) New Zealand; or
- (ii) a country with which Niue has undertaken to surrender all persons who are wanted by the authorities of that country for the carrying out of a sentence or detention order or against whom those authorities are proceeding for an offence; or
- (iii) a colony, territory or protectorate of an extradition country; or
- (iv) a territory for the international relations of which an extradition country is responsible;

"extradition offence" means -

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

"extraditable person" means -

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

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

3. Extradition treaties

(1) Where an extradition treaty operates between Niue and an extradition country, the Cabinet may, by regulation, provide that this Act -

- (i) shall not apply to that extradition country, or
- (ii) shall apply in relation to that extradition country subject to such limitations, conditions, exceptions, or qualifications as are specified in the regulations.

(2) Subject to subsection (1), this Act shall be read subject to the terms of the treaty and shall be construed to give effect to the treaty.

PART II EXTRADITION FROM NIUE

4. Provisional arrest

(1) The Court may issue a provisional arrest warrant, on such conditions as it thinks fit, even though no request for surrender has been made, if it is satisfied on the basis of the information presented that -

(i) a warrant for the arrest of a person has been issued in an extradition country by a court or authority; and

(ii) the person is, or is suspected of being, in Niue or on his or her way to Niue; and

(iii) 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

(iv) it is necessary or desirable for an arrest warrant to be issued urgently.

(2) A person for whom an arrest warrant is issued according to subsection (1) must be brought as soon as practicable before the Court.

(3) The person must be remanded by the Court in custody or, subject to subsection (5), placed on bail for such a period as may be necessary for an extradition request according section 5 to be received and endorsed according to section 6.

(4) The Court shall not remand a person on bail unless there are special circumstances that justify the remand.

(5) If the Court does not receive the extradition request under section 5 within reasonable time, which shall not exceed 30 days from the date of the provisional arrest, the Court may order that -

(i) the provisional arrest is terminated; and

(ii) the proceedings are adjourned or terminated.

(6) As soon as the extradition request under section 5 is received and endorsement under section 6 is made, the section 7 procedures must be followed.

5. Request for surrender

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

(i) a charge supported by affidavit, or an authenticated copy of an affidavit made before a judge of the extradition country; and

(ii) an authenticated copy of a warrant of arrest; and

(iii) an accurate statement of the offence or offences for which extradition is requested, including the time and place of their commission, their legal descriptions and a reference to the relevant legal provisions; and

(iv) a copy of the relevant enactments or, where this is not possible, a statement of the relevant law; and

(v) as accurate a description as possible of the extraditable person, together with any other information which will help to establish that person's identity and nationality; and

(vi)(I) a statement that the requirements of section 16(1) will be fulfilled; or

(II) a request for consent according to section 16(2).

6. Endorsement of extradition country's arrest warrant

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

(i) a request for surrender is made in the form provided in section 5; and

(ii) the Court is informed by affidavit that the person for whose arrest the warrant is in force is, or is suspected of being, in or on their way to Niue; and

(iii) there are reasonable grounds to believe that the person is eligible under section 9 to be surrendered to the country requesting the surrender.

(2) A warrant endorsed under subsection (1) is sufficient authority for a constable to execute the warrant in accordance with this Act.

7. Procedure following arrest

(1) A person arrested on a warrant endorsed under section 6 must be brought before the Court as soon as possible.

(2) The Court may remand the person in custody, or, admit the person to bail subject to subsection (3), for such a period as may be necessary for the purposes of section 9.

(3) The Court shall not remand the person on bail unless there are special circumstances justifying such remand.

8. Consent to surrender by extraditable person

(1) A person may at any time notify the Court that he or she consents to surrender to the extradition country for the extradition offence for which surrender is sought.

(2) The person can consent to surrender even when the offence for which surrender is sought is not an extradition offence.

(3) After receiving notification of consent under subsection (1) the Court shall make a surrender order in respect of the person.

(4) The Court must not issue a surrender order under subsection (3) unless it is satisfied that the person has freely consented to the surrender for the offence or offences in full knowledge of the consequences.

(5) After the Court issues a surrender order under subsection (3), section 13 applies as if the person had been found eligible for surrender.

9. Determination of eligibility for surrender

(1) The Court must determine whether a person is eligible for surrender in relation to the offence for which surrender is sought.

(2) A person is eligible for surrender if the Court is satisfied that -

(i) the requirements of section 5 and 6 have been satisfied; and

(ii) the person is an extraditable person in relation to the extradition country; and

(iii) the offence is an extradition offence in relation to the extradition country; and

(iv) there are no substantial grounds to believe that a restriction under section 10 or 11 on the surrender of the person applies; and

(v) the surrender is in accordance with the provisions of any treaty between Niue and the extradition country; and

(vi) the extradition country provided sufficient undertakings where they requested under section 11(2); and

(vii) if the conduct constituting the extradition offence had taken place within the jurisdiction of Niue, that conduct or equivalent conduct would have constituted an extradition offence under the laws of Niue.

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

10. Mandatory restrictions

An extradition request must be refused if -

(i) the extradition offence is a political offence in relation to the extradition country;
or

(ii) on surrender to the extradition country, the person may be prejudiced at their trial, or punished, detained or restricted in their personal liberty, by reason of their race, religion, nationality or political opinion; or

(iii) the person has been acquitted or pardoned by a competent tribunal or authority in the extradition country or Niue or has undergone the punishment provided by the law of the extradition country or Niue, in respect of the extradition offence or another offence constituted by the same conduct as constitutes the extradition offence.

11. Discretionary restrictions

(1) An extradition request may be refused if -

(i) having regard to all the circumstances of the case, it would be unjust or oppressive to surrender the person, because of -

(I) the trivial nature of the case; or

(II) the accusation of an offence against that person or was not made in good faith in the interests of justice; or

(III) the amount of time that has passed since the offence is alleged to have been committed or was committed; or

(ii) the person has been accused of an offence within the jurisdiction of Niue (other than the offence for which the surrender is sought), and the proceedings against the person have not been disposed of; or

(iii) the person may be or has been sentenced to death and the extradition country is unable to sufficiently assure that -

(I) the person will not be sentenced to death; or

(II) the sentence will not be Carried out; or

(iv) the person is a New Zealand citizen and there is no treaty in force between Niue and the extradition country which provides for the extradition of New Zealand citizens; or there is no treaty between New Zealand and the extradition countries which provides for the extradition of New Zealand citizens from Niue.

(2) For the purpose of determining under subsection (1) whether an extradition request is to be refused or not, the Court may seek any undertakings from the extradition country that the Court thinks fit.

(3) Subsection (1) (iv) does not apply to an extradition request by New Zealand.

12. Procedure following determination of eligibility for surrender

(1) If the Court is satisfied that the person is eligible for surrender, the Court must -

(i) issue a declaration that the person is eligible for surrender; and

(ii) issue a warrant for the detention of the person pending the surrender of the person to the extradition country; and

(iii) inform the person that -

(I) he or she will not be surrendered until the expiration of 15 days after the date of the issue of the warrant; and

(II) during that time the person has the right to apply for a review of the decision determining eligibility for surrender under section 9.

(2) Where the Court issues a warrant under subsection (1) (i), the Court may grant bail to the person on such conditions as it thinks fit.

(3) If the Court is not satisfied that the person is eligible for surrender, it must discharge the person, unless it orders that the person continue to be detained, under this Act.

13. Review of decision

(1) Where the Court makes a decision under section 12, the person or the requesting country may, within 15 days after the date of decision, apply to the Court of Appeal for a review of the decision.

(2) The Court of Appeal may -

(i) confirm or quash the Court's decision, and

(ii) direct the Court either to discharge and release the person or order by warrant that the person be surrendered to the extradition country.

(3) The Court of Appeal shall review the decision by way of rehearing, and may have regard to evidence in addition to or in substitution of the evidence that was before the Court.

14. Surrender order

(1) The Court must make a surrender order in respect of the person after the expiration of the period of 15 days from the issue of the warrant of detention.

(2) Any property in the possession of the person at the time of their arrest that may be material as evidence of the offence to which the request for their surrender relates shall, if the Court so directs, be delivered up on the person's surrender.

15. Discharge of offender

The Court shall, on application, order that the offender be released unless sufficient cause is shown against the release, where a person is in custody in Niue at the expiration of one month from the date of the surrender order under section 13 (2) or under section 14, whichever is the later.

16. Person extradited not to be tried for other offences

(1) A person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his or her surrender other than that for which he or she was extradited, nor shall he or she be for any other reason restricted in his or her personal freedom, except when Niue consents.

(2) A request for consent under subsection (1) shall be submitted, accompanied by the documents mentioned in section 5 and a certified record of any statement made by the extradited person in respect of the offence concerned.

(3) Consent under this section shall be given when the offence for which extradition is requested is an extradition offence in accordance with this Act.

PART III EXTRADITION TO NIUE

17. Request by Niue

(1) The Chief Officer of Police (or the person authorised by the law of an extradition country) may make a request to the relevant authority of an extradition country for the surrender of a person who is accused or has been convicted of an extradition offence against the law of Niue and is suspected of being in that country or on their way to that country.

(2) Any person surrendered pursuant to a request under subsection (1) may be brought to Niue and delivered to the proper authorities to be dealt with according to law.

18. Person surrendered not to be tried for other offences

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

(i) be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his or her surrender other than that for which he or she was extradited, nor shall he or she be for any other reason restricted in his or her personal freedom;

(ii) be detained in Niue for the purpose of being surrendered to another country with the purpose of being proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his or her surrender other than that for which he or she was extradited, nor shall his or her personal freedom be restricted for any other reason.

PART IV MISCELLANEOUS

19. Directions by Court

Where a matter of procedure or evidence is not provided for in this Act or regulations made under this Act, the Court shall give such directions as it thinks fit in respect of that matter of procedure or evidence.

20. Search and seizure

(1) Upon arrest under an endorsed extradition country's arrest warrant, the constable may search the person arrested without further warrant.

(2) The constable may seize any thing found on the person or under the person's apparent control if the officer believes on reasonable grounds that the thing may be evidence as to the commission of any offence in relation to which the warrant to arrest was endorsed.

(3) Subsection (2) does not authorise a constable to remove, or to require the person to remove, any clothing that the person is wearing unless the removal of clothing is essential for the collection of evidence.

(4) When the removal of clothing is essential for the collection of evidence, the search shall be carried out by a constable of the same sex as the person searched and in a private room.

(5) A constable may retain any property or thing seized under subsection (2) pending any direction from the Court as to the manner in which the thing is to be dealt with.

21. Search and seizure warrants

(1) The Court may issue a search and seizure warrant under such conditions as it thinks fit when it -

(i) receives a request accompanied by affidavit setting out the reasons and circumstances for the request; and

(ii) is satisfied that there are reasonable grounds for suspecting that there may be in any place any thing that may be material as evidence in proving any offence in relation to which the warrant to arrest was endorsed.

(2) The warrant under subsection (1) shall be issued in accordance with section 284 of the Niue Act 1966.

22. Delivery of property

(1) If a person is ordered to be surrendered under this Act, the Court may direct that anything that may be evidence of the extradition offence in the extradition country, including anything seized under section 20, be delivered on the person's surrender.

(2) The Court may refuse to direct that any particular thing be delivered to the extradition country or returned to the person if the thing is required for the investigation of an offence within the jurisdiction of Niue or the possession of the thing by the person would be unlawful in Niue.

23. Procedure

Proceedings under this Act shall be conducted in accordance with the rules for the trial of summary offences.

24. Official documents and their authentication

(1) In any proceedings under this Act -

(i) a duly authenticated document that purports to set out testimony given on oath, or declared or affirmed to be true, by a person in proceedings in an extradition country, shall be admissible as evidence of the matters stated in the testimony;

(ii) a duly authenticated document that purports to have been received in evidence, or to be a copy of a document that has been received in evidence in proceedings in an extradition country shall be admissible in evidence;

(iii) a duly authenticated document that certifies that a person was convicted, on a date specified in the document of an offence against the law of, or of a part of, an extradition country shall be admissible as evidence of the fact and date of the conviction; and

(iv) a duly authenticated document that purports to be a foreign warrant shall be admissible in evidence.

(2) A document shall be deemed to be duly authenticated for the purpose of being admitted in evidence in proceedings under this Act where, in the case of a document that -

(i) purports to set out testimony given, declared or affirmed by a person in proceedings in an extradition country, the document purports to be certified by a judicial officer in that extradition country and to be the original document containing or recording that testimony or a true copy of that original document;

(ii) purports to have been received in evidence, or to be a copy of a document that has been received in evidence, in proceedings in an extradition country, the document purports to be certified by a judicial officer in or of that country and to have been, or to be a true copy of a document that has been so received in evidence;

(iii) certifies that a person has been convicted of an offence, the document purports to be certified by a judicial officer in or of that country; or

(iv) purports to be a foreign warrant, the document purports to be signed by a judicial officer in or of the country in which the document was issued and the

document purports to be authenticated by the oath of a witness or by being signed by or sealed with the official seal of a Minister in or of that country.

(3) The Court shall take judicial notice of the signature or seal of a Minister authenticating any document specified in subsection (2).

(4) Nothing in this section shall be construed as preventing the proof of any matter, or the admission in evidence of any document, in accordance with any enactment in Niue.

25. Regulations

The Cabinet may make regulations for the purposes of this Act.

26. Repeal

The following enactments are repealed -

- (1) The Extradition Act 1965;
- (2) The Fugitive Offenders Act 1881;
- (3) Niue Act 1966, sections 305-320;
- (4) The Extradition Act 1998.

.....