

**Reprint
as at 1 September 1999**



**Extradition (United States of
America) Order 1970**
(SR 1970/240)

Arthur Porritt, Governor-General

Order in Council

At the Government House at Wellington this 30th day of November
1970

Present:

His Excellency the Governor-General in Council

Whereas the treaty set out in Schedule 1 has been concluded between
New Zealand and the United States of America:

Now therefore, pursuant to the Extradition Act 1965, His Excellency
the Governor-General, acting by and with the advice and consent of
the Executive Council and, in respect of clause 4, at the request and
with the consent of the Government of the Cook Islands made and
given in accordance with Article 88 of the Constitution of the Cook
Islands, hereby makes the following order.

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989
have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together
with other explanatory material about this reprint.

This order is administered by the Ministry of Justice.

Contents

		Page
1	Title and commencement	2
2	Application of Extradition Act to United State of America	2
3	Order in force in Niue	2
4	Order in force in Cook Islands	2
5	Revocations	2
	Schedule 1	3
	Treaty on extradition between New Zealand and the United States of America	
	Schedule 2	13
	United Kingdom Orders in Council revoked in New Zealand	

Order

- 1 Title and commencement**
 - (1) This order may be cited as the Extradition (United States of America) Order 1970.
 - (2) This order shall come into force on 8 December 1970.

- 2 Application of Extradition Act to United State of America**

The Extradition Act 1999 is hereby applied to the United States of America in respect of the treaty set out in Schedule 1.

Clause 2: amended, on 1 September 1999, pursuant to section 112(1)(a) of the Extradition Act 1999 (1999 No 55).

- 3 Order in force in Niue**

Subject to section 320 of the Niue Act 1966, this order shall be in force in Niue.

- 4 Order in force in Cook Islands**

Subject to section 349A of the Cook Islands Act 1915, this order shall be in force in the Cook Islands.

- 5 Revocations**

On the commencement of this order—

- (a) subsection (2) of section 21 of the Extradition Act 1965 (as added by the Extradition Amendment Act 1967) shall cease to have effect:
- (b) the Orders in Council specified in Schedule 2, being orders made under the provisions of the Extradition Acts 1870 to 1906 of the United Kingdom Parliament and applying those Acts to the United States of America, shall cease to have effect as part of the law of New Zealand.

Schedule 1

cl 2

Treaty on extradition between New Zealand and the United States of America

New Zealand and the United States of America, desiring to make more effective the cooperation of the two countries for the reciprocal extradition of offenders, agree as follows:

Article I

Each Contracting Party agrees to extradite to the other, in the circumstances and subject to the conditions described in this Treaty, persons found in its territory who have been charged with or convicted of any of the offences mentioned in Article II of this Treaty committed within the territory of the other.

Article II

Extradition shall be granted, in accordance with the provisions of this Agreement, in respect of the following offences:

1. Murder; attempted murder, comprehending the crime designated under law in the United States as assault with intent to commit murder.
2. Manslaughter.
3. Aggravated wounding, injuring or assault; wounding or injuring with intent to cause grievous bodily harm.
4. Unlawful throwing or application of any corrosive or injurious substances.

Article II—*continued*

5. Rape; indecent assault; sodomy.
6. Abortion.
7. Unlawful sexual acts with or upon children under the age specified by the laws of both the requesting and requested parties.
8. Procuring sexual intercourse.
9. Willful abandonment of a minor under the age of six years when the life of that minor is or is likely to be injured or endangered.
10. Bigamy.
11. Kidnapping; child stealing; abduction.
12. Robbery; assault with intent to rob.
13. Burglary; housebreaking or shopbreaking.
14. Larceny.
15. Embezzlement.
16. Obtaining property, money or valuable securities by false pretences or by conspiracy to defraud the public or any person by deceit or falsehood or other fraudulent means, whether such deceit or falsehood or any fraudulent means would or would not amount to a false pretence.
17. Bribery, including soliciting, offering and accepting.
18. Extortion.
19. Receiving and transporting any money, valuable securities or other property knowing the same to have been unlawfully obtained.
20. Fraud by promoter, director, manager or officer of any company, existing or not.
21. Forgery, comprehending the crimes designated under law in the United States as the forgery or false making of private or public obligations and official documents or public records of the government or public authority or the uttering or fraudulent use of the same; uttering what is forged.
22. The making or the utterance, circulation or fraudulent use of counterfeit money or counterfeit seals and stamps of the government or public authority.

Article II—*continued*

23. Knowingly and without lawful authority, making or having in possession any instrument, tool, or machine adopted and intended for the counterfeiting of money, whether coin or paper.
24. Perjury; subornation of perjury.
25. False swearing.
26. Arson and damage to property, utilities, or means of transportation or communication by fire or explosive.
27. Any malicious act done with intent to cause danger to property or endanger the safety of any person in connection with any means of transportation.
28. Piracy, by statute or by law of nations; mutiny or revolt on board an aircraft or vessel against the authority of the captain or commander of such aircraft or vessel; any seizure or exercise of control, by force or violence or threat of force or violence, of an aircraft or vessel.
29. Malicious injury to property, comprehending willful damage to property under New Zealand law.
30. Offences against the bankruptcy laws which are punishable by more than three months' imprisonment.
31. Offences against the laws relating to the importation, exportation, supply, or possession of narcotics including dangerous drugs; abetting offence against corresponding law in another country.
32. Unlawful obstruction of justice through bribery of judicial officers; corruption and bribery of heads of government departments or members of the Congress in the United States, or Ministers of the Crown or members of Parliament in New Zealand; corruption and bribery of law enforcement officers or government officials; fabrication of evidence; conspiracy to bring false accusation; corrupting juries and witnesses by threats, bribes, or other corrupt means.

Extradition shall also be granted for attempts to commit, conspiring to commit, or participation in, or inciting, counseling, or attempting to procure any person to commit, or being an accessory after the fact to, any of the offences mentioned in this Article.

Article II—*continued*

Extradition shall also be granted for any offence of which one of the above listed offences is the substantial element, when, for purposes of granting jurisdiction to the United States Government, transporting or transportation is also an element of the specific offence.

Article III

A reference in this Treaty to the territory of a Contracting Party is a reference to all the territory falling under the jurisdiction of that Contracting Party, including territorial waters, and the airspace thereover belonging to or under the control of one of the Contracting Parties, and vessels and aircraft belonging to one of the Contracting Parties or to a citizen or corporation thereof when such vessel is on the high seas or such aircraft is over the high seas. In relation to New Zealand, the term “territory” shall include the Cook Islands and Niue.

Article IV

Extradition shall be granted only if the evidence be found sufficient, according to the laws of the place where the person sought shall be found, either to justify his committal for trial if the offence of which he is accused had been committed in that place or to prove that he is the person convicted by the courts of the requesting Party.

Article V

Neither of the Contracting Parties shall be bound to deliver up its own citizens under this Treaty, but the executive authority of each shall have the power to deliver them up, if, in its discretion, it be deemed proper to do so.

Article VI

Extradition shall not be granted in any of the following circumstances:

1. When the person whose surrender is sought is being proceeded against or has been tried and discharged or punished or is otherwise lawfully detained in consequence of such acquittal

Article VI—*continued*

or conviction in the territory of the requested Party for the offence for which his extradition is requested.

2. When the person whose surrender is sought has been tried and acquitted or has undergone his punishment in a third State for the offence for which his extradition is requested.
3. When the prosecution or the enforcement of the penalty for the offence has become barred by lapse of time according to the laws of the requesting Party or would be barred by lapse of time according to the laws of the requested Party had the offence been committed in its territory.
4. If the offence for which his extradition is requested is of a political character, or if he proves that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character. If any question arises as to whether a case comes within the provisions of this paragraph, it shall be determined according to the laws of the requested Party.

Article VII

When the offence for which the extradition is requested is punishable by death under the laws of the requesting Party and the laws of the requested Party do not permit such punishment for that offence, extradition may be refused unless the requesting Party provides such assurances as the requested Party considers sufficient that the death penalty shall not be imposed, or, if imposed, shall not be executed.

Article VIII

When the person whose extradition is requested is being proceeded against or is serving a sentence or is otherwise lawfully detained in the territory of the requested Party for an offence other than that for which extradition has been requested, his surrender may be deferred until the conclusion of the proceedings and the full execution of any punishment he may be or may have been awarded.

When the person whose extradition is requested was previously surrendered by a third State for prosecution or execution of sentence no action shall be taken pursuant to such request until such time has

Article VIII—*continued*

elapsed as is required by any treaty with that third State or until he has had an opportunity of leaving the territory of the requested Party.

Article IX

The determination that extradition based upon the request therefor should or should not be granted shall be made in accordance with the laws of the requested Party and the person whose extradition is sought shall have the right to use such remedies and recourses as are provided by such law.

Article X

The request for extradition shall be made through the diplomatic channel.

The request shall be accompanied by a description of the person sought, a statement of the facts of the case, the text of the applicable laws of the requesting Party including the law defining the offence, the law prescribing the punishment for the offence, and the law relating to the limitation of the legal proceedings.

When the request relates to a person who has not yet been convicted, it must also be accompanied by a warrant of arrest issued by a judge or other judicial officer of the requesting Party and by such evidence as, according to the laws of the requested Party, would justify his arrest and committal for trial if the offence had been committed there, including evidence proving the person requested is the person to whom the warrant of arrest refers.

When the request relates to a person already convicted, it must be accompanied by the judgment of conviction and sentence passed against him in the territory of the requesting Party, by a statement showing how much of the sentence has not been served, and by evidence proving that the person requested is the person to whom the sentence refers.

The warrant of arrest and deposition or other evidence, given under oath, and the judicial documents establishing the existence of the conviction, or certified copies of these documents, shall be admitted in evidence in the examination of the request for extradition when, in the case of a request emanating from New Zealand they bear the

Article X—*continued*

signature or are accompanied by the attestation of a judge, magistrate or other official or are authenticated by the certificate of the Attorney General or Solicitor General and, in any case, are certified by the principal diplomatic or consular officer of the United States in New Zealand, or when, in the case of a request emanating from the United States, in the case of a warrant it is signed and in the case of other documents they are certified by a judge, magistrate or official of the United States, and, in every case, they are sealed by the official seal of the Department of State.

Article XI

In case of urgency a Contracting Party may apply for the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel. The application shall contain a description of the person sought, an indication of intention to request the extradition of the person sought and a statement of the existence of a warrant of arrest or a judgment of conviction against that person, and such further information, if any, as would be necessary to justify the issue of a warrant of arrest had the offence been committed, or the person sought been convicted, in the territory of the requested Party.

On receipt of such an application the requested Party shall take the necessary steps to secure the arrest of the person claimed.

A person arrested upon such an application shall be set at liberty upon the expiration of 45 days from the date of his arrest if a request for his extradition accompanied by the documents specified in Article X shall not have been received. However, this stipulation shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

Article XII

If the requested Party requires additional evidence or information to enable it to decide on the request for extradition, such evidence or information shall be submitted to it within such time as that Party shall require.

Article XII—*continued*

If the person sought is under arrest and the additional evidence or information submitted as aforesaid is not sufficient or if such evidence or information is not received within the period specified by the requested Party, he shall be discharged from custody. However, such discharge shall not bar the requesting Party from submitting another request in respect of the same offence.

Article XIII

A person extradited under the present Treaty shall not be detained, tried or punished in the territory of the requesting Party for any offence other than an extraditable offence disclosed by the facts on which his surrender was granted nor be extradited or surrendered under an analogous procedure by that Party to a third State unless:

1. He has left the territory of the requesting Party after his extradition and has voluntarily returned to it; or
2. He has not left the territory of the requesting Party within 60 days after being free to do so.

These stipulations shall not apply to offences committed after the extradition.

Article XIV

A requested Party upon receiving two or more requests for the extradition of the same person either for the same offence, or for different offences, shall determine to which of the requesting States it will extradite the person sought, taking into consideration the circumstances and particularly the possibility of a later extradition between the requesting States, the seriousness of each offence, the place where the offence was committed, the nationality of the person sought, the dates upon which the requests were received and the provisions of any extradition agreements between the requested Party and the other requesting State or States.

Article XV

The requested Party shall promptly communicate to the requesting Party through the diplomatic channel the decision on the request for extradition.

Article XV—*continued*

If a warrant or order for the extradition of a person sought has been issued by the competent authority and he is not removed from the territory of the requested Party within such time as may be prescribed by the laws of that Party, he may be set at liberty and the requested Party may subsequently refuse to extradite that person for the same offence.

Article XVI

To the extent permitted under the law of the requested Party and subject to the rights of third parties, which shall be duly respected, all articles acquired as a result of the offence or which may be required as evidence shall, if found, be surrendered if extradition is granted.

Article XVII

Expenses related to the transportation of the person sought shall be paid by the requesting Party. The appropriate legal officers of the country in which the extradition proceedings take place shall, by all legal means within their power, assist the officers of the requesting Party before the respective judges and magistrates. No pecuniary claim, arising out of the arrest, detention, examination and surrender of persons sought under the terms of this Treaty shall be made by the requested Party against the requesting Party other than as specified in the second and third paragraphs of this Article.

The requested Party shall be reimbursed for the lodging, maintenance and board of the person sought.

The legal officers, other officers of the requested Party, and court stenographers, if any, of the requested Party who shall, in the usual course of their duty, give assistance and who receive no salary or compensation other than specific fees for services performed, shall be entitled to receive from the requesting Party the usual payment for such acts or services performed by them in the same manner and to the same amount as though such acts or services had been performed in ordinary criminal proceedings under the laws of the country of which they are officers.

Article XVIII

This Treaty shall apply to offences specified in Article II committed before as well as after the date this Treaty enters into force, provided that no extradition shall be granted for an offence committed before the date this Treaty enters into force which was not an offence under the laws of both countries at the time of its commission.

Article XIX

This Treaty shall be ratified and the ratification shall be exchanged in Wellington as soon as possible.

This Treaty shall supersede any existing extradition treaty and provisions on extradition in any other treaty in force between New Zealand and the United States and shall enter into force upon the exchange of ratifications. It may be terminated by either Contracting Party giving notice of termination to the other Contracting Party at any time and the termination shall be effective six months after the date of receipt of such notice.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

DONE in duplicate at Washington this twelfth day of January, one thousand nine hundred seventy.

For New Zealand:
Frank Corner

For the United States of America:
William P Rogers

Reprinted as at
1 September 1999

**Extradition (United States of America)
Order 1970**

Schedule 2

cl 5(b)

**United Kingdom Orders in Council
revoked in New Zealand**

Date of order	<i>Gazette</i> reference
1. 21 March 1890	1890, Vol I, p 743
2. 26 June 1901	1901, Vol II, p 1843
3. 11 February 1907	1907, Vol I, p 1379

P J Brooks,
Clerk of the Executive Council.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 3 December 1970.

Contents

- 1 General
- 2 Status of reprints
- 3 How reprints are prepared
- 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
- 5 List of amendments incorporated in this reprint (most recent first)

Notes**1 *General***

This is a reprint of the Extradition (United States of America) Order 1970. The reprint incorporates all the amendments to the order as at 1 September 1999, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*

Extradition Act 1999 (1999 No 55): section 112(1)(a)
