

Pitcairn Trials Bill

Government Bill

Explanatory note

General policy statement

Purpose of Bill

The Pitcairn Trials Bill implements obligations in the Agreement between the Government of New Zealand and the Government of United Kingdom of Great Britain and Northern Ireland concerning Trials under Pitcairn Law in New Zealand and Related Matters (the **Agreement**).

New Zealand's obligations under Agreement

Under the Agreement, New Zealand agrees to allow Pitcairn Courts to sit on New Zealand soil for the purpose of conducting certain trials under Pitcairn law. The trials fall into 2 categories. The first group are those arising from recent British Police investigations into alleged sexual offending on Pitcairn. Earlier this year, the Pitcairn Public Prosecutor advised the Islanders that some charges would be laid. New Zealand has also agreed to consider requests to host other trials in the future on a case-by-case basis. New Zealand agrees, also on a case-by-case basis, to consider requests for the enforcement of certain sentences imposed by a Pitcairn Court when sitting in New Zealand.

Background to Agreement

The Agreement came about following an approach from the United Kingdom Government. Holding trials on Pitcairn itself presents considerable logistical difficulties because of its remoteness, its geography, and the nature of the facilities available. Trials could result in a large influx of people to the Island, including judges,

lawyers, court staff, accused, victims and other witnesses. The Island has no airport nor a harbour in which a ship can anchor. It does not have a hotel and relies on rain for its fresh water supply.

New Zealand as a venue

Other possible venues have been identified but none is a straightforward option, with even the United Kingdom needing first to pass legislation. New Zealand is regarded as the preferred choice amongst the possible alternate venues because of the strong New Zealand connection with Pitcairn. Although Pitcairn itself has a population of only about 45 persons, many Islanders live, or have lived, in New Zealand. Since 1985 all Pitcairn babies have been born here. Accordingly, many Islanders have, or are entitled to, New Zealand citizenship. There is also a New Zealand connection at the official level. The Governor of Pitcairn is based in New Zealand as is the Commissioner for Pitcairn who is in charge of the practical administration of the Island's affairs. A number of New Zealanders hold office in the Pitcairn justice system, for example, judges, the prosecutor, and the public defender.

New Zealand's assistance

Even though the request is not without its difficulties for New Zealand, the Government has been willing to consider it because of the unique circumstances. By granting the request, the way would be clear for the Pitcairn justice system to take its course at an early date. This would be in the interests not only of the victims but also those against whom allegations of offending have been made. More generally, it is in the interests of the Pitcairn community to have this episode in Pitcairn history brought to an early conclusion so it can move forward.

Nature of Agreement

In order to hold trials in New Zealand it was necessary first to settle the terms and conditions in an agreement with the United Kingdom. The Agreement is similar in content to "headquarters" agreements negotiated for international courts or tribunals and to that concluded between the Netherlands and the United Kingdom regarding the holding of the Lockerbie trial in the Netherlands.

Implementing legislation

To give effect to the obligations that the Agreement imposes on New Zealand implementing legislation is needed. The provisions of this Bill, which will be a stand-alone statute, are aimed, essentially, at setting out the circumstances in which New Zealand or Pitcairn law would apply in the event that Pitcairn Courts sit here. New Zealand would be simply a venue for some, or all aspects of a particular trial. The trials themselves would be conducted under Pitcairn law.

Overview of Bill

The Bill therefore provides that the Pitcairn Courts may sit in New Zealand and apply Pitcairn law, and that their proceedings are not justiciable in the New Zealand courts. Any challenges must instead be made to the appropriate court under Pitcairn law. To preserve the independence of the Pitcairn Courts certain immunities and privileges are conferred on those courts and persons associated with them, such as judges. These immunities and privileges are not for the benefit of the individuals concerned, and can be waived. (The provisions are similar to those in Orders in Council made under the Diplomatic Privileges and Immunities Act 1968, for example, relating to the International Court of Justice.)

The Bill contains various provisions allowing Pitcairn accused to be brought into New Zealand, or to be surrendered from the jurisdiction of New Zealand to a Pitcairn court. They can be held in custody before and during the trial, and after conviction and sentence pending transfer to the place where they are to serve their sentences if that place is not New Zealand. Pitcairn accused may be released on bail in New Zealand under Pitcairn bail orders if certain conditions are met. A Pitcairn accused may also be remanded to a hospital for psychiatric examination or for detention during trial. There are provisions to allow the entry to and removal from New Zealand of persons who are not New Zealand citizens or permit holders but whose presence is needed here for the trials, including Pitcairn accused or witnesses.

If, following a request by the Pitcairn Governor, New Zealand agrees to enforce a Pitcairn sentence of imprisonment or community-based sentence, the sentence is enforced as if it were a New Zealand sentence. The Minister of Justice may impose conditions when granting a request for enforcement. Consistent with the

approach taken in prisoner-transfer regimes internationally, a sentence would not be enforced in New Zealand unless the offender concerned consents. A request can also be made in relation to a person found to be mentally ill, for example, a person who is acquitted on the grounds of insanity.

Clause by clause analysis

Clause 1 is the Title clause.

Part 1

General provisions

Preliminary provisions

Clause 2 is the commencement clause. The Agreement comes into force when the second of the 2 countries advises that it has completed its domestic procedures. It is not yet clear when that will occur. Consequently, the Act will come into force on a date to be appointed by Order in Council.

Clause 3(1) states the Act's purpose—to make provision to implement in New Zealand law New Zealand's obligations under the Agreement.

Clause 3(2) states that, to that end, the Act provides—

- for Pitcairn Courts to sit in New Zealand for the purpose of holding certain trials under Pitcairn law; and
- for the enforcement in New Zealand, if New Zealand agrees, of certain sentences imposed and orders made in those trials by a Pitcairn Court sitting in New Zealand.

Clause 4(1) defines terms and expressions used in the Act, including **Agreement, Governor, Minister, Pitcairn, Pitcairn accused, Pitcairn Court, Pitcairn offender, Pitcairn sentence, Pitcairn trial, premises, Registrar, and specified investigations trial**. *Clause 4(2)* makes it clear that a reference in the Act to a Minister of the Crown means a reference to that Minister of the Crown in right of New Zealand.

Clause 5 provides an extended definition of **trial**.

Clause 6 relates to requests that trials that are not specified investigations trials be allowed to take place in New Zealand. (A **specified investigations trial** means a trial that arises from investigations—

- that were conducted by the Kent Police during and between 1999 and 2001; and
- that relate to allegations of sexual offending on Pitcairn.)

Clause 7 makes it clear that part only of a Pitcairn trial may take place in New Zealand.

Clause 8 provides that the Act binds the Crown.

Clause 9 permits New Zealand's Attorney-General to exercise powers or perform functions or duties if—

- the Agreement or the Act confers those powers, or imposes those functions or duties, on New Zealand; and
- the Agreement or the Act does not specify the Minister who is to exercise or perform those powers, functions, or duties.

Entry to and removal from New Zealand

Clause 10 enables limited purpose visas and limited purpose permits under the Immigration Act 1987 to be issued or granted to certain participants in Pitcairn trials that will take place, are taking place, or have taken place, in New Zealand.

Clause 11 lists participants in those trials, and related persons, referred to in *clause 10(2)(a)*.

Clause 12 lists purposes (relating to the conduct of those trials, and to the enforcement in New Zealand of Pitcairn sentences and hospital orders imposed or made in those trials) referred to in *clause 10(2)(d)*.

Clause 13 allows the expiry or revocation of limited purpose permits to be effective as soon as the relevant notice is given or served.

Relationship with certain Acts

Clause 14 provides that, with some specified exceptions, nothing in the Act limits or affects the use or application of the following Acts:

- Extradition Act 1999:
- Immigration Act 1987:
- Mutual Assistance in Criminal Matters Act 1992.

Regulations

Clause 15 is a standard regulation-making power.

Part 2 Trials

Sittings in New Zealand of Pitcairn Courts

Clause 16 authorises Pitcairn Courts to sit in New Zealand for the purposes of Pitcairn trials.

Clause 17 provides that Pitcairn law and practice applies in a Pitcairn trial that takes place in New Zealand and, with the exceptions specified in the Act, that New Zealand law does not apply in a trial of that kind.

Clause 18 makes the conduct of a Pitcairn Court sitting in New Zealand immune from challenge under New Zealand law.

Clause 19 makes clear, for the avoidance of doubt, the extent of the bar to proceedings in *clause 18*.

Clause 20 relates to the legal capacity of Pitcairn Courts sitting in New Zealand.

Premises in New Zealand of Pitcairn Courts

Clause 21 makes it clear that a Pitcairn Court's premises in New Zealand are under the control and authority of that Pitcairn Court.

Clause 22 relates to the inviolability of a Pitcairn Court's premises and records in New Zealand.

Clause 23 deals with New Zealand authorities providing assistance in a Pitcairn Court's premises in New Zealand.

Clause 24 gives examples, for the purposes of *clause 23(2)(a)*, of an emergency requiring prompt protective action.

Clause 25 states that, except as provided in *clauses 17 and 21*, New Zealand law applies in relation to and within a Pitcairn Court's premises in New Zealand.

Immunities and exemptions of Pitcairn Courts

Clause 26 gives the following immunity from suit and legal process in New Zealand:

- the Pitcairn Courts;
- the property, funds, and assets of the Pitcairn Courts.

Clause 27(1) makes Pitcairn Courts and their assets, income, and other property, exempt from New Zealand income tax. *Clause 27(2)* exempts Pitcairn Courts from New Zealand duties and taxes in respect of the importation of goods imported directly by them for their official use in New Zealand in relation to a Pitcairn trial.

Immunities of Judges and officials of Pitcairn Courts, of Pitcairn Prosecutor, and of Pitcairn defence counsel

Clause 28 relates to the immunity from suit and legal process in New Zealand of Judges and officials of Pitcairn Courts and of the Pitcairn Prosecutor.

Clause 29 relates to the immunity from suit and legal process in New Zealand of Pitcairn defence counsel.

Clause 30 relates to the inviolability in New Zealand of papers or documents of the Pitcairn Prosecutor and of Pitcairn defence counsel.

Transfer and detention of overseas Pitcairn accused

Clause 31 provides that an overseas Pitcairn accused may come to New Zealand from another country and be transported through New Zealand territory to a Pitcairn Court's premises in New Zealand in order that he or she may be put on trial in a Pitcairn trial that is to take place in New Zealand. However, a transfer of that kind may take place only if the Minister has granted a request for the purpose by the Governor of Pitcairn.

Clause 32 specifies the procedure for transfers under *clause 31*.

Clause 33 makes provision for cases where it is not practicable for the Pitcairn accused to be transferred to a Pitcairn Court's premises immediately after his or her arrival in New Zealand.

Under *clause 34*, a Pitcairn accused who comes to New Zealand under a request granted under *clause 31* is protected from detention, prosecution, or punishment for an offence against New Zealand law that was committed, or is alleged to have been committed, before his or her arrival in New Zealand under the request.

Surrender of Pitcairn accused in New Zealand

Clause 35 relates to a Pitcairn accused—

- who is, or is suspected of being, in New Zealand, or on his or her way to New Zealand; and

- whose surrender is sought in respect of an offence to be tried by a Pitcairn Court according to Pitcairn law in a Pitcairn trial to be held in New Zealand.

Clause 35(1) applies provisions of the Extradition Act 1999 (except Part 3) to the surrender of the Pitcairn accused—

- as if Pitcairn were a designated country under that Act; and
- as if the accused would, if surrendered in relation to the offence, be transported out of New Zealand to be dealt with according to Pitcairn law.

Clause 35(2) states that those provisions apply subject to all necessary modifications (for example, subject to those in *Schedule 2*).

Clause 35(3) ensures, in proceedings under the Extradition Act 1999 provisions that are applied by *clause 35*,—

- that, if a discretionary restriction on the surrender of the person applies or may apply, the court may (rather than making the determination itself) refer the case to the Minister of Justice for him or her to determine whether the person is to be surrendered; and
- that (as is the case with extradition to Australia) the court is not required to refer New Zealand citizens' cases to the Minister for a decision on surrender.

To avoid doubt, *clause 35(4)* makes it clear that the Act does not prevent an accused from appearing voluntarily before a Pitcairn Court at the Pitcairn Court's premises in New Zealand if no proceedings under the Extradition Act 1999 provisions that are applied by *clause 35* have been commenced in respect of the accused.

Clause 36 relates to the transfer to a Pitcairn Court's premises in New Zealand of a Pitcairn accused who is to be surrendered by New Zealand.

Detention in Court's premises and remand in custody in prison

Clause 37 relates to detention in a Pitcairn Court's premises.

Clause 38 allows the remand in custody in New Zealand prisons of the following persons remanded in custody by order or warrant of a Pitcairn Court sitting in New Zealand:

- Pitcairn accused;
- Pitcairn offenders who are yet to be sentenced or otherwise dealt with by a Pitcairn Court in relation to any matter.

Two or more orders or warrants may be issued or made by the Pitcairn Court, each authorising detention for up to 28 days.

Pitcairn Court bail

Clause 39 defines terms for the purposes of *clauses 39 to 45*. In those clauses,—

- a **Pitcairn accused** includes a Pitcairn offender who is remanded on bail pending sentencing by a Pitcairn Court; and
- a **Pitcairn Court bail order** includes any instrument by which a Pitcairn Court grants bail to a Pitcairn accused.

Clause 40 provides that a Pitcairn Court bail order that is endorsed under *clause 41* has effect in New Zealand according to its terms as if it were an order made by a New Zealand District Court.

Clause 41(1) empowers a New Zealand District Court Judge, or a Registrar of a New Zealand District Court, to endorse a Pitcairn Court bail order if he or she is satisfied of the matters specified in *clause 41(2)*. *Clause 41(3)* requires the endorsement to be in the form in *Schedule 3*, or in a replacement form prescribed by regulations made under *clause 16*, but also allows the form to be varied as required to fit the circumstances of the particular case. *Clause 41(4)* relates to notification of decisions to endorse bail orders and to the sending of copies of endorsed bail orders.

Clause 42 contains further provisions on endorsement of bail orders.

Clause 43 enables members of the New Zealand Police to execute a arrest warrant issued by a Pitcairn Court in respect of a Pitcairn accused to whom an endorsed Pitcairn Court bail order relates.

Clause 44 empowers members of the New Zealand Police in certain circumstances to arrest without warrant a Pitcairn accused to whom an endorsed Pitcairn Court bail order relates.

Clause 45 makes provision for cases where it is not practicable for an arrested Pitcairn accused to be transferred to a Pitcairn Court's premises immediately following arrest.

Remand in custody in hospital

Clause 46 allows a Pitcairn accused or Pitcairn offender to be remanded in a New Zealand hospital for a psychiatric examination if a Pitcairn Court sitting in New Zealand makes an order (or issues a warrant) in a Pitcairn trial requiring that the accused or offender be remanded in custody in a hospital or other similar institution for a

psychiatric examination enabling the preparation of a psychiatric report for a specified purpose. Two or more orders or warrants each authorising detention for 14 days or less may be issued or made by the Pitcairn Court, but the total period of detention must not exceed 1 month.

Clause 47 allows a Pitcairn accused to be remanded in a New Zealand hospital during a Pitcairn trial (as defined by *clauses 4(1) and 5*) if a Pitcairn Court sitting in New Zealand makes an order (or issues a warrant) requiring that the accused be remanded in custody in a hospital or other similar institution. Two or more orders or warrants may be issued or made by the Pitcairn Court, each authorising detention for up to 28 days.

Pitcairn witnesses

Clause 48 provides for a Pitcairn witness who is in (but is not a prisoner in) another country, and whose attendance is sought before a Pitcairn Court sitting in New Zealand, to come to New Zealand for the purposes of giving evidence in the Pitcairn Court. However, the entry of the Pitcairn witness may take place only if the Attorney-General has approved a request for the purpose by the Governor of Pitcairn.

Clause 49 provides for a Pitcairn witness who is a prisoner in another country, and whose attendance is sought before a Pitcairn Court sitting in New Zealand (a **foreign prisoner**),—

- to come to New Zealand for the purposes of giving evidence in the Pitcairn Court, and be transported through New Zealand territory to a Pitcairn Court's premises; and
- to be held in a New Zealand prison while in New Zealand.

However, the entry of the foreign prisoner may take place only if the Attorney-General has approved a request for the purpose by the Governor of Pitcairn.

Clause 50 relates to the custody of foreign prisoners in New Zealand under *clause 49*.

Clause 51 gives overseas Pitcairn witnesses (whether or not they are foreign prisoners) specified protections while they are in New Zealand in connection with a request under *clause 48* or *clause 49*.

Clause 52 relates to requests by the Governor of Pitcairn that a Pitcairn witness in New Zealand (whether at large or in prison for a Pitcairn offence or a New Zealand offence) attend before a Pitcairn

Court at its premises in New Zealand and give evidence in a Pitcairn trial. The clause requires the requests to be dealt with under relevant provisions of the Mutual Assistance in Criminal Matters Act 1992 as if the request related to the giving of evidence in a court that is a court of a foreign country and that is not sitting in New Zealand.

Other assistance in relation to Pitcairn trial

Clause 53 relates to requests by the Governor of Pitcairn for assistance in relation to a Pitcairn trial that is not assistance of the kind referred to in *clause 52*. The clause requires the requests to be dealt with under the Mutual Assistance in Criminal Matters Act 1992, which is applied with all necessary modifications (for example, taking into account that it may be necessary to make arrangements for evidence to be sent only to a Pitcairn Court's premises in New Zealand, and not to a foreign country).

Requests from third countries relating to certain overseas persons

Clause 54 prevents an overseas Pitcairn accused, overseas Pitcairn offender, or overseas Pitcairn witness, who is in New Zealand in connection with a Pitcairn trial, from being extradited from New Zealand to a third country, or involved in the provision of assistance to a third country, under either of the following Acts without the prior consent in writing of the Governor of Pitcairn:

- Extradition Act 1999:
- Mutual Assistance in Criminal Matters Act 1992.

Part 3

Enforcement of Pitcairn sentences and hospital orders

Applying for and making enforcement orders

Clause 55 provides that the Governor may ask the Minister to enforce a Pitcairn sentence or hospital order in New Zealand.

Clause 56 sets out the procedure that the Minister must follow on receipt of a request for enforcement, and the matters that he or she must be satisfied about before agreeing to a request for enforcement.

Clause 57 describes the kind of conditions of enforcement that the Minister may, and may not, propose when agreeing to enforce a Pitcairn sentence or hospital order in New Zealand.

Clause 58 sets out the procedures involved in making an enforcement order.

Clause 59 provides that the Minister must give notice to various people as soon as it is known that an enforcement order will not be made, or if 28 days have elapsed since the Pitcairn sentence or hospital order was made and no request for an enforcement order has been made.

Status of persons pending decisions about enforcement orders

Clause 60 provides that a sentenced Pitcairn offender must be detained in a New Zealand prison pending a decision about enforcement of the sentence. Offenders sentenced only to a community-based sentence may be released by order of the Minister. The offender may be detained under this provision either until notice is given that an enforcement order will not be sought (in which case an order may be made under *clause 62* for the person's continued detention pending removal) or, if an enforcement order has been requested, for 3 months. This is to allow time for the decision to be made. If the offender has appealed against sentence or conviction, that 3-month period may be extended by Ministerial order for a further 3 months, in case the decision on the enforcement order depends on the outcome of the appeal. (All periods of detention count as time served under the sentence – *clause 64(5)*.)

Clause 61 provides that an equivalent regime to the one provided in *clause 60* for offenders applies to people who are subject to hospital orders.

What happens if enforcement order not to be made

Clause 62 provides that, if notice is given under *clause 59* that an enforcement order will not be made, the Minister may make an order requiring the Pitcairn offender or person subject to a hospital order to be detained for up to 28 days. (This detention is to facilitate the prompt removal of the person from New Zealand.) A person who is subject only to a community-based sentence may, however, be released during this period.

Enforcing Pitcairn sentences and hospital orders

Clause 63 provides that an enforcement order for the enforcement of a particular Pitcairn sentence or hospital order has effect in New Zealand as if it were the equivalent sentence or order in New Zealand. The sentence or order must be enforced as far as possible as if it had been imposed or made in New Zealand, subject only to any

modifications required by the Act or included as conditions of enforcement. However, provision is made for requests for variations of community-based sentences that may involve cancelling the sentence or reducing its duration to be referred to the Pitcairn Court for determination.

Clause 64 provides for the application of New Zealand law to every person who is subject to an enforcement order, subject to a number of modifications that are set out in the clause and other provisions of the Act.

Clause 65 sets out the circumstances in which the Minister must or may amend or cancel an enforcement order.

Clause 66 sets out when an enforcement order expires. Generally, this is when the sentence or order to which it relates ends. However, under *subclause (5)*, if a person is removed from New Zealand under the Immigration Act 1987, the enforcement order ends with that removal. (A person who has been serving a sentence of imprisonment will normally be removed from New Zealand when he or she is released from detention, unless he or she has a right to remain in the country.)

Clause 67 provides for notice to be given to the chief executive of the Department of Labour of dates that are relevant to the release from detention of, or the expiry of an enforcement order relating to, a person who is not a New Zealand citizen. (These provisions are necessary because such a person may be liable, on release from detention or on expiry of the enforcement order, to be removed from New Zealand under the Immigration Act 1987.)

Schedules

Schedule 1 sets out the text of the Agreement.

Schedule 2 contains modifications to provisions of the Extradition Act 1999 that are applied by *clause 35*.

Schedule 3 sets out a prescribed form of endorsement for Pitcairn Court bail orders.

Hon Phil Goff

Pitcairn Trials Bill

Government Bill

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Pitcairn Trials

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Pitcairn Trials Act **2002**.

Part 1
General provisions

Preliminary provisions

2 Commencement

This Act comes into force on a date to be appointed by the Governor-General by Order in Council.

3 Purpose of this Act

- (1) The purpose of this Act is to make provision to implement in New Zealand law New Zealand's obligations under the Agreement.
- (2) To that end, this Act provides—
- (a) for Pitcairn Courts to sit in New Zealand for the purpose of holding certain trials under Pitcairn law; and
 - (b) for the enforcement in New Zealand, if New Zealand agrees, of certain sentences imposed and orders made in those trials by a Pitcairn Court sitting in New Zealand.

4 Interpretation

- (1) In this Act, unless the context otherwise requires,—
- Agreement** means the Agreement between the Government of New Zealand and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Trials under

Pitcairn Law in New Zealand and Related Matters dated 11 October 2002, a copy of which is set out in **Schedule 1**

community-based sentence—

- (a) means any of the following imposed by a Pitcairn Court in the exercise of its criminal jurisdiction in a Pitcairn trial in New Zealand:
 - (i) a sentence of supervision;
 - (ii) a sentence of community work; and
- (b) in relation to a Pitcairn offender, means every sentence of that kind to which the offender is subject

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

Director of Mental Health means the person holding or acting in that office under section 91 of the Mental Health (Compulsory Assessment and Treatment) Act 1992

enforcement order means an order under **section 58** requiring a Pitcairn sentence or hospital order to be enforced in New Zealand

Governor—

- (a) means the Governor of Pitcairn; and
- (b) includes a person lawfully performing the functions of the office of Governor, under section 4(3) of the Pitcairn Order 1970 (United Kingdom)

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

hospital order means an order (other than an order or warrant of a kind referred to in **section 46 or section 47**)—

- (a) that is made by a Pitcairn Court in the exercise of its criminal jurisdiction in a Pitcairn trial in New Zealand; and
- (b) that is made after a person is—
 - (i) found unfit to plead; or
 - (ii) acquitted on the grounds of insanity; and
- (c) that requires that the person be detained in a hospital or other similar institution

Minister means the Minister of Justice

Pitcairn means the Islands of Pitcairn, Henderson, Ducie, and Oeno

Pitcairn accused or accused—

- (a) means a person against whom a formal charge has been signed (either before or after the entry into force of the Agreement) by a Pitcairn Magistrate under section 17(3) of the Justice Ordinance (Pitcairn); but
- (b) does not include a Pitcairn offender, a person subject to a hospital order, or a person who has been acquitted of, or discharged without conviction in relation to, the offence or offences with which he or she has been charged

Pitcairn Court means any of the following:

- (a) the Magistrate's Court established by section 10(1) of the Judicature (Courts) Ordinance (Pitcairn);
- (b) the Supreme Court of Pitcairn, Henderson, Ducie, and Oeno Islands continued by section 3 of the Judicature (Courts) Ordinance (Pitcairn);
- (c) the Pitcairn Court of Appeal established by article 3 of the Pitcairn Court of Appeal Order 2000 (United Kingdom)

Pitcairn defence counsel means a barrister or solicitor who—

- (a) is entitled to appear before a Pitcairn Court; and
- (b) is acting for a Pitcairn accused or Pitcairn offender or person subject to a hospital order

Pitcairn Magistrate means a person appointed to that office by the Governor under section 11(1) and (4) of the Judicature (Courts) Ordinance (Pitcairn)

Pitcairn offender or offender means a person convicted of an offence or offences in a Pitcairn trial in New Zealand

Pitcairn Prosecutor—

- (a) means the person appointed by the Governor as the Public Prosecutor for Pitcairn; and
- (b) includes a person appointed by the Governor as a Deputy Public Prosecutor for Pitcairn; and
- (c) includes a person lawfully exercising or performing the functions or powers of the Public Prosecutor for Pitcairn

Pitcairn sentence means any of the following:

- (a) a sentence of imprisonment;
- (b) a community-based sentence

Pitcairn trial means—

- (a) a specified investigations trial; or

- (b) a trial that is not a specified investigations trial but that the Minister has allowed to take place in New Zealand, by granting a request under **section 6**

Pitcairn witness means a person required or expected to give evidence in a Pitcairn trial in New Zealand

premises, in relation to a Pitcairn Court, means the buildings and land (including installations and facilities) in New Zealand occupied and used by that Court from time to time for the purposes of a Pitcairn trial

prison means a penal institution as defined in section 2(1) of the Penal Institutions Act 1954

Registrar, in relation to a Pitcairn Court,—

- (a) means the person appointed by the Governor as the Registrar of that Court; and
- (b) includes a person appointed by the Governor as a Deputy Registrar of that Court

sentence of imprisonment—

- (a) means a sentence of imprisonment imposed by a Pitcairn Court in the exercise of its criminal jurisdiction in a Pitcairn trial in New Zealand; and
- (b) in relation to a Pitcairn offender, means every sentence of that kind to which the offender is subject

specified investigations trial means a trial that arises from investigations—

- (a) that were conducted by the Kent Police during and between 1999 and 2001; and
- (b) that relate to allegations of sexual offending on Pitcairn

trial has the meaning given to it by **section 5**.

- (2) A reference in this Act to a Minister of the Crown (for example, to the Attorney-General or to the Minister of Immigration) is a reference to that Minister of the Crown in right of New Zealand.

5 Trial defined

In this Act, unless the context otherwise requires, **trial** means the trial or trials of a person in accordance with Pitcairn law and practice in respect of an offence or offences against Pitcairn law; and includes (without limitation) all or any of the following:

- (a) investigative steps involving a Pitcairn Court or a Pitcairn Magistrate or a Judge or Judges of a Pitcairn Court (for example, the issuing of a search warrant):
- (b) the institution of a criminal proceeding by the signing of a formal charge:
- (c) any preliminary proceedings (for example, committal proceedings):
- (d) the person pleading guilty, or not guilty, or a special plea (for example, a plea of previous acquittal, previous conviction, or pardon), and the entering of that plea:
- (e) taking evidence:
- (f) conducting or continuing a proceeding to determine guilt:
- (g) giving judgment in a proceeding:
- (h) sentencing or otherwise dealing with the person (whether or not the person pleads guilty):
- (i) any appeals or review:
- (j) any other associated matters.

6 Requests that trials that are not specified investigations trials be allowed to take place in New Zealand

- (1) The Governor may ask the Minister to allow a trial that is not a specified investigations trial to take place in New Zealand.
- (2) The request must be made in writing.
- (3) The Minister must notify the Governor of the Minister's decision to grant or to decline the request.
- (4) Before deciding whether to grant or to decline the request, the Minister must consult with the Attorney-General, the Minister of Corrections, the Minister for Courts, the Minister of Foreign Affairs and Trade, the Minister of Immigration, and the Minister of Police.

7 Part only of Pitcairn trial may take place in New Zealand

Nothing in this Act prevents a single aspect of, or some only of the aspects of, a Pitcairn trial taking place in New Zealand if 1 or more other aspects of the trial have taken place, or will take place, outside New Zealand.

8 Act binds the Crown

This Act binds the Crown.

9 Obligations under Agreement or this Act

If the Agreement or this Act confers a power, or imposes a duty or function, on New Zealand, then the power, duty, or function may be exercised or performed on behalf of the Government of New Zealand by the Attorney-General unless the Agreement or this Act provides otherwise.

Compare: 2000 No 26 s 7

*Entry to and removal from New Zealand***10 Limited purpose visas or limited purpose permits under Immigration Act 1987 for certain participants in trials**

- (1) If this section applies to a person,—
- (a) the Minister (as defined in section 2(1) of the Immigration Act 1987) or a visa officer may, if he or she thinks fit, issue a limited purpose visa to the person under the Immigration Act 1987; or
 - (b) the Minister (as so defined) or appropriate immigration officer may, if he or she thinks fit, grant a limited purpose permit (or a further limited purpose permit) to the person under the Immigration Act 1987.
- (2) This section applies to a person only if—
- (a) the person is a person specified in **section 11**; and
 - (b) the person is coming to, or is in, New Zealand; and
 - (c) the person is not a New Zealand citizen, a person exempt under the Immigration Act 1987 from the requirement to hold a permit, or a person who already holds a permit granted under that Act; and
 - (d) the person's presence in New Zealand is or will be necessary or desirable in connection with a purpose specified in **section 12**.
- (3) This section applies whether or not the person concerned applies for, or consents to the issuing or granting of, the visa or permit, and despite anything to the contrary in any provision of the Immigration Act 1987 that relates to—
- (a) the issuing of limited purpose visas; or
 - (b) the granting of limited purpose permits.
- (4) Except as provided in **subsection (3) and section 13**, the issue of a visa, or grant of a permit, under this section and the Immigration Act 1987 does not affect any rights or entitlements under that Act of the person concerned.

11 Persons referred to in section 10(2)(a)

The persons referred to in **section 10(2)(a)** are—

- (a) a Pitcairn accused or Pitcairn offender or person subject to a hospital order:
- (b) a Pitcairn witness:
- (c) a support person for a person referred to in **paragraph (a) or paragraph (b)**:
- (d) a Pitcairn Magistrate, a Judge of a Pitcairn Court, the Registrar of a Pitcairn Court or any person performing the functions of such a Registrar, any other official of a Pitcairn Court, the Pitcairn Prosecutor, or a Pitcairn defence counsel:
- (e) an associate (for example, a member of the family) of a person referred to in **paragraph (d)**.

12 Purposes referred to in section 10(2)(d)

The purposes referred to in **section 10(2)(d)** are—

- (a) the conduct of a Pitcairn trial that is to be conducted, or is being conducted, by a Pitcairn Court sitting in New Zealand:
- (b) the making of decisions under **Part 3** about whether there should be made or granted a request for the enforcement in New Zealand of a Pitcairn sentence imposed on the person or a hospital order made in respect of the person:
- (c) the making of arrangements for the person's immediate removal from New Zealand if, under **Part 3**, there has been made a decision not to make, or not to grant, a request for the enforcement in New Zealand of a Pitcairn sentence imposed on the person or a hospital order made in respect of the person:
- (d) the enforcement of the person's Pitcairn sentence or hospital order, and with arrangements being made for the person's removal from New Zealand once that sentence or order has been enforced if, under **Part 3**, that sentence or order is to be enforced in New Zealand.

13 Expiry or revocation of limited purpose permits may be effective immediately upon giving or service of notice

- (1) This section applies to a person to whom **section 10** applies and to a limited purpose permit (or further limited purpose permit) granted to the person in accordance with that section if—

- (a) an immigration officer is, under section 34C(3) of the Immigration Act 1987 (as applied by **section 10** of this Act), to give the person a notice specifying an expiry date for the permit that is a date earlier than the latest date on which the permit will expire; or
 - (b) the permit is to be revoked under section 33(1) of the Immigration Act 1987 (as applied by section 34E(a) of that Act and by **section 10** of this Act).
- (2) In the situation in **subsection (1)(a)**, the notice specifying an earlier expiry date for the permit may, despite section 34C(3)(a) of that Act, specify an earlier expiry date that is a date (for example, the date upon which the notice is given to the person) sooner than 14 days after the notice is given to the person.
- (3) In the situation in **subsection (1)(b)**, the person may be treated, for the purposes of section 33(2)(b) of that Act, as if he or she were a person to whom section 33(4) of that Act applies and, if the person is treated in that way,—
- (a) the notice of the revocation given under section 33(1) of that Act must notify the person that the revocation is effective immediately upon service of the notice; and
 - (b) the revocation becomes effective immediately upon service of the notice under section 33(1) of that Act.

Relationship with certain Acts

- 14 Use or application of certain Acts not limited or affected**
- (1) Except as provided in **sections 10 to 13, 35 and 36, and 52 to 54, and in Schedule 2**, nothing in this Act limits or affects the use or application of the following Acts:
- (a) Extradition Act 1999;
 - (b) Immigration Act 1987;
 - (c) Mutual Assistance in Criminal Matters Act 1992.
- (2) In particular, nothing in **sections 35 and 36 and Schedule 2**—
- (a) affects the use or application of Part 3 of the Extradition Act 1999 in relation to a surrender to which those provisions of this Act do not apply (for example, in relation to the surrender of a Pitcairn accused in respect of an offence to be tried by a Pitcairn Court in a Pitcairn trial outside New Zealand); or
 - (b) prevents Pitcairn or the United Kingdom of Great Britain and Northern Ireland from being declared under that

Act to be a designated country, or prevents Part 4 of that Act from being applied to any of those countries.

Regulations

15 Regulations

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing the forms of endorsements, orders, and other documents for the purposes of this Act, and requiring the use of the forms prescribed:
- (b) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

Part 2 Trials

Sittings in New Zealand of Pitcairn Courts

16 Pitcairn Courts may sit in New Zealand

Pitcairn Courts may sit in New Zealand for the purpose of exercising or performing their functions and powers under Pitcairn law in relation to any Pitcairn trial.

Compare: 2000 No 26 s 167

17 Pitcairn law applies in every Pitcairn trial in New Zealand

- (1) Pitcairn law and practice applies in every Pitcairn trial that takes place in New Zealand and, except as provided in **subsection (2)** or in any other provision of this Act, no New Zealand enactment or rule of law applies in a trial of that kind.
- (2) **Subsection (1)** does not prevent the application of the following sections, or proceedings being brought and dealt with in a New Zealand court in accordance with the following sections, in association with, and for the purposes of, a Pitcairn trial:
 - (a) **sections 35 and 36** (which relate to the surrender of a Pitcairn accused in New Zealand):
 - (b) **sections 39 to 45** (which relate to Pitcairn Court bail).

18 Proceedings of Pitcairn Courts not subject to challenge under New Zealand law

- (1) The conduct of a trial by a Pitcairn Court sitting in New Zealand is not subject to judicial or other challenge in a New Zealand court.
- (2) In particular, none of the following may be brought or made in a New Zealand court in respect of a judgment or order or determination or step of a Pitcairn Court made or given or taken at a sitting of that Pitcairn Court in New Zealand:
 - (a) any judicial review (whether by way of an application for review under Part I of the Judicature Amendment Act 1972 or otherwise):
 - (b) an application for, or for relief in the nature of, a declaration, declaratory judgment, or injunction:
 - (c) an application for, or for relief in the nature of, a writ of habeas corpus (as that term is defined in section 3 of the Habeas Corpus Act 2001).
 - (d) an appeal (for example, against a Pitcairn sentence or hospital order, or the conviction or charge to which it relates).
- (3) **Subsection (2)** does not limit **subsection (1)**.
- (4) No person may, under New Zealand law, apply to a person or authority other than a court for review of, or lodge a complaint about, or seek an investigation of, an aspect of a Pitcairn trial in New Zealand.
- (5) In particular, no person may seek, under New Zealand law, the exercise of the prerogative of mercy in relation to a conviction, order, or sentence (as the case may be) of a Pitcairn Court entered, ordered, or imposed in a Pitcairn trial in New Zealand.
- (6) **Subsection (5)** does not limit **subsection (4)**.

Compare: 1908 No 89 s 56N; 2000 No 26 s 170

19 Extent of bar to proceedings in section 18

- (1) Nothing in **section 18** prevents proceedings or applications or appeals of the kind referred to in **section 18(2)(a) or (b) or (c) or (d)** from being brought or made in a Pitcairn Court, in accordance with Pitcairn law and practice, and in respect of the conduct of a Pitcairn trial by a Pitcairn Court sitting in New Zealand.

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- (2) Nothing in **section 18** prevents proceedings or applications or appeals of the kind referred to in **section 18(2)(a) or (b) or (c) or (d)** from being brought or made in a New Zealand court, in accordance with New Zealand law, and in respect of decisions or actions—
 - (a) that are made by the Attorney-General or the Minister or a New Zealand court or a New Zealand Judge or a member of the New Zealand Police or another New Zealand official; and
 - (b) that are made under any of **sections 35 and 36** (which relate to the surrender of a Pitcairn accused in New Zealand) and **sections 39 to 45** (which relate to Pitcairn Court bail).
 - (3) Nothing in **section 18** prevents a person or authority other than a court from reviewing, or considering a complaint about, or investigating, under New Zealand law, a decision or action referred to in **subsection (2)** of this section.
 - (4) Nothing in **section 18** prevents reviews, complaints, or investigations of the kind referred to in **section 18(4)** from being applied for, lodged, or sought, in accordance with Pitcairn law and practice, in relation to an aspect of a Pitcairn trial in New Zealand.
 - (5) Nothing in **section 18** prevents a person from seeking, under Pitcairn law, the exercise of the prerogative of mercy in relation to a conviction, order, or sentence (as the case may be) of a Pitcairn Court entered, ordered, or imposed in a Pitcairn trial in New Zealand.
 - (6) This section is for the avoidance of doubt.

20 Legal capacity, etc, of Pitcairn Courts in New Zealand

- (1) While a Pitcairn Court is sitting in New Zealand, it may (in accordance with the Agreement) exercise or perform its functions and powers under Pitcairn law and practice for the purpose of any 1 or more Pitcairn trials.
- (2) However, no particular exercise or performance of a function or power of a Pitcairn Court sitting in New Zealand is enforceable in New Zealand under New Zealand law just because of **subsection (1)**.

- (3) To enable it to exercise or perform its functions in relation to Pitcairn trials or under the Agreement, a Pitcairn Court in New Zealand—
 - (a) has full juridical personality; and
 - (b) in particular, may undertake any lawful activity that is within the scope of those functions and, in doing so, has all legal capacity necessary for undertaking the activity.
- (4) In undertaking an activity referred to in **subsection (3)(b)**, a Pitcairn Court may be represented by the Registrar.

Compare: 2000 No 26 s 168

Premises in New Zealand of Pitcairn Courts

21 Pitcairn Court's premises under control of Pitcairn Court

- (1) A Pitcairn Court's premises are under the control and authority of that Pitcairn Court.
- (2) Nothing in this Act or any other New Zealand enactment or any New Zealand rule of law prevents a Pitcairn Court from expelling or excluding from that Pitcairn Court's premises in accordance with Pitcairn law and practice a person or persons whose presence is not, in that Pitcairn Court's opinion, conducive to the maintenance of order or the conduct of a trial.
- (3) **Subsection (2)** does not limit **subsection (1)**.

22 Inviolability of Pitcairn Court's premises and records

- (1) The following enjoy the like inviolability as is accorded in respect of official premises, archives, documents, and materials, of a diplomatic mission:
 - (a) a Pitcairn Court's premises; and
 - (b) archives in New Zealand of a Pitcairn Court that is or has been sitting in New Zealand; and
 - (c) documents or materials in New Zealand that are made available to, or that belong to, or that are or have been used by, a Pitcairn Court that is or has been sitting in New Zealand.
- (2) New Zealand authorities must not enter a Pitcairn Court's premises to perform any of their official duties except—
 - (a) with the express consent, or at the request, of—
 - (i) the Registrar; or
 - (ii) an official designated by the Registrar; or

- (b) as provided in **section 23**.
- (3) **Subsection (2)** does not limit **subsection (1)**.
- (4) However, nothing in this section prevents a Pitcairn Court from waiving in a particular case its right to inviolability under **subsection (1)**.

Compare: SR 1983/195 cl 5; SR 2000/247 cl 7

23 Assistance from New Zealand authorities

- (1) The Registrar or an official designated by the Registrar may ask for the assistance of a member of the New Zealand Police if that assistance is reasonably necessary in order—
 - (a) to preserve law and order within, or in the immediate vicinity of, a Pitcairn Court’s premises; or
 - (b) to remove a person from a Pitcairn Court’s premises.
- (2) Nothing in this section or **section 22** prevents the appropriate New Zealand authorities from entering a Pitcairn Court’s premises without the express consent of the Registrar or of an official designated by the Registrar if,—
 - (a) an emergency requiring prompt protective action occurs on those premises, or those authorities believe on reasonable grounds that an emergency of that kind has occurred, is occurring, or is about to occur; and
 - (b) it is not practicable in the particular circumstances for either the Registrar or an official designated by the Registrar to be reached in time.
- (3) If a request is made under **subsection (1)** or action is taken under **subsection (2)**, the member of the police may provide assistance and, in doing so, has all the powers and protections that a member of the police would have in relation to any other incident of that kind that occurs in New Zealand territory.

24 Emergencies requiring prompt protective action

- (1) This section gives, for the purposes of **section 23(2)(a)**, examples of an emergency requiring prompt protective action.
- (2) One example of that kind is an earthquake, fire, flood, hurricane, landslide, or release of a hazardous substance, that has caused, is causing, or threatens to cause,—
 - (a) serious damage to the Pitcairn Court’s premises; or
 - (b) the death of, or serious bodily injury to, a person on those premises.

- (3) Another example of that kind is the suspected commission on those premises, or outside those premises by a person who was freshly pursued onto those premises, of an offence against New Zealand law if—
 - (a) that offence involves (or would if committed involve) serious damage to property, or the death of, or serious bodily injury to, a person; or
 - (b) that offence is (or would if committed be) punishable by imprisonment.

25 New Zealand law generally applicable to Pitcairn Court's premises

- (1) Except as provided in **sections 17 and 21**, New Zealand law applies in relation to and within a Pitcairn Court's premises.
- (2) To avoid doubt, nothing in **sections 16 to 24** affects New Zealand courts' jurisdiction in relation to an incident—
 - (a) that occurs within a Pitcairn Court's premises; and
 - (b) that amounts to an offence against New Zealand law.

Immunities and exemptions of Pitcairn Courts

26 Immunity from legal process in New Zealand

- (1) The following enjoy immunity from suit and legal process in New Zealand:
 - (a) the Pitcairn Courts;
 - (b) the property, funds, and assets of the Pitcairn Courts.
- (2) However, nothing in this section prevents a Pitcairn Court from waiving in a particular case its immunity from jurisdiction under **subsection (1)**.
- (3) If a Pitcairn Court grants a waiver referred to in **subsection (2)**, a separate waiver of immunity is required before a judgment may be executed against that Pitcairn Court or against property, funds, or assets of that Pitcairn Court.

Compare: SR 1983/195 cl 4; SR 2000/247 cl 6

27 Exemption from income tax and import duty

- (1) Within the scope of its official functions, every Pitcairn Court, and every asset, income, and other property of every Pitcairn Court, is exempt from income tax.
- (2) Every Pitcairn Court is exempt from all duties and taxes in respect of the importation of goods imported directly by that

Pitcairn Court for its official use in New Zealand in relation to a Pitcairn trial.

- (3) The exemption in **subsection (2)** is subject to compliance with any conditions the Minister of Customs determines for the protection of the revenue.

Compare: SR 2000/247 cls 9, 10

Immunities of Judges and officials of Pitcairn Courts, of Pitcairn Prosecutor, and of Pitcairn defence counsel

28 Immunities of Judges and officials of Pitcairn Courts and of Pitcairn Prosecutor

- (1) Each of the following persons has immunity from suit and legal process in New Zealand in respect of things done or omitted to be done by the person in the course of the exercise or performance of the person's official functions relating to a Pitcairn trial in New Zealand:
- (a) a Pitcairn Magistrate;
 - (b) a Judge of a Pitcairn Court;
 - (c) the Registrar of a Pitcairn Court (including any official of a Pitcairn Court acting as the Registrar of that Court);
 - (d) other officials of a Pitcairn Court;
 - (e) the Pitcairn Prosecutor.
- (2) However, nothing in this section prevents the Governor from waiving in a particular case the immunity under **subsection (1)**.
- (3) If it is not waived as referred to in **subsection (2)**, the immunity under **subsection (1)** continues after the person ceases to hold the office concerned, and after termination of the Agreement, in respect of things done or omitted to be done by the person in the course of the exercise or performance of the person's official functions relating to a Pitcairn trial in New Zealand.
- (4) To avoid doubt, immunities under this section are accorded in the interests of the Pitcairn Courts, and in particular for the independent exercise or performance in a Pitcairn trial in New Zealand of the official functions of the persons specified in **subsection (1)(a) to (e)**, and not for the personal benefit of those persons themselves.

Compare: SR 1959/61 cl 2; SR 2000/196 cl 14

29 Immunities of Pitcairn defence counsel

- (1) Pitcairn defence counsel have immunity from suit and legal process in New Zealand in respect of things done or omitted to be done by them in their capacity as counsel for a Pitcairn accused or Pitcairn offender or person subject to a hospital order in a Pitcairn trial in New Zealand.
- (2) However, nothing in this section prevents the Chief Justice of the Supreme Court of Pitcairn, Henderson, Ducie, and Oeno Islands from waiving in a particular case the immunity under **subsection (1)**.
- (3) If it is not waived as referred to in **subsection (2)**, the immunity under **subsection (1)** continues after a Pitcairn defence counsel ceases to act for the Pitcairn accused or Pitcairn offender or person subject to a hospital order, and after termination of the Agreement, in respect of things done or omitted to be done by the Pitcairn defence counsel in his or her capacity as counsel for the accused or offender or person in the Pitcairn trial in New Zealand.
- (4) To avoid doubt, immunities under this section are accorded to Pitcairn defence counsel for the independent performance of their functions as counsel for a Pitcairn accused or Pitcairn offender or person subject to a hospital order in the Pitcairn trial in New Zealand, and not for the personal benefit of the Pitcairn defence counsel themselves.
- (5) This section does not limit or affect the application of any disciplinary rules that may apply to a Pitcairn defence counsel.

Compare: SR 1959/61 cl 3(1)(b)

30 Inviolability of documents of Pitcairn Prosecutor and of Pitcairn defence counsel

- (1) A paper or document is inviolable in New Zealand if the paper or document is part of, or associated with, the performance in a Pitcairn trial in New Zealand of—
 - (a) the Pitcairn Prosecutor's official functions; or
 - (b) a Pitcairn defence counsel's functions.
- (2) However, nothing in this section prevents the right to inviolability under **subsection (1)** from being waived in a particular case,—

- (a) in the case of the Pitcairn Prosecutor, by notice given by the Governor; and
 - (b) in the case of a Pitcairn defence counsel, by notice given by the Chief Justice of the Supreme Court of Pitcairn, Henderson, Ducie, and Oeno Islands.
- (3) Nothing in this section limits or affects the application in a Pitcairn trial in New Zealand of Pitcairn law relating to documents (for example, relating to the production or disclosure of documents).

Compare: SR 1959/61 cl 3(1)(a)

Transfer and detention of overseas Pitcairn accused

31 Request for transfer of overseas Pitcairn accused to Pitcairn Court's premises

- (1) A Pitcairn accused may come to New Zealand from another country and be transported through New Zealand territory to a Pitcairn Court's premises in order that he or she may be put on trial in a Pitcairn trial that is to take place in New Zealand.
- (2) The accused must not enter New Zealand and be transported through New Zealand territory under **subsection (1)** unless—
 - (a) the Governor has first made a request to the Minister to permit that transfer of the accused; and
 - (b) the Minister has granted the request.
- (3) The Minister must not grant the request unless satisfied—
 - (a) that the request relates to a Pitcairn trial that is to take place in New Zealand; and
 - (b) that the accused who is sought to be transferred is an accused in that trial.
- (4) The Minister may grant the request subject to any conditions the Minister thinks fit.
- (5) If the Minister grants the request, the Minister must make any arrangements that may be necessary to facilitate, in accordance with this Act,—
 - (a) the entry of the accused to New Zealand; and
 - (b) the transportation of the accused through New Zealand territory to the Pitcairn Court's premises.

Compare: 2000 No 26 s 136

32 Procedure for transfer of overseas Pitcairn accused to Pitcairn Court's premises

If a request is granted under **section 31**, the Pitcairn accused concerned must, immediately after his or her arrival in New Zealand, be transferred in custody to a Pitcairn Court's premises by any of the following:

- (a) any person holding the accused in custody under Pitcairn law immediately before the arrival of the accused in New Zealand;
- (b) 1 or more members of the New Zealand Police.

33 Delay in bringing Pitcairn accused before Pitcairn Court

(1) If it is not practicable to transfer the Pitcairn accused to a Pitcairn Court's premises under **section 32** immediately after his or her arrival in New Zealand, then he or she may, with no further authority than this subsection, be held in custody for a period not exceeding 24 hours either,—

- (a) at the place of arrival, by any 1 or more persons holding the accused in custody immediately before the arrival of the accused in New Zealand; or
- (b) in police custody, by any 1 or more members of the New Zealand Police.

(2) If it appears to a member of the New Zealand Police that the transfer to a Pitcairn Court's premises is unlikely to take place within the 24-hour period referred to in **subsection (1)**, an application must be made under **subsection (3)**.

(3) A New Zealand District Court may, on an application for the purpose in writing by a member of the New Zealand Police, order that the accused be held in custody in a New Zealand prison for a period exceeding 24 hours that the District Court considers reasonably necessary to facilitate the transfer of the accused to a Pitcairn Court's premises.

34 Protection for overseas Pitcairn accused

(1) A Pitcairn accused who comes to New Zealand under a request granted under **section 31** must not be detained, prosecuted, or punished for an offence that is alleged to have been, or that was, committed against New Zealand law before his or her arrival in New Zealand under the request.

(2) **Subsection (1)** does not apply to an accused who—

- (a) has left New Zealand and then returns otherwise than under the same or a later request under **section 31**; or
 - (b) being obliged to leave New Zealand, has had the opportunity to leave, but has remained in, New Zealand.
- (3) To avoid doubt, nothing in this section applies to an accused if, when the Minister receives a request under **section 31** in respect of the accused, **section 35** applies in respect of the accused.

Compare: 1992 No 86 s 17

Surrender of Pitcairn accused in New Zealand

35 Surrender of Pitcairn accused in New Zealand

- (1) In relation to the surrender of a Pitcairn accused (being a person who is, or is suspected of being, in New Zealand, or on his or her way to New Zealand) in respect of an offence to be tried by a Pitcairn Court according to Pitcairn law in a Pitcairn trial at the Pitcairn Court's premises, the provisions of the Extradition Act 1999 (except those of Part 3) apply—
- (a) as if Pitcairn were a designated country under that Act (and, for the purposes of this paragraph, it does not matter whether or not Pitcairn or the United Kingdom becomes a designated country under that Act); and
 - (b) as if the accused would, if surrendered in relation to the offence, be transported out of New Zealand to be dealt with according to Pitcairn law.
- (2) However, those provisions apply subject to all necessary modifications (for example, subject to those in **Schedule 2**).
- (3) Despite **subsection (1)**, and without limiting **subsection (2)**, in proceedings under the provisions of the Extradition Act 1999 that are applied by this section,—
- (a) the court cannot determine that a person is not eligible for surrender under section 45(4) of that Act, but may, under section 48(4) of that Act and in the situations referred to in that subsection, refer the case to the Minister under section 48(5) of that Act; and
 - (b) the court is (as it is when section 48(3)(a) or (b) of that Act applies) not required to refer New Zealand citizens' cases to the Minister under section 48(1)(a) of that Act.
- (4) To avoid doubt, if no proceedings (being proceedings under the provisions of the Extradition Act 1999 that are applied by

this section) have been commenced in respect of an accused, nothing in this section or **section 36 or Schedule 2** prevents the accused from appearing voluntarily before a Pitcairn Court at the Pitcairn Court's premises.

36 Transfer to Pitcairn Court's premises of Pitcairn accused who is to be surrendered by New Zealand

- (1) In the situation stated in **subsection (2)**, the accused—
 - (a) must be promptly surrendered in relation to the offence for which the surrender is sought; and
 - (b) must be promptly transferred in custody to a Pitcairn Court's premises for the purposes of the Pitcairn trial by the officer referred to in section 67(c) of the Extradition Act 1999 (as applied by **section 35** of this Act).
- (2) The situation referred to in **subsection (1)** is that, in proceedings under the provisions of the Extradition Act 1999 that are applied by **section 35** of this Act,—
 - (a) the court or the Minister makes a surrender order or a temporary surrender order in relation to a Pitcairn accused and in relation to that offence; and
 - (b) that order takes effect.
- (3) Nothing in this section prevents an accused surrendered under a temporary surrender order from being returned to detention in a prison in New Zealand in respect of a sentence of imprisonment imposed for an offence against the law of New Zealand, in accordance with undertakings given by Pitcairn under section 54(4)(b)(ii) of the Extradition Act 1999 (as applied by **section 35** of this Act).
- (4) If, because of a surrender order under section 55(1) of the Extradition Act 1999 (as applied by **section 35** of this Act), the accused is surrendered to serve a sentence that was imposed as a result of his or her having been temporarily surrendered to Pitcairn, the sentence may be served in New Zealand in accordance with an enforcement order under **Part 3** of this Act.

*Detention in Court's premises and remand in custody
in prison*

37 Detention in Pitcairn Court's premises

- (1) No person may be detained in a Pitcairn Court's premises except—

-
- (a) a Pitcairn accused, or Pitcairn offender, or person subject to a hospital order, who is present in those premises in relation to a Pitcairn trial:
 - (b) any of the following persons in respect of whom the Pitcairn Court makes an order for detention in the Pitcairn Court's premises:
 - (i) a witness in the course of giving evidence:
 - (ii) a person who may have committed a contempt of Court, or an offence against Pitcairn law, within the Pitcairn Court's premises:
 - (iii) a person found guilty summarily of a contempt of Court.
- (2) Pitcairn law applies to the detention in the Pitcairn Court's premises of a person specified in **subsection (1)(a) or (b)**.
 - (3) Detention referred to in this section must be only detention that is reasonably necessary to allow the Pitcairn trial concerned to be conducted on the particular day concerned.
 - (4) To avoid doubt, nothing in this section permits the validity of detention referred to in this section to be challenged in legal proceedings in New Zealand courts (for example, on the grounds that the detention is not detention of the kind described in **subsection (3)**).

38 Remand in custody in prison of Pitcairn accused and Pitcairn offenders

- (1) In this section, **Pitcairn accused** or **accused** includes a Pitcairn offender who is yet to be sentenced or otherwise dealt with by a Pitcairn Court in relation to any matter.
- (2) This section applies to a Pitcairn accused if a Pitcairn Court sitting in New Zealand makes an order (or issues a warrant) requiring that the accused be remanded in custody that is not—
 - (a) custody in the Pitcairn Court's premises; or
 - (b) custody in a hospital or other similar institution.
- (3) The order (or warrant) is sufficient authority for the detention of the accused in a prison for the period (being a period not exceeding 28 days after the making of the order (or the issuing of the warrant)) specified in the order (or warrant).

- (4) Nothing in this section prevents a Pitcairn Court sitting in New Zealand from making 2 or more orders (or issuing 2 or more warrants) remanding the same accused in custody.
- (5) If this section applies to an accused,—
 - (a) the order (or warrant) has effect as if it were an order (or warrant) of a New Zealand court remanding the accused in custody for an offence against the law of New Zealand; and
 - (b) except as provided in **section 18**, New Zealand law applies to the accused while he or she is liable to be detained under the order (or warrant).

Compare: 2000 No 26 s 171(2), (3)

Pitcairn Court bail

39 Interpretation

In this section and **sections 40 to 45**,—

Pitcairn accused or **accused** includes a Pitcairn offender who is remanded on bail pending sentencing by a Pitcairn Court

Pitcairn Court bail order includes an instrument (however described) by which a Pitcairn Court—

- (a) grants bail to a Pitcairn accused; or
- (b) admits a Pitcairn accused to bail; or
- (c) releases a Pitcairn accused on bail; or
- (d) orders the admission of a Pitcairn accused to bail.

40 Endorsed Pitcairn Court bail order has effect in New Zealand

- (1) A Pitcairn Court bail order that is endorsed under **section 41** has effect in New Zealand according to its terms (for example, for the period (if any) specified in the order) as if it were an order made by a New Zealand District Court.
- (2) Despite **subsection (1)**, the only New Zealand enactments, or New Zealand rules of law, relating to bail that apply to a Pitcairn Court bail order that is endorsed under **section 41** are **sections 39 to 45** of this Act, and therefore nothing in the Bail Act 2000, or in any other New Zealand enactment, or rule of law, relating to bail, applies to an order of that kind.
- (3) A member of the New Zealand Police must notify the Pitcairn Prosecutor without delay if—

- (a) a Pitcairn accused who is required to do so fails to report to the New Zealand Police in accordance with an endorsed Pitcairn Court bail order; or
- (b) it comes to the attention of a member of the New Zealand Police that a Pitcairn accused has breached any other bail condition to which he or she is subject.

Compare: 1992 No 86 s 57(1)

41 Pitcairn Court bail orders may be endorsed in New Zealand

- (1) A Pitcairn Court bail order relating to the release on bail of a Pitcairn accused is enforceable in New Zealand (in accordance with Pitcairn law and **sections 39 to 45**) if—
 - (a) the Registrar of the Pitcairn Court notifies a New Zealand District Court Judge or a Registrar of a New Zealand District Court of the making of the order and presents him or her with a copy of the order; and
 - (b) he or she endorses the order under this section.
- (2) The New Zealand District Court Judge or Registrar of the New Zealand District Court may endorse a Pitcairn Court bail order presented to him or her only if satisfied—
 - (a) that the order—
 - (i) is made by a Pitcairn Court in a Pitcairn trial in New Zealand; and
 - (ii) relates to an accused in that trial; and
 - (iii) states where the accused is to reside during the period of the bail; and
 - (iv) either is in force, or will be in force once endorsed; and
 - (b) that the accused has accepted the bail conditions.
- (3) Except to the extent that any variation is required to fit the circumstances of a particular case, an endorsement under this section must be in the form set out in **Schedule 3** or, if the form in **Schedule 3** is replaced by a form prescribed by regulations made under **section 15**, in that replacement form.
- (4) If a Pitcairn Court bail order is endorsed under this section by a New Zealand District Court Judge or a Registrar of a New Zealand District Court, the Registrar of that New Zealand District Court must—
 - (a) notify the Pitcairn Court that made the order; and

- (b) arrange for a copy of the endorsed order to be sent to the police station nearest to where the accused is to reside or to which the accused is to report; and
- (c) if the accused is in custody in a New Zealand prison, to the Superintendent of that prison.

Compare: 1999 No 55 s 41

42 Further provisions on endorsement of bail orders

- (1) A Pitcairn Court bail order may be endorsed under **section 41** even though the terms or effects of the order differ (for example, in relation to the content of the bail conditions or in relation to the duration of the order) from those of a bail order that is likely to be made in the particular circumstances by a New Zealand court in a corresponding New Zealand case.
- (2) Two or more Pitcairn court bail orders may be endorsed under **section 41** in relation to the same accused at different times during 1 or more Pitcairn trials.
- (3) This section is for the avoidance of doubt.

43 Procedure where Pitcairn Court issues arrest warrant

- (1) If a Pitcairn Court issues a warrant for the arrest of a Pitcairn accused to whom an endorsed Pitcairn Court bail order relates, the Pitcairn Court's arrest warrant may be executed in New Zealand by a member of the New Zealand Police (according to its terms and without the need for the warrant itself to be separately endorsed) as if it were an arrest warrant issued by a New Zealand court.
- (2) An accused who is arrested under the Pitcairn Court's arrest warrant must be brought before the Pitcairn Court at the Pitcairn Court's premises as soon as possible.
- (3) To avoid doubt, in relation to the arrest of an accused under this section, the member of the New Zealand Police has all the powers and protections that he or she would have under New Zealand law in relation to the execution of a New Zealand arrest warrant.

44 Arrest without warrant of Pitcairn accused on bail

- (1) A member of the New Zealand Police may arrest without warrant in New Zealand a Pitcairn accused released on bail by

order of a Pitcairn Court if the Pitcairn Court bail order concerned has been endorsed under **section 41** and the member of the New Zealand Police believes on reasonable grounds—

- (a) that the accused has absconded or is about to abscond for the purpose of evading justice; or
 - (b) that the accused has contravened or failed to comply with any condition of bail.
- (2) An accused who is arrested under **subsection (1)** must be brought before the Pitcairn Court at the Pitcairn Court's premises as soon as possible.
 - (3) To avoid doubt, in relation to the arrest of an accused under this section, the member of the New Zealand Police has the same powers and protections as he or she would have under New Zealand law in relation to the arrest without warrant of a defendant under section 35 of the Bail Act 2000.

Compare: 2000 No 38 ss 35, 58

45 Delay in bringing Pitcairn accused before Pitcairn Court in New Zealand

- (1) If it is not practicable to bring the Pitcairn accused referred to in **section 43(2)** or **section 44(2)** before the Pitcairn Court in New Zealand immediately following arrest, he or she must instead be brought before a New Zealand District Court Judge as soon as possible.
- (2) **Subsection (3)** applies to a Judge if a person is brought before the Judge under **subsection (1)** and the Judge is satisfied—
 - (a) that the person is an accused to whom a Pitcairn Court bail order endorsed under **section 41** relates; and
 - (b) if (and only if) the person was arrested under **section 44(1)**, that the person,—
 - (i) had absconded, or was about to abscond, for the purpose of evading justice, when he or she was arrested; or
 - (ii) has contravened or failed to comply with any condition of bail.
- (3) A Judge to whom this subsection applies must—
 - (a) order that the person be transferred to the Pitcairn Court's premises as soon as practicable; and
 - (b) make any other orders relating to the person's detention pending or during transfer that may be necessary in the circumstances.

- (4) This section overrides **sections 43 and 44**.

Remand in custody in hospital

46 Pitcairn accused or Pitcairn offender remanded in hospital for psychiatric examination

- (1) This section applies to a Pitcairn accused or Pitcairn offender if a Pitcairn Court sitting in New Zealand has made an order (or issued a warrant) in a Pitcairn trial requiring that the accused or offender be remanded in custody in a hospital or other similar institution for a psychiatric examination enabling the preparation of a psychiatric report (however described) that would help the Pitcairn Court in determining—
- (a) whether the accused is fit to plead; or
 - (b) whether the accused was, at the time he or she did or omitted to do the act giving rise to the offence alleged, insane; or
 - (c) the type and length of any sentence or other measure that might be imposed or ordered; or
 - (d) the nature of any requirement that it may impose as part of, or as a condition of, any sentence or order.
- (2) The order (or warrant) is sufficient authority for the detention of the accused or offender in a hospital at which adequate facilities for the psychiatric examination are available, for the purpose and period (being a period not longer than 14 days after the making of the order (or the issuing of the warrant)) specified in the order (or warrant).
- (3) Nothing in this section prevents a Pitcairn Court sitting in New Zealand from making 2 or more orders (or issuing 2 or more warrants) remanding the same accused or offender in custody, but the total period of detention must not exceed 1 month.
- (4) If this section applies to an accused or offender,—
- (a) the order (or warrant) has effect as if it were an order under section 121(2)(b)(ii) of the Criminal Justice Act 1985; and
 - (b) except as provided in **section 18**, New Zealand law applies to the accused or offender while he or she is liable to be detained under the order (or warrant).

47 Pitcairn accused remanded in hospital during trial

- (1) This section applies to a Pitcairn accused if a Pitcairn Court sitting in New Zealand has made an order (or issued a warrant) in a Pitcairn trial requiring that the accused be remanded in custody in a hospital or other similar institution during the trial.
- (2) For the purposes of **subsection (1)**, it does not matter whether or not the Pitcairn Court has earlier made an order (or issued a warrant) in a Pitcairn trial requiring that the accused be remanded in custody in a hospital or other similar institution for psychiatric examination.
- (3) The order (or warrant) is sufficient authority for the detention of the accused in a hospital for the period (being a period not exceeding 28 days after the making of the order (or the issuing of the warrant)) specified in the order (or warrant).
- (4) Nothing in this section prevents a Pitcairn Court sitting in New Zealand from making 2 or more orders (or issuing 2 or more warrants) remanding the same accused in custody.
- (5) If this section applies to an accused,—
 - (a) the order (or warrant) has effect as if it were an order under section 121(11) of the Criminal Justice Act 1985; and
 - (b) except as provided in **section 18**, New Zealand law applies to the accused while he or she is liable to be detained under the order (or warrant).

*Pitcairn witnesses***48 Request for attendance of overseas Pitcairn witnesses (other than prisoners)**

- (1) This section applies to a Pitcairn witness who is in (but is not a prisoner in) another country and whose attendance is sought before a Pitcairn Court sitting in New Zealand.
- (2) The Governor may request that a Pitcairn witness to whom this section applies be allowed to come to New Zealand for the purposes of giving evidence in the Pitcairn Court.
- (3) The Attorney-General may grant the request if satisfied—
 - (a) that the request relates to a Pitcairn trial; and
 - (b) that the Pitcairn witness's attendance is sought for the purposes of giving evidence at that trial.

- (4) If, by granting the request under **subsection (3)**, the Attorney-General gives authority to proceed, he or she—
- (a) may give the authority subject to any conditions he or she thinks fit; and
 - (b) must make any arrangements that may be necessary to facilitate, in accordance with this Act, the entry of the Pitcairn witness to New Zealand.

Compare: 1992 No 86 s 12

49 Request for transfer and detention of foreign prisoners

- (1) This section applies to a Pitcairn witness who is a prisoner in another country and whose attendance is sought before a Pitcairn Court in New Zealand (in this section and **sections 50 and 51** called a **foreign prisoner**).
- (2) The Governor may request that, for the purposes of giving evidence in a Pitcairn trial, a foreign prisoner—
- (a) be allowed to come to New Zealand from another country and be transported through New Zealand territory to a Pitcairn Court's premises; and
 - (b) be held in a New Zealand prison while in New Zealand.
- (3) The Attorney-General may grant the request if satisfied—
- (a) that the request relates to a Pitcairn trial; and
 - (b) that the foreign prisoner's attendance is sought for the purposes of giving evidence at that trial.
- (4) If, by granting the request under **subsection (3)**, the Attorney-General gives authority to proceed, he or she—
- (a) may give the authority subject to any conditions he or she thinks fit; and
 - (b) must make any arrangements that may be necessary to facilitate, in accordance with this Act,—
 - (i) the entry of the foreign prisoner to New Zealand; and
 - (ii) the transportation of the foreign prisoner through New Zealand territory to the Pitcairn Court's premises.

Compare: 1992 No 86 s 12

50 Custody of foreign prisoner

- (1) A foreign prisoner who is in New Zealand under **section 49** must, while in New Zealand, be kept in such custody in a prison as the Minister directs in writing.

- (2) A direction under **subsection (1)** in respect of a foreign prisoner is sufficient authority for the detention of that foreign prisoner in accordance with the terms of that direction.
- (3) If, under **subsection (1)**, a foreign prisoner in New Zealand under **section 49** is directed to be detained in a prison,—
 - (a) the direction has effect as if it were an order of a New Zealand court remanding the foreign prisoner in custody for an offence against the law of New Zealand; and
 - (b) except as provided in **section 18**, New Zealand law applies to the foreign prisoner while he or she is liable to be detained in a prison under the direction.
- (4) The Minister must direct that a foreign prisoner must be released from custody if he or she is being held in custody under a direction under **subsection (1)** and the Governor requests that the foreign prisoner be released from custody.
- (5) The Minister must make any arrangements that may be necessary to facilitate, in accordance with this Act, the foreign prisoner's transfer to the Pitcairn Court's premises and between a prison and the Pitcairn Court's premises.

Compare: 1992 No 86 ss 15(1)–(3), 16

51 Protections for overseas Pitcairn witnesses

- (1) A person who is an overseas Pitcairn witness (whether a foreign prisoner or not) and who comes to New Zealand under a request under **section 48 or section 49**—
 - (a) must not be detained, prosecuted, or punished while in New Zealand for an offence against New Zealand law that is alleged to have been, or that was, committed before the person's arrival in New Zealand under the request; and
 - (b) must not be subjected to any civil proceedings in New Zealand in respect of an act or omission that is alleged to have occurred, or that occurred, before the person's arrival in New Zealand under the request, being civil proceedings to which the person could not be subjected if he or she were not in New Zealand; and
 - (c) must not be subjected to any measure under New Zealand law that may affect the giving of evidence by the person in a Pitcairn trial freely and independently.
- (2) **Subsection (1)** does not apply to a Pitcairn witness who—

- (a) has left New Zealand and then returns otherwise than under the same or a later request relating to a Pitcairn trial; or
 - (b) has had the opportunity to leave, but has remained in, New Zealand.
- (3) To avoid doubt, nothing in this section applies to a Pitcairn witness who is present in New Zealand when the Attorney-General receives a request under **section 52** in respect of that Pitcairn witness.

Compare: 1992 No 86 s 17

52 Request for person in New Zealand to attend at Pitcairn Court's premises and give evidence

- (1) This section applies to a Pitcairn witness who is present in New Zealand, whether he or she is at large in New Zealand or in custody in a New Zealand prison in relation to an offence against New Zealand law or an offence against Pitcairn law.
- (2) If the Governor requests that the Pitcairn witness attend before a Pitcairn Court at the Pitcairn Court's premises and give evidence in a Pitcairn trial,—
- (a) the request must be dealt with under Part III of the Mutual Assistance in Criminal Matters Act 1992; and
 - (b) sections 31 to 38 and 40 to 42 of that Act apply with all necessary modifications as if the request related to the giving of evidence in a court that is a court of a foreign country and that is not sitting in New Zealand.
- (3) The Attorney-General may seek from the Governor—
- (a) an undertaking that, while a New Zealand prisoner is present in the Pitcairn Court's premises, that prisoner will not be released from custody without the prior consent in writing of the Attorney-General;
 - (b) an undertaking as to any other matters that the Attorney-General thinks appropriate in the circumstances.

Compare: 1992 No 86 s 39(d), (e)

Other assistance in relation to Pitcairn trial

- 53 Requests for other assistance also to be dealt with under Mutual Assistance in Criminal Matters Act 1992**
- (1) If Pitcairn seeks assistance from New Zealand in relation to a Pitcairn trial that is not assistance of the kind referred to in **section 52**,—
 - (a) a request for that assistance may be made by the Governor to the Attorney-General; and
 - (b) the request must be dealt with under the Mutual Assistance in Criminal Matters Act 1992.
 - (2) For the purposes of **subsection (1)(b)**, the Mutual Assistance in Criminal Matters Act 1992 applies with all necessary modifications (for example, taking into account that it may be necessary to make arrangements for evidence to be sent only to a Pitcairn Court's premises, and not to a foreign country).

Requests from third countries relating to certain overseas persons

- 54 Restriction on extradition of, or mutual assistance in criminal matters involving, certain overseas persons**
- (1) **Subsection (2)** applies to a person who is—
 - (a) an overseas Pitcairn accused, overseas Pitcairn offender, or overseas Pitcairn witness; and
 - (b) in New Zealand in connection with a Pitcairn trial.
 - (2) The person may be extradited from New Zealand to another country, or involved in the provision of assistance to another country, under either of the following Acts only with the prior consent in writing of the Governor:
 - (a) Extradition Act 1999;
 - (b) Mutual Assistance in Criminal Matters Act 1992.
 - (3) In **subsection (2)**, **another country** does not include Pitcairn.

Part 3
**Enforcement of Pitcairn sentences and
hospital orders**

Applying for and making enforcement orders

55 Request for enforcement in New Zealand of Pitcairn sentence or hospital order

- (1) The Governor may ask the Minister to agree to enforce a Pitcairn sentence or hospital order in New Zealand, and to make an enforcement order accordingly.
- (2) The request must be in writing, must include the information referred to in Article 18(3) of the Agreement, and may include any further information that the Governor considers may be relevant.
- (3) If, for any reason, New Zealand wishes to enforce a Pitcairn sentence or hospital order, the Attorney-General may invite the Governor to make a request to the Minister under **subsection (1)**.
- (4) A single request may be made in respect of any Pitcairn sentence or sentences to which an offender is subject.

56 Decision on request for enforcement

- (1) On receipt of a request for enforcement of a Pitcairn sentence or hospital order, the Minister must consult with,—
 - (a) in all cases, the Attorney-General, the Minister of Corrections, the Minister for Courts, the Minister for Foreign Affairs and Trade, and the Minister of Police; and
 - (b) the Minister of Immigration, but only in the case of a person who is not a New Zealand citizen; and
 - (c) the Minister of Health, but only in the case of a person who is subject to a hospital order.
- (2) The Minister may seek from the Governor any information of the kind referred to in Article 18(4) of the Agreement.
- (3) The Minister may propose conditions of enforcement (as described in **section 57**) on which the Minister will agree to enforce a sentence or order, in which case the Minister must advise the Governor, in writing, of the proposed conditions.
- (4) The Minister may agree to enforce a Pitcairn sentence or hospital order in New Zealand only if satisfied that—

- (a) the sentence or order is of a kind that, either on its own or in combination with any other sentence or order to which the offender is subject, is reasonably capable of being enforced in New Zealand; and
 - (b) the person to whom the sentence or order relates has given free and informed consent to the enforcement of the sentence or order in New Zealand, in full knowledge of any conditions of enforcement that will apply and of the legal consequences of the enforcement order; and
 - (c) the Governor consents to any conditions of enforcement proposed by the Minister; and
 - (d) it is appropriate in all the circumstances that the Minister agrees to enforce the sentence or order.
- (5) The consent referred to in **subsection (4)(b)** may, if the Governor or the Minister considers it necessary in view of the person's age, or physical or mental condition, be given by a person acting on behalf of the person.

57 Conditions of enforcement

- (1) Except as provided in **subsection (2)**, the Minister may propose, and the Governor may agree to, any conditions of enforcement, including (without limitation) conditions—
- (a) that clarify or modify aspects of any Pitcairn sentence or hospital order to which the offender is subject, so that it can be enforced in New Zealand in a manner that is consistent with how an equivalent New Zealand sentence or order would be enforced;
 - (b) that specify that certain sentences to which the offender is subject will not be enforced in New Zealand;
 - (c) that specify circumstances in which an enforcement order relating to particular sentences may or will be cancelled.
- (2) The Minister may not propose, as a condition of enforcement,—
- (a) the alteration of the term of a sentence of imprisonment, the period of supervision, or the number of hours of community work, specified in a sentence imposed by the Pitcairn Court; or
 - (b) a condition that is inconsistent with a provision of this Act.

58 Making enforcement orders

- (1) If the Minister agrees to enforce a Pitcairn sentence or hospital order in New Zealand, the Minister must make an enforcement order.
- (2) Despite agreeing to enforce a Pitcairn sentence or hospital order, the Minister may postpone making an enforcement order pending the outcome of any appeal that could affect the sentence or order.
- (3) A copy of every enforcement order must be sent to—
 - (a) the Governor; and
 - (b) the Commissioner of Police; and
 - (c) the chief executive of the Department of Corrections; and
 - (d) the chief executive of the Department of Labour, but only in the case of a person who is not a New Zealand citizen; and
 - (e) the Director of Mental Health, but only in the case of a person who is subject to a hospital order.
- (4) Every enforcement order must—
 - (a) set out any applicable conditions of enforcement; and
 - (b) state whether or not the person is a New Zealand citizen; and
 - (c) if regulations made under **section 15** prescribe a form for enforcement orders, be in that form.
- (5) The date of the enforcement order is the date specified in the order.

59 Notification that enforcement order will not be made

If any of the following occurs, the Minister must immediately give notice to the people listed in **section 58(3)(a) to (e)** that an enforcement order will not be made in respect of a particular Pitcairn sentence or hospital order:

- (a) the Minister is advised by the Governor that an enforcement order will not be sought in relation to the sentence or order;
- (b) the Minister declines a request to enforce a Pitcairn sentence or hospital order;
- (c) 28 days have elapsed since the Pitcairn sentence or order was imposed or made and the Minister has not received a request for enforcement of the sentence or order.

*Status of persons pending decisions about
enforcement orders*

60 Status of offender between sentencing and decision on enforcement order

- (1) When a Pitcairn offender is sentenced by a Pitcairn Court, the offender must be detained in custody, for the period determined under **subsection (4) or subsection (5)**, as if he or she were remanded in custody between conviction and sentence; and New Zealand law applies to the offender, except as provided in **section 18**.
- (2) The Pitcairn warrant of commitment, supervision order, or community work order (as the case may be) relating to the sentence is sufficient authority for the detention under this section of the offender who is subject to the sentence.
- (3) Despite **subsection (1)**, the Minister may order the release (subject to any conditions that the Minister thinks fit) of an offender who is liable to be detained under this section but who is subject only to a community-based sentence.
- (4) An offender ceases to be liable to be detained under this section with respect to a particular sentence on whichever of the following dates first applies:
 - (a) the date on which chief executive of the Department of Corrections receives notice from the Minister that an enforcement order in respect of that sentence will not be made;
 - (b) the date that is 28 days after the sentence was imposed, unless the chief executive of the Department of Corrections is advised that a request for enforcement has been made, in which case **paragraph (c)** applies;
 - (c) the date that is 3 months after the sentence was imposed, unless, before that date,—
 - (i) an enforcement order is made with respect to the sentence (in which case the offender ceases to be liable to detention under this section and commences serving his or her sentence under the enforcement order); or
 - (ii) an order is made under **subsection (5)**.
- (5) By order under this subsection, the Minister may extend by 3 months the period referred to in **subsection (4)(c)**, but only if—
 - (a) the offender has appealed to a Pitcairn Court against a conviction or sentence; and

- (b) the Minister considers that the making of the enforcement order, or the decision on whether to enforce the sentence, ought to be delayed pending the outcome of the appeal.
- (6) The Minister may make an order under **subsection (5)** only once in respect of a particular sentence.

61 Status of person subject to hospital order between making of order and decision on enforcement order

- (1) When a Pitcairn Court makes a hospital order in relation to a person, the person must be detained in a hospital as if the person were a special patient (as defined in section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992) who,—
 - (a) in the case of a person who has been found by the Pitcairn Court to be unfit to plead, is subject to an order under section 115(1)(a) of the Criminal Justice Act 1985, having been found to be under disability (as defined in section 108(1) of that Act); or
 - (b) in the case of a person who has been acquitted by the Pitcairn Court on the grounds of insanity, is subject to an order under section 115(1)(b) of the Criminal Justice Act 1985.
- (2) New Zealand law applies to a person detained under this section, except as provided in **section 18**.
- (3) The hospital order made by the Pitcairn Court is sufficient authority for the detention of the person under this section as a special patient.
- (4) A person who is subject to a hospital order may not be detained under this section beyond whichever of the following dates first applies:
 - (a) the date on which the Director of Mental Health receives notice under **section 59** that an enforcement order will not be made;
 - (b) 28 days after the order was made, unless the Director of Mental Health is advised that a request for enforcement has been made, in which case **paragraph (c)** applies;
 - (c) 3 months after the order was made unless, before that date,—
 - (i) an enforcement order is made with respect to the order (in which case the offender ceases to be

detained under this section and commences detention under the enforcement order instead);
or

- (ii) an order is made under **subsection (5)**.
- (5) By order made under this subsection, the Minister may extend by 3 months the period referred to in **subsection (4)(c)**, but only if—
- (a) the person has appealed to a Pitcairn Court against the hospital order; and
 - (b) the Minister considers that the making of the enforcement order, or the decision on whether to enforce the order, ought to be delayed pending the outcome of the appeal.
- (6) The Minister may make an order under **subsection (5)** only once in respect of a particular hospital order.

What happens if enforcement order not to be made

62 Detention and removal if enforcement order will not be made

- (1) If the Minister gives notice under **section 59** that an enforcement order will not be made in respect of a particular Pitcairn sentence or hospital order, the Minister may make an order under this section in respect of the person who is subject to the sentence or order.
- (2) An order under this section is an order—
 - (a) for the continued detention, for up to 28 days, of a person who is detained at the time the order is made; or
 - (b) in respect of a person who is at large under an order made under **section 60(3)** at the time the order is made, for the cancellation of that order, for the return of the person to detention, and for his or her subsequent detention for up to 28 days.
- (3) With respect to a person referred to in **subsection (2)(b)**, the Minister may issue a notice for the person's apprehension; and after the notice is issued any member of the New Zealand Police may, whether or not the member has possession of the notice, apprehend the person for the purpose of returning him or her to detention.
- (4) No person may be detained under an order made under this section for more than 28 days, but the person may be released

before the expiry of 28 days if, upon release, the person is taken into the custody of—

- (a) a member of the New Zealand Police or an authorised person (being a person who is authorised by the Governor to take custody of the person), for the purpose of removing the detained person from New Zealand; or
 - (b) a person who is exercising powers under the Immigration Act 1987 or any other enactment.
- (5) An order under this section also authorises any member of the New Zealand Police or any authorised person to do all or any of the following in respect of a person who is subject to an order under this section:
- (a) hold the person in custody during transit to the point of departure from New Zealand;
 - (b) hold the person in custody at the point of departure pending removal from New Zealand;
 - (c) escort the person out of New Zealand.
- (6) The Minister must make any arrangements that may be necessary to facilitate the removal from New Zealand (other than under the Immigration Act 1987) of a person whose Pitcairn sentence or hospital order is not to be enforced in New Zealand.

Enforcing Pitcairn sentences and hospital orders

63 Effect of enforcement order

- (1) An enforcement order is authority for the enforcement in New Zealand of a Pitcairn sentence or hospital order and, in particular,—
- (a) an enforcement order for the enforcement of a sentence of imprisonment has effect in New Zealand as a New Zealand warrant of commitment for imprisonment for the term specified by the Pitcairn Court and, if applicable, as a New Zealand order for minimum period of imprisonment for the period specified by the Pitcairn Court;
 - (b) an enforcement order for the enforcement of a sentence of supervision has effect in New Zealand as a New Zealand order for sentence of supervision for the period specified by the Pitcairn Court, subject to **subsection (3)**;
 - (c) an enforcement order for the enforcement of a sentence of community work has effect in New Zealand as a New

- Zealand order for sentence of community work for the number of hours specified by the Pitcairn Court, subject to **subsection (4)**:
- (d) an enforcement order in respect of a person who has been found unfit to plead has effect in New Zealand as if the person were subject to an order under section 115(1)(a) of the Criminal Justice Act 1985, having been found to be under disability (as defined in section 108(1) of that Act):
 - (e) an enforcement order in respect of a person who has been found not guilty on the ground of insanity has effect in New Zealand as an order made under section 115(1)(b) of the Criminal Justice Act 1985.
- (2) Every Pitcairn sentence and hospital order to which an enforcement order relates must be enforced as far as possible as if the sentence or order, along with any conditions or directions associated with it, had been imposed or made by a New Zealand court, subject only to any modifications required by this Act or the conditions of enforcement (as provided in **section 57**).
- (3) If an application is made under section 54(1) or (2) of the Sentencing Act 2002 (which relates to the variation or cancellation of a sentence of supervision), the New Zealand court may exercise its powers under section 54(3)(a) of that Act, but if the court considers that the exercise of powers under section 54(3)(b) or (c) of that Act would be appropriate, it must—
- (a) refer the matter to the Pitcairn Court for determination; and
 - (b) suspend the sentence pending the decision of that Court and any necessary amendment or cancellation of the relevant enforcement order.
- (4) If an application is made under section 68(1) or (2) of the Sentencing Act 2002 (which relates to the variation or cancellation of a sentence of community work), the New Zealand court may not exercise its powers under section 68(3) of that Act, but must—
- (a) refer the matter to the Pitcairn Court for determination; and
 - (b) suspend the sentence pending the decision of that Court and any necessary amendment or cancellation of the relevant enforcement order.

64 New Zealand law applies subject to specified exceptions

- (1) The law of New Zealand applies to every person who is subject to an enforcement order as if the person were serving a sentence imposed by a New Zealand court, or were subject to an order made by a New Zealand court (as the case may be).
- (2) **Subsection (1)** is subject to **sections 18 and 63(3) and (4)**, and to **subsections (3) to (6)** of this section.
- (3) A Pitcairn offender or person subject to a hospital order may be removed from New Zealand to another country under either of the following Acts only with the prior consent in writing of the Governor:
 - (a) Extradition Act 1999:
 - (b) Mutual Assistance in Criminal Matters Act 1992.
- (4) For the avoidance of doubt, if a Pitcairn offender, while subject to an enforcement order, is sentenced in a New Zealand court for a New Zealand offence, the Pitcairn sentence that is the subject of the enforcement order is for all purposes to be treated as if it were a New Zealand sentence, and the Sentencing Act 2002 and the Parole Act 2002 apply accordingly.
- (5) For the purpose of determining, under the Parole Act 2002, how much of a sentence an offender has served, the following types of detention that occur before an enforcement order is made, along with the types of detention referred to in section 91 of that Act, are pre-sentence detention:
 - (a) detention overseas during any step in the trial of the offender, as evidenced by a certificate, signed by the Governor, showing the number of days of that detention:
 - (b) detention in a prison or hospital in New Zealand pursuant to a provision of this Act, if that detention is not, or may not be, already treated as pre-sentence detention under the Parole Act 2002.
- (6) **Subsection (5)** applies, with all necessary modifications, for the purpose of determining the maximum period of detention (as described in section 116 of the Criminal Justice Act 1985) of a person who is subject to a hospital order, having been found by a Pitcairn Court to be unfit to plead.

65 Amending and cancelling enforcement orders

- (1) On receiving notice from a Pitcairn Court that the Court has done any of the things set out in **subsection (2)**, the Minister

must amend the relevant enforcement order in a manner that gives effect to the actions of the Pitcairn Court and may, if appropriate, cancel the enforcement order.

- (2) The things referred to in **subsection (1)** are—
 - (a) that a Pitcairn Court has quashed or otherwise nullified the Pitcairn conviction to which the sentence referred to in the enforcement order relates:
 - (b) that a Pitcairn Court has amended the Pitcairn sentence to which the enforcement order relates:
 - (c) that a Pitcairn Court has amended or cancelled the hospital order to which the enforcement order relates.
- (3) In **subsection (2)**, a reference to a Pitcairn Court includes a reference to a court sitting outside New Zealand to which the conviction, sentence, or order of a Pitcairn Court has been appealed.
- (4) If, through the exercise of the prerogative of mercy under Pitcairn law, a sentence that is subject to an enforcement order is affected, the Minister must give effect to the change by amending or cancelling the enforcement order accordingly.
- (5) The Minister may also cancel an enforcement order in any of the following situations:
 - (a) the enforcement order specifies circumstances in which it may be cancelled and the Minister is satisfied that those circumstances apply:
 - (b) the person to whom the order relates is still detained and the Governor requests that the order be cancelled on the grounds that the Pitcairn sentence or hospital order is to be enforced elsewhere than in New Zealand:
 - (c) the Governor requests that the order be cancelled and the Minister is satisfied that, in all the circumstances, the order ought to be cancelled.
- (6) The termination of the Agreement does not, in itself, affect any enforcement order.

66 Expiry of enforcement orders

- (1) An enforcement order in respect of an offender who is subject to a sentence of imprisonment expires on the date after the offender's release on which any release conditions to which he or she is subject cease to apply, unless **subsection (5)** applies.

- (2) An enforcement order in respect of an offender who is subject to a community-based sentence expires on the date specified by a probation officer in a notice to the chief executive of the Department of Corrections that identifies the date on which the offender has completed the community-based sentence.
- (3) An enforcement order in respect of a person who is subject to a hospital order expires,—
 - (a) in the case of a person who was found by a Pitcairn Court to be unfit to plead, when the Attorney-General directs under section 116 of the Criminal Justice Act 1985 that the person either be brought before the appropriate court or be held as a patient, rather than as a special patient:
 - (b) in the case of a person who was acquitted on the grounds of insanity, when the person is discharged under section 117 of the Criminal Justice Act 1985 or a direction is given under that section for the person to be held as a patient, rather than as a special patient.
- (4) The fact that a person is still subject to an enforcement order does not, of itself, give the person a right to remain in New Zealand, and the person may be required under the Immigration Act 1987 to leave New Zealand even if he or she is still subject to release conditions.
- (5) If a person who is subject to an enforcement order is required under the Immigration Act 1987 to leave New Zealand, then, despite anything in this section, the enforcement order expires on the date that the person leaves the country as required under the Immigration Act 1987.

67 Notice of certain things to be given to Department of Labour

- (1) This section applies with respect only to a person who is subject to an enforcement order and who is not a New Zealand citizen (in this section referred to as an **overseas person**).
- (2) The chief executive of the Department of Corrections must, as soon as practicable, advise the chief executive of the Department of Labour of—
 - (a) the key dates and non-parole period (as determined under, and in accordance with, section 88 of the Parole Act 2002) of an overseas person who is subject to a

- sentence of imprisonment, and of any changes to those dates or that period; and
- (b) the actual or expected date on which an overseas person who is detained in prison or on home detention is or will be released from detention; and
 - (c) the actual or expected date on which an overseas person who is subject to a community-based sentence finishes or will finish his or her sentence.
- (3) With respect to an overseas person who is subject to a sentence of imprisonment, the chief executive of the Department of Labour is deemed to be included in the list in section 43(2) of the Parole Act 2002 (which lists various people who must receive notice of impending Parole Board hearings).
- (4) The person who is in charge of a hospital in which an overseas person is detained must give notice to the chief executive of the Department of Labour, as soon as practicable, of the date on which the overseas person ceases, or will cease, to be a special patient.
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s 4(1)

Schedule 1 Agreement

AGREEMENT BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND CONCERNING TRIALS UNDER PITCAIRN LAW IN NEW ZEALAND AND RELATED MATTERS

Contents

[This table is not part of the Agreement and is included for convenience]

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The Government of New Zealand and the Government of the United Kingdom of Great Britain and Northern Ireland,

Have agreed as follows:

Article 1

Definitions

For the purposes of this Agreement, the following definitions shall apply:

- (a) “accused” means any person against whom a formal charge has been signed by a Magistrate -
 - (i) pursuant to section 17(3) of the Justice Ordinance 1999 (Pitcairn); and
 - (ii) either before or after the entry into force of this Agreement;
- (b) “community-based sentence” means any punishment or measure ordered by the Pitcairn Court in the exercise of its criminal jurisdiction requiring a person to serve a sentence of supervision or a sentence of community work;
- (c) “competent authorities” means national, municipal and other competent authorities under the law of the host country;
- (d) “counsel” means a barrister or solicitor entitled to appear before the Pitcairn Court;
- (e) “Government”, unless otherwise provided, means the Government of New Zealand;
- (f) “Governor” means
 - (i) the Governor of the Islands; and
 - (ii) includes any person lawfully performing the functions of the office of Governor pursuant to section 4(3) of the Pitcairn Order 1970 (United Kingdom);
- (g) “host country” means New Zealand;
- (h) “Islands” means the Islands of Pitcairn, Henderson, Ducie, and Oeno;
- (i) “Magistrate” means any person appointed to that office by the Governor pursuant to section 11(1) and (4) of the Judicature (Courts) Ordinance 1999 (Pitcairn);
- (j) “Magistrate’s Court” means the Court established by section 10(1) of the Judicature (Courts) Ordinance 1999 (Pitcairn);

- (k) “offender” means a prisoner, or a prisoner who is on parole or subject to release conditions, or a person who is subject to a community-based sentence;
- (l) “Parties” means the Government of New Zealand and the Government of the United Kingdom of Great Britain and Northern Ireland;
- (m) “Pitcairn Court” means any of the following:
 - (i) the Magistrate’s Court;
 - (ii) the Supreme Court; and
 - (iii) the Pitcairn Court of Appeal;
- (n) “Pitcairn Court of Appeal” means the Pitcairn Court of Appeal established by article 3 of the Pitcairn Court of Appeal Order 2000 (United Kingdom);
- (o) “premises of the Pitcairn Court” means the buildings and land (including installations and facilities) in the host country occupied and used by the Pitcairn Court from time to time for the purpose of any trial;
- (p) “prisoner” means a person who is required to be detained in a prison or in a hospital or other institution pursuant to a sentence imposed by, or by virtue of an order made by, the Pitcairn Court in the course of the exercise of its criminal jurisdiction;
- (q) “prison sentence”
 - (i) means any punishment or measure involving deprivation of liberty ordered by the Pitcairn Court for a limited or unlimited period of time in the exercise of its criminal jurisdiction; and
 - (ii) includes an order made by the Pitcairn Court relating to the detention of a person in a hospital or other institution;
- (r) “Public Prosecutor”
 - (i) means the person appointed by the Governor to be the Public Prosecutor for the Islands; and
 - (ii) includes any person lawfully exercising or performing the functions or powers of the Public Prosecutor;
- (s) “Registrar”, in relation to the Magistrate’s Court, Supreme Court, or Pitcairn Court of Appeal,

- (i) means the person appointed by the Governor as the Registrar of that Court; and
- (ii) includes any person appointed by the Governor as a Deputy Registrar of that Court;
- (t) “sentence” means a prison sentence or a community-based sentence;
- (u) “Supreme Court” means the Supreme Court of Pitcairn, Henderson, Ducie, and Oeno Islands continued by section 3 of the Judicature (Courts) Ordinance 1999 (Pitcairn);
- (v) “trial” means the trial or trials of an accused in accordance with Pitcairn law and practice in respect of offences charged, and (without limitation) includes as appropriate:
 - (i) investigative steps;
 - (ii) the institution of criminal proceedings;
 - (iii) any preliminary proceedings (including committal proceedings);
 - (iv) sentencing;
 - (v) any appeals or review; and
 - (vi) any other associated matters;
- (w) “witness” means a person required or expected to give evidence in the trial of an accused.

Article 2

Purpose and Scope of the Agreement

- (1) This Agreement provides for-
 - (a) the sitting and proper functioning of the Pitcairn Court in New Zealand for the purposes of any trial; and
 - (b) the serving or enforcement in New Zealand of sentences imposed by the Pitcairn Court in any such trial.
- (2) This Agreement applies only in relation to the following trials:
 - (a) any trial arising from investigations into allegations of sexual offending on the Islands, conducted by the Kent Police from 1999 to 2001; and
 - (b) any other trial that the Government, from time to time, agrees to host after being requested to do so by the Governor.

Article 3

The Pitcairn Court

- (1) The Government undertakes to host the Pitcairn Court for the sole purpose, and for the duration, of any trial in New Zealand. For this purpose the Government shall permit the Pitcairn Court to sit in New Zealand in the premises of the Pitcairn Court.
- (2) The jurisdiction of the Pitcairn Court is limited to any trial.
- (3) The Government shall also permit the detention of the accused for the purposes of the trial within the premises of the Pitcairn Court in accordance with Pitcairn law and practice. The enforcement of all other sanctions involving the deprivation of liberty of persons within those premises is not permitted, except in so far as the Pitcairn Court orders or authorises:
 - (a) the temporary detention of witnesses transferred in custody to the premises of the Pitcairn Court;
 - (b) the temporary detention of witnesses in the course of their evidence;
 - (c) the temporary detention of persons who may have committed offences within the premises of the Pitcairn Court, including contempt of Court; and
 - (d) the imprisonment of persons found guilty summarily of contempt of Court.
- (4) The conduct of any trial by the Pitcairn Court shall be exempt and immune from judicial or other challenge in the host country.
- (5) The Governor shall consult with the Government before appointing to the Pitcairn Court a New Zealand judge who holds a current warrant.

Article 4

Juridical Personality of the Pitcairn Court

- (1) The Pitcairn Court shall possess in the host country full juridical personality. This shall, in particular, include the capacity -
 - (a) to enter into contracts;
 - (b) to acquire and dispose of real and personal property of every kind;
 - (c) to institute legal proceedings; and

-
- (d) to enter into subsidiary arrangements with the Government as envisaged in Article 26.
- (2) For the purposes of this Article, the Pitcairn Court shall be represented by the Registrar of the Court concerned.

Article 5

Inviolability of the premises of the Pitcairn Court

- (1) The premises of the Pitcairn Court shall be inviolable.
- (2) The competent authorities shall not enter the premises of the Pitcairn Court to perform any official duty, except with the express consent of, or at the request of, the Registrar of the Court concerned or an official designated by that Registrar. Judicial actions and the service or execution of legal process, including the seizure of private property, shall not be enforced on the premises of the Pitcairn Court except with the consent of, and in accordance with conditions approved by, the Registrar of the Court concerned.
- (3) In case of fire or other emergency requiring prompt protective action, or in the event that the competent authorities have reasonable cause to believe that such an emergency has occurred or is about to occur, on the premises of the Pitcairn Court, the consent of the Registrar of the Court concerned, or an official designated by that Registrar to any necessary entry into the premises of the Pitcairn Court shall be presumed if neither of them could be reached in time.
- (4) The Pitcairn Court may expel or exclude from the premises of the Pitcairn Court persons whose presence is not considered by the Pitcairn Court to be conducive to the maintenance of order or the conduct of any trial.

Article 6

Law and Authority on the Premises of the Pitcairn Court

- (1) The premises of the Pitcairn Court shall be under the control and authority of the Pitcairn Court, as provided in this Agreement.
- (2) Except as otherwise provided in this Agreement, the laws of the host country shall apply within the premises of the Pitcairn Court.

Article 7**Protection of the Premises of the Pitcairn Court**

The Registrar of the Court concerned may request the assistance of the New Zealand Police if that assistance is reasonably necessary in order to preserve law and order within the premises of the Pitcairn Court or in the immediate vicinity of the premises, or to remove a person from those premises.

Article 8**Immunity of the Pitcairn Court**

The Pitcairn Court, its property, funds, and assets, wherever located in the host country and by whomsoever held, shall enjoy immunity from every form of legal process, except insofar as, in any particular case, the Pitcairn Court has expressly waived its immunity. Waiver of immunity from jurisdiction shall not be held to imply waiver of immunity in respect of execution of any judgment, for which a separate waiver shall be necessary.

Article 9**Inviolability of Archives and Documents of the Pitcairn Court and Pitcairn Prosecutor**

- (1) The archives of the Pitcairn Court and, in general, all documents and materials made available to, belonging to, or used by the Court, wherever located in the host country and by whomsoever held, shall be inviolable.
- (2) The Public Prosecutor shall be accorded inviolability of all documents relating to the performance in New Zealand of his or her functions as Prosecutor.

Article 10**Exemption from Taxes and Duties**

- (1) Within the scope of its official functions, the Pitcairn Court, its assets, income and other property, shall be exempt from income tax.
- (2) The Pitcairn Court shall be exempt from all duties and taxes in respect of the import of goods, including publications and motor vehicles, to New Zealand, the import of which by the Pitcairn Court is necessary for the exercise of its official activities.

(3) Goods acquired or imported under paragraph (2) shall not be sold, given away, or otherwise disposed of, except in accordance with conditions agreed on with the Government.

Article 11 Communications

(1) The Pitcairn Court shall be permitted to communicate as necessary for the performance of its functions, free from interference by the Government.

(2) For the fulfilment of its purposes, the Pitcairn Court shall have the right to publish freely and without restrictions within the host country.

Article 12 Essential Services for the Premises of the Pitcairn Court

(1) In case of force majeure resulting in a complete or partial disruption of essential services required for the functioning of the Pitcairn Court, the Pitcairn Court shall be accorded the same priority for restoration of those services as is given to the courts of the host country.

(2) Any works relating to the essential services required for the functioning of the Pitcairn Court shall be carried out only with the consent of the Registrar of the Court concerned.

Article 13 Emblem, Markings, and Flag

The Pitcairn Court shall be entitled to display on its premises its emblem and markings, as well as the appropriate flag.

Article 14 Immunities

(1) The Judges, the Magistrates, the Registrar, the Public Prosecutor, and officials of the Pitcairn Court shall enjoy immunity from criminal and civil jurisdiction in respect of words spoken or written and other acts performed by them in their official capacity. Such immunity shall continue to be accorded to them after termination of

their official position in respect of activities carried out on behalf of the Pitcairn Court.

(2) The immunities are accorded to the Judges, the Magistrates, the Registrar, the Public Prosecutor, and officials of the Pitcairn Court, in the interest of the Pitcairn Court, and not for the personal benefit of the persons themselves. The right to waive the immunity in any case where it can be waived without prejudice to the purposes for which it is accorded shall vest in the Governor.

Article 15

Defence Counsel

(1) Defence counsel acting for an accused or for an offender shall not be subjected by the host country to any measure which may affect the free and independent performance of their functions under Pitcairn law.

(2) In particular -

- (a) the Government shall facilitate the meeting of any immigration requirements;
- (b) defence counsel shall be accorded inviolability of all documents relating to the performance of their functions as counsel for that accused or offender.

(3) Defence counsel shall enjoy immunity from criminal and civil jurisdiction in respect of words spoken or written and other acts performed by them in their capacity as counsel for that accused or offender. Such immunity shall continue to be accorded to them after they have ceased to represent the accused or offender at any trial.

(4) The immunities are accorded to the defence counsel for the independent performance of their functions and not for the personal benefit of the persons themselves. The right to waive the immunity in any case where it can be waived without prejudice to the purposes for which it is accorded shall vest in the Chief Justice of the Pitcairn Court.

(5) Paragraph (2) shall apply also to persons directly assisting defence counsel.

(6) This Article shall be without prejudice to such disciplinary rules as may be applicable to defence counsel.

Article 16

The Accused

- (1) Following a request by the Governor, the Government shall facilitate the transfer through the territory of the host country of an accused in transit from another country to the premises of the Pitcairn Court.
- (2) An accused already present in the host country shall, in accordance with the relevant law and arrangements, be transferred to the premises of the Pitcairn Court for the purposes of any trial.
- (3) Where the Pitcairn Court remands an accused in custody, the Government shall facilitate, in accordance with any relevant arrangements, the transfer of the accused through the territory of the host country between the Pitcairn Court and a New Zealand prison.
- (4) The Government shall not exercise its criminal jurisdiction over an accused to whom paragraph (1) refers in respect of conduct or convictions prior to the arrival of the accused in the host country for the purposes of transfer to the Pitcairn Court. The immunity shall cease when an accused, being obliged to leave the territory of the host country, has not done so or, having left it, has returned.
- (5) Unless the Government otherwise agrees, the Pitcairn Court shall not exercise its criminal jurisdiction over an accused to whom paragraph (2) refers in respect of conduct or convictions prior to the transfer, other than the conduct to which that transfer relates.
- (6) An accused, who is not otherwise entitled to remain in New Zealand, shall be obliged to leave New Zealand -
- (a) on the trial being discontinued by process of law preventing any further trial under Pitcairn law; or
 - (b) on being acquitted, except where the accused is acquitted on the grounds of insanity and is a person in respect of whom a request is granted under Article 18; or
 - (c) in any of the situations specified in Article 18(13) (which relates to departure following the enforcement of certain sentences in New Zealand); or
 - (d) on being sentenced by the Pitcairn Court where that sentence is not to be served in New Zealand.

Article 17**Remand in Custody or on Bail**

- (1) The Government shall recognise, and permit the enforcement, in accordance with New Zealand law, by competent authorities in the host country of orders made in any trial by the Pitcairn Court that relate to the remand in custody or on bail of an accused.
- (2) Where the Pitcairn Court remands an accused in custody in a New Zealand prison while so remanded the accused shall be subject to the laws and practice of the host country relating to detention of prisoners.
- (3) In deciding whether to release an accused on bail in New Zealand the Pitcairn Court shall, in addition to any relevant factors under Pitcairn law, also have regard to the considerations that a New Zealand court would take into account in a case of a similar nature, including whether there is a risk that the accused may interfere with witnesses or other evidence in New Zealand and whether there is a risk that the accused may offend against New Zealand law while on bail. The Pitcairn Court shall not impose any bail conditions on a person released on bail in New Zealand that could not have been imposed under New Zealand law.
- (4) The Registrar shall notify the competent authorities of the host country of orders made in any trial by the Pitcairn Court that relate to the remand in custody or on bail of an accused.

Article 18**Enforcement of Sentences**

- (1) A sentence imposed on an offender by the Pitcairn Court in a trial to which this Agreement applies may, in accordance with this Article, be enforced in New Zealand.
- (2) A request for enforcement of a sentence may be made by the Governor and shall be communicated through diplomatic channels. The Government may invite the Governor to make such a request. The Government shall decide whether or not to grant the request and may, in its sole discretion, refuse the request or may grant the request subject to conditions. The Government shall inform the Governor of its decision through diplomatic channels.
- (3) If the enforcement of a sentence is requested the Governor shall provide the Government with the following information:

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- (a) the name, date, place of birth, nationality (including whether New Zealand nationality is held, if known) and usual place of residence of the offender;
 - (b) a certified copy of the judgment or memorandum imposing the sentence and, if not included in the judgment or memorandum, a summary of the law on which it is based;
 - (c) a statement of the facts upon which the sentence is based;
 - (d) information regarding the nature and duration of the sentence, including -
 - (i) the term of the sentence, including the date on which it was imposed and its termination date;
 - (ii) the length of time already served by the offender (if any);
 - (iii) information on the behaviour of the offender which may be relevant for parole determinations and any credits to which the offender is entitled, including on account of pre-trial confinement or other reasons.
- (4) The Governor shall, as far as possible, provide the Government with any other relevant information, documents or statements, including any psychiatric reports, pre-sentence reports, sentencing notes, and victim impact statements, before or when making a request for enforcement. The Government may seek further information from the Governor before deciding whether or not to grant the request.
- (5) A request for enforcement may not be granted unless the offender gives free and informed consent to the enforcement of the sentence in New Zealand in full knowledge of its legal consequences. Where, in view of the offender's age or physical or mental condition either Party considers it necessary, the offender's consent may be given by a person entitled to act on the offender's behalf. The Government shall be given the opportunity to verify that the consent of the offender has been given in accordance with this paragraph.
- (6) If a request is granted, the Government shall, if required under the law of the host country, convert the sentence in accordance with that law. When converting the sentence the Government -
- (a) shall be bound by the findings as to the facts insofar as they appear explicitly or implicitly from the judgment or memorandum of the Pitcairn Court;

- (b) may not convert a sanction involving deprivation of liberty to a pecuniary sanction nor to a community-based sentence;
 - (c) shall deduct the full period of deprivation of liberty already served by the offender (if any); and
 - (d) without prejudice to the application of Article 18(9)(b), shall not aggravate the penal position of the offender.
- (7) The transfer of the offender by the Pitcairn authorities to the authorities of the host country shall occur or take effect on a date and at a place agreed upon by both Parties.
- (8) The host country shall cooperate in facilitating the transit through its territory of an offender to the place where the sentence is to be carried out.
- (9) Where a request is granted under this Article the enforcement of the sentence concerned shall be governed by the laws and practice of the host country, including -
- (a) those governing the place of detention, the conditions for service of imprisonment or, where applicable, for detention in a hospital or other institution, and those relating to prison conditions, confinement or other deprivation of liberty;
 - (b) those providing for the release of a prisoner on parole, on home detention, or on conditions or otherwise, and for recall following release;
 - (c) those governing the conditions for service of, and compliance with, community-based sentences, including the review of those sentences and other sanctions for breach.
- (10) Except as provided in Article 18(6) and Article 18(9)(c), in respect of sentences to be enforced pursuant to this Agreement, the Islands shall retain exclusive jurisdiction regarding the judgments of its courts, the sentences imposed by them, and any procedures for revision, modification or cancellation of those judgments and sentences. The Government shall terminate enforcement of the sentence as soon as it is informed by the Governor that, as a consequence of any such revision, modification or cancellation, the sentence is no longer to be enforced.
- (11) The competence to grant a pardon or to exercise the prerogative of mercy is reserved solely for the appropriate authority under Pitcairn law.

- (12) An offender who is serving a sentence of imprisonment in the host country shall not be subject to extradition to a third state or territory unless such extradition has been approved by the Governor at the request of the Government.
- (13) An offender, whose sentence is to be enforced in the host country in accordance with this Article but who is not entitled to remain in New Zealand, shall be obliged to leave the host country-
- (a) in the case of a sentence of imprisonment imposed by the Pitcairn Court, on release from detention;
 - (b) in the case of a person detained in a hospital or other institution under an order of the Pitcairn Court but to whom paragraph (a) does not apply, when that person ceases to be liable to be subject to that order or to be detained in the hospital or other institution, whichever is the earlier;
 - (c) in the case of a community-based sentence, on the completion of that sentence.

Article 19

Application of Article 18

- (1) Article 18 shall not apply if, when giving its agreement to host a trial to which Article 2(2)(b) relates, the Government notifies the Governor that it will not contemplate enforcing any sentence that the Pitcairn Court might impose in such a trial.
- (2) Nothing in this Article limits the discretion of the Government to refuse a request under Article 18(2) where no notification is given under this Article at the time that agreement to host the trial is given.

Article 20

Witnesses

- (1) The Government shall permit the entry into New Zealand of witnesses for the sole purpose of attending the trial.
- (2) The Government shall facilitate the transfer through the territory of the host country of any witness, including a witness in custody, in transit from another country to the premises of the Pitcairn Court.
- (3) Where a witness is required to be held in custody the Government shall facilitate, in accordance with any relevant arrangements,

the transfer of the witness through the territory of the host country between the Pitcairn Court and a New Zealand prison.

(4) A witness in custody in a New Zealand prison while so detained shall be subject to the laws and practice of the host country relating to detention of prisoners

(5) The Government shall facilitate the protection of any witness in accordance with its law.

(6) The Government shall not exercise its criminal jurisdiction over a witness to whom paragraph (2) refers in respect of conduct or convictions prior to the arrival of the witness in the host country for the purposes of attending the trial. The immunity shall cease when any witness, being obliged to leave the territory of the host country, has not done so or, having left it, has returned, unless such return is required for the purposes of any trial.

(7) Without prejudice to paragraph (5), a witness shall not be subjected by the host country to any measure which may affect the witness giving evidence freely and independently.

Article 21

Co-operation with the Competent Authorities

(1) Without prejudice to their immunities accorded under this Agreement, it is the duty of all persons enjoying such immunities to respect the laws of the host country. In performing their official functions they shall also refrain from interfering in the internal affairs of the host country.

(2) The Pitcairn Court shall co-operate at all times with the competent authorities to facilitate the proper administration of justice, and prevent any abuse of the immunities and facilities accorded under this Agreement.

(3) The Pitcairn Court shall observe security directives issued by competent authorities of the host country.

Article 22

Notification

The Registrar of the Court concerned shall notify the Government of the names and status of persons referred to in this Agreement, other than members of the public, and of any change in their status. The provisions of this Agreement shall apply to a person of that kind

only if the Government has received notification from that Registrar in respect of the person.

Article 23

Entry into and Exit from the Host Country

All persons notified by the Registrar of the Court concerned to the Government in accordance with Article 22 shall have the right of facilitated entry into and exit from the host country, as necessary for the purposes of any trial. Visas or permits, where required, shall be granted free of charge and as promptly as possible. The same facilities shall be accorded to persons accompanying witnesses for the purposes of any trial, provided that each such person has been notified by the Registrar of the Court concerned to the Government.

Article 24

Costs and Indemnity

- (1) The Government of the United Kingdom shall bear all costs incurred by the host country relating to -
 - (a) the establishment and sitting of the Pitcairn Court in New Zealand;
 - (b) the carrying out in New Zealand of orders of the Pitcairn Court made in the course of, or relating to, a trial, as contemplated by this Agreement; and
 - (c) the serving or enforcement in New Zealand of any sentence imposed by the Pitcairn Court, as contemplated by this Agreement.
- (2) The costs referred to in paragraph (1) include but are not limited to -
 - (a) the use of the time of serving members of the New Zealand Judiciary who have been appointed as judges of the Pitcairn Court;
 - (b) costs incurred by the New Zealand Police;
 - (c) the use of time of employees, contractors, or agents of the Department of Corrections, applied to the business of the Pitcairn Court;
 - (d) the costs associated with the detention of accused or witnesses in a New Zealand prison in relation to the trial; and the

- transporting of those prisoners to and from the premises of the Pitcairn Court;
- (e) where an offender convicted by the Pitcairn Court serves a sentence of imprisonment in New Zealand, the costs associated with the detention of that offender during the sentence, including rehabilitation costs such as the provision of programmes in prison, supervision during home detention or after release on parole and any programme costs;
 - (f) where an offender convicted by the Pitcairn Court serves a community-based sentence in New Zealand, the costs associated with the administration of that sentence, including the provision of any programmes; and
 - (g) where a person is detained in a hospital or other institution in New Zealand by virtue of an order made by the Pitcairn Court in the course of the exercise of its criminal jurisdiction, the costs associated with that detention, including the costs of provision of any treatment or programmes.
- (3) The Government of the United Kingdom shall, in accordance with subsidiary arrangements made with the Government of New Zealand, deposit in a designated account, prior to each quarter, the amount which that Government estimates will be incurred by it in that quarter.
- (4) An accounting shall be supplied by the Government of all sums expended by it every quarter.
- (5) On a date to be determined by agreement the Government of the United Kingdom and the Government of New Zealand shall agree a final accounting and shall make any balancing payment that may be required.
- (6) The Government of the United Kingdom and the Government of New Zealand shall make appropriate arrangements for the indemnification of the latter in respect of any legal challenges brought relating to matters arising out of this Agreement.

Article 25

Legal Co-operation

Nothing in this Agreement shall prejudice the application of treaties or other arrangements that provide for legal co-operation in criminal matters, including extradition, except in so far as otherwise provided in this Agreement.

Article 26
Subsidiary Arrangements

The Registrar of the Court concerned and a designated representative of the Government may make subsidiary arrangements with a view to the practical application of this Agreement.

Article 27
Settlement of Disputes

Any dispute relating to the interpretation or application of this Agreement shall be resolved by consultation and negotiation between the Parties.

Article 28
Final Provisions

- (1) The Parties shall notify each other when their respective requirements for entry into force have been completed. This Agreement shall enter into force on the date that the later notification is received.
- (2) This Agreement may be terminated following the completion of all trials referred to in Article 2(2)(a) by either Party by giving notice to the other through the diplomatic channel. The Agreement shall cease to be in force one month after the date of receipt of such notice.
- (3) Termination shall not affect:
 - (a) the provisions of this Agreement that are required for the orderly termination of the operation of the Pitcairn Court;
 - (b) the continuation of the immunity from legal process in respect of words spoken or written or other acts performed by persons in their capacity as judges, magistrates, the Registrar, the Public Prosecutor or officials of the Pitcairn Court, or defence counsel;
 - (c) the continuation and completion of any trial that, at the time notice is given, is underway pursuant to an approval that the Government has given under Article 2(2)(b); and
 - (d) the serving or enforcement in the host country of any sentence imposed by the Pitcairn Court and in respect of which the Government has granted a request for transfer under Article 18 before notice is given.

(4) This Agreement may be amended by mutual consent at any time at the request of either Party.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE in duplicate at Wellington on this 11th day of October 2002.

For the Government of
New Zealand:

For the Government of the United
Kingdom of Great Britain and
Northern Ireland:

Phil Goff

Richard Fell

Schedule 2 ss 14(1), (2), 35(2), (4)
Modifications to provisions of Extradition Act 1999
applied by section 35 of this Act

- 1 Section 41 must be read—
 - (a) as if in the heading there were inserted after the word “**issued**”, the words “**by Pitcairn Court sitting in New Zealand or**”; and
 - (b) as if in subsection (1) there were inserted, after the word “issued”, the words “by a Pitcairn Court sitting in New Zealand or issued”.

- 2 Section 42 must be read as if in subsection (1)(a) there were inserted, after the word “issued”, the words “by a Pitcairn Court sitting in New Zealand or”.

- 3 Section 45 must be read as if in subsection (2) for the expression “subsections (3) and (4)” there were substituted the expression “subsection (3)”.

- 4 Section 54 must be read—
 - (a) as if in subsection (4)(b)(i) and (iii) for the words “the extradition country” there were substituted the words “a Pitcairn Court’s premises”; and
 - (b) as if in subsection (4)(b)(ii) for the words “New Zealand” there were substituted the words “detention in a penal institution in New Zealand in respect of the sentence of imprisonment imposed for an offence against the law of New Zealand”; and
 - (c) as if in subsection (7) for the words “the extradition country” there were substituted the words “custody in connection with the request”; and
 - (d) as if in subsection (7) there were inserted, after the words “New Zealand” , the words “in respect of the sentence of imprisonment imposed for the offence against the law of New Zealand”.

- 5 Section 55 must be read—
 - (a) as if in subsection (1)(b) for the words “New Zealand” there were substituted the words “detention in a penal institution in New Zealand in respect of the sentence of

- imprisonment imposed for an offence against the law of New Zealand”; and
- (b) as if in subsection (1)(c) there were inserted, after the words “New Zealand”, the words “in respect of the sentence of imprisonment imposed for the offence against the law of New Zealand”.
- 6 The words of the form of surrender order or temporary surrender order (if any) prescribed for the purposes of the Act must be read as if they reflected, or must be adapted so that they reflect, the modifications to sections 54 and 55 required by **clauses 4 and 5 of this Schedule**.
- 7 Section 57 must be read as if in subsection (1) for the words “conveyed out of New Zealand” there were substituted the words “conveyed to a Pitcairn Court’s premises”.
- 8 Section 58 must be read as if in subsection (2) for the words “conveyed out of New Zealand” there were substituted the words “conveyed to a Pitcairn Court’s premises”.
- 9 Section 59 must be read—
- (a) as if in the heading there were inserted, after the word “Part”, the words “**(as applied by section 35 of Pitcairn Trials Act 2002)**”; and
- (b) as if for the words “or under any enactment repealed by this Act” there were substituted the words “(as applied by **section 35 of the Pitcairn Trials Act 2002)**”; and
- (c) as if there were inserted, after the words “under this Act” in both places where they occur, the words “(as so applied)”.
- 10 Section 67 must be read as if in paragraph (d) for the words “transport the person out of New Zealand as soon as practicable to the extradition country” there were substituted the words “transport the Pitcairn accused promptly to a Pitcairn Court’s premises”.
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Schedule 3 s 41(3)
Form of endorsement of Pitcairn Court bail order

To every member of the New Zealand Police

I, [*name of Judge (or Registrar)*], New Zealand District Court Judge (or Registrar), authorise the enforcement in New Zealand of the order of a Pitcairn Court on which this endorsement appears, including (without limitation), in the event of a breach of the terms of the order,—

- (a) the arrest of [*full name*], being the person named in the order,—
 - (i) under an arrest warrant issued by that Pitcairn Court; or
 - (ii) under **section 44 of the Pitcairn Trials Act 2002** (which allows arrest in New Zealand without warrant in certain circumstances); and
- (b) [*full name*] being brought before that Pitcairn Court in New Zealand as soon as possible to be further dealt with in accordance with the applicable law, in accordance with **section 43(2)** (or **section 44(2)**) of that Act.

Dated: [*date*].

.....
 New Zealand District Court Judge
 (or New Zealand District Court Registrar)