STATUTORY INSTRUMENTS

1975 No. 1508

FUGITIVE CRIMINAL

The Fugitive Offenders (Tuvalu) Order 1975

Made - - - -	17*th September* 1975
Laid before Parliament	24*th September* 1975
Coming into Operation	16*th October* 1975

At the Court at Balmoral, the 17th day of September 1975

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by sections 17 and 20 of the Fugitive Offenders Act 1967(**a**), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation and commencement.

1. This Order may be cited as the Fugitive Offenders (Tuvalu) Order 1975 and shall come into operation on 16th October 1975.

Interpretation.

2. The Interpretation Act 1889(**b**) shall apply, with the necessary adaptations, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to, Acts of Parliament.

Extension of Fugitive Offenders Act 1967 to Tuvalu.

3. Sections 1 to 15, inclusive, 19, 21 and 22 of, and Schedules 1 and 2 to, the Fugitive Offenders Act 1967, modified and adapted as in the Schedule hereto, shall extend to Tuvalu:

Provided that nothing in those sections and schedules shall apply in relation to Southern Rhodesia.

Revocation.

4. The Fugitive Offenders (Gilbert and Ellice Islands) Order 1967(**c**) is revoked in so far as it forms part of the law of Tuvalu.

N. E. Leigh

SCHEDULE TO THE ORDER

Article 3.

PROVISIONS OF FUGITIVE OFFENDERS ACT 1967 AS EXTENDED TO TUVALU

Return of offenders to the United Kingdom, Commonwealth countries, the Republic of Ireland and United Kingdom dependencies

Persons liable to be returned.

1. Subject to the provisions of this Act, a person found in the Territory who is accused of a relevant offence in any other country being—

(*a*) the United Kingdom; or

(*b*) a Commonwealth country designated for the purposes of this section under section 2(1) of this Act, or the Republic of Ireland; or

(*c*) a United Kingdom dependency as defined by section 2(2) of this Act,

(**a**) 1967 c. 68. (**b**) 1889 c. 63. (**c**) S.I. 1967/1910 (1967 III, p. 5270).

or who is alleged to be unlawfully at large after conviction of such an offence in any such country, may be arrested and returned to that country as provided by this Act.

Designated Commonwealth countries and United Kingdom dependencies.

2.—(1) The Commissioner may, with the approval of the Secretary of State, by order designate for the purposes of section 1 of this Act any country for the time being mentioned in section 1(3) of the British Nationality Act 1948(a) (countries having separate citizenship), or any other country within the Commonwealth; and any country so designated is in this Act referred to as a designated Commonwealth country.

(2) In this Act the expression "United Kingdom dependency" means—

(*a*) any colony (not being a colony for whose external relations a country other than the United Kingdom is responsible);

(*b*) any associated state within the meaning of the West Indies Act 1967(b); and

(*c*) any country outside Her Majesty's dominions (being a country in which Her Majesty has jurisdiction, or over which She extends protection, in right of Her Government in the United Kingdom) to which the Commissioner may, with the approval of the Secretary of State, by order apply this subsection,

not being in any case a country which is or forms part of a designated Commonwealth country.

(3) The Commissioner may, with the approval of the Secretary of State, by order direct that this Act shall have effect in relation to the return of persons to, or in relation to persons returned from, the United Kingdom, any designated Commonwealth country, the Republic of Ireland, or any United Kingdom dependency subject to such exceptions, adaptations or modifications as may be specified in the order.

(4) For the purposes of any order under subsection (1) of this section, any territory for the external relations of which a Commonwealth country is responsible may be treated as part of that country or, if the Government of that country so requests, as a separate country.

Relevant offences.

3.—(1) For the purposes of this Act an offence of which a person is accused or has been convicted in the United Kingdom or a designated Commonwealth country or the Republic of Ireland or a United Kingdom dependency is a relevant offence if—

(*a*) in the case of an offence against the law of a designated Commonwealth country or the Republic of Ireland, it is an offence which, however described in that law, falls within any of the descriptions set out in the Schedule to this Act, and is punishable under that law with imprisonment for a term of twelve months or any greater punishment;

(*b*) in the case of an offence against the law of the United Kingdom or a United Kingdom dependency, it is punishable under that law, on conviction by or before a superior court, with imprisonment for a term of twelve months or any greater punishment; and

(*c*) in any case, the act or omission constituting the offence, or the equivalent act or omission, would constitute an offence against the law of the Territory if it took place within the Territory or, in the case of an extra-territorial offence, in corresponding circumstances outside the Territory.

(2) In determining for the purposes of this section whether an offence against the law of a designated Commonwealth country or the Republic of Ireland falls within a description set out in the Schedule to this Act, any special intent or state of mind or special circumstances of aggravation which may be necessary to constitute that offence under the law shall be disregarded.

(a) 1948 c. 56. (b) 1967 c. 4.

(3) The descriptions set out in the Schedule to this Act include in each case offences of attempting or conspiring to commit, of assisting, counselling or procuring the commission of or being accessory before or after the fact to the offences therein described, and of impeding the apprehension or prosecution of persons guilty of those offences.

(4) References in this section to the law of any country include references to the law of any part of that country.

General restrictions on return.

4.—(1) A person shall not be returned under this Act to a designated Commonwealth country or the Republic of Ireland, or committed to or kept in custody for the purposes of such return, if it appears to the Commissioner, to the court of committal or to the High Court on an application for habeas corpus—

(*a*) that the offence of which that person is accused or was convicted is an offence of a political character ;

(*b*) that the request for his return (though purporting to be made on account of a relevant offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions ; or

(*c*) that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

(2) A person accused of an offence shall not be returned under this Act to any country, or committed to or kept in custody for the purposes of such return, if it appears as aforesaid that if charged with that offence in the Territory he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction.

(3) A person shall not be returned under this Act to any country, or committed to or kept in custody for the purposes of such return, unless provision is made by the law of that country, or by an arrangement made with that country, for securing that he will not, unless he has first been restored or had an opportunity of returning to the Territory, be dealt with in that country for or in respect of any offence committed before his return under this Act other than—

(*a*) the offence in respect of which his return under this Act is requested ;

(*b*) any lesser offence proved by the facts proved before the court of committal ; or

(*c*) any other offence being a relevant offence in respect of which the Commissioner may consent to his being so dealt with.

(4) Any such arrangement as is mentioned in subsection (3) of this section may be an arrangement made for the particular case or an arrangement of a more general nature ; and for the purposes of that subsection a certificate issued by or under the authority of the Commissioner confirming the existence of an arrangement with any country and stating its terms shall be conclusive evidence of the matters contained in the certificate.

(5) The reference in this section to an offence of a political character does not include an offence against the life or person of the Head of the Commonwealth or any related offence described in section 3(3) of this Act.

Proceedings for return

Authority to proceed.

5.—(1) Subject to the provisions of this Act relating to provisional warrants, a person shall not be dealt with thereunder except in pursuance of an order of the Commissioner (in this Act referred to as an authority to proceed), issued in pursuance of a request made to the Commissioner by or on behalf of the Government of the United Kingdom, or of the Republic of Ireland, or of the designated Commonwealth country, or by the Governor of the United Kingdom dependency, in which the person to be returned is accused or was convicted.

(2) There shall be furnished with any request made for the purposes of this section on behalf of any country—

(*a*) in the case of a person accused of an offence, a warrant for his arrest issued in that country ;

(*b*) in the case of a person unlawfully at large after conviction of an offence, a certificate of the conviction and sentence in that country, and a statement of the amount if any of that sentence which has been served,

together (in each case) with particulars of the person whose return is requested and of the facts upon which and the law under which he is accused or was convicted, and evidence sufficient to justify the issue of a warrant for his arrest under section 6 of this Act.

(3) On receipt of such a request the Commissioner may issue an authority to proceed unless it appears to him that an order for the return of the person concerned could not lawfully be made, or would not in fact be made, in accordance with the provisions of this Act.

Arrest for purposes of committal.

6.—(1) A warrant for the arrest of a person accused of a relevant offence, or alleged to be unlawfully at large after conviction of such an offence, may be issued—

(*a*) on the receipt of an authority to proceed, by a magistrate in any part of the Territory ;

(*b*) without such an authority, by a magistrate in any part of the Territory, upon information that the said person is or is believed to be in or on his way to the Territory ;

and any warrant issued by virtue of paragraph (*b*) above is in this Act referred to as a provisional warrant.

(2) A warrant of arrest under this section may be issued upon such evidence as would, in the opinion of the magistrate, authorise the issue of a warrant for the arrest of a person accused of committing a corresponding offence or, as the case may be, of a person alleged to be unlawfully at large after conviction of an offence, within the jurisdiction of the magistrate.

(3) Where a provisional warrant is issued under this section, the authority by whom it is issued shall forthwith give notice to the Commissioner, and transmit to him the information and evidence, or certified copies of the information and evidence, upon which it was issued ; and the Commissioner may in any case, and shall if he decides not to issue an authority to proceed in respect of the person to whom the warrant relates, by order cancel the warrant and, if that person has been arrested thereunder, discharge him from custody.

(4) A warrant of arrest issued under this section may be executed in any part of the Territory and may be executed by any person to whom it is directed or by any constabulary officer.

(5) Where a warrant is issued under this section for the arrest of a person accused of an offence of stealing or receiving stolen property or any other offence in respect of property, a magistrate or justice of the peace in any part of the Territory shall have the like power to issue a warrant to search for the property as if the offence had been committed within the jurisdiction of the magistrate or justice.

Proceedings for committal.

7.—(1) A person arrested in pursuance of a warrant under section 6 of this Act shall (unless previously discharged under subsection (3) of that section) be brought as soon as practicable before a court (in this Act referred to as the court of committal) consisting of a magistrate.

(2) For the purposes of proceedings under this section a court of committal consisting of a magistrate shall have the like jurisdiction and powers, as nearly as may be, including power to remand in custody or on bail, as a magistrates' court conducting a preliminary inquiry.

(3) Where the person arrested is in custody by virtue of a provisional warrant and no authority to proceed has been received in respect of him, the court of committal may fix a reasonable period (of which the court shall give notice to the Commissioner) after which he will be discharged from custody unless such an authority has been received.

(4) Where an authority to proceed has been issued in respect of the person arrested and the court of committal is satisfied, after hearing any evidence tendered in support of the request for the return of that person or on behalf of that person, that the offence to which the authority relates is a relevant offence and is further satisfied—

(*a*) where that person is accused of the offence, that the evidence would be sufficient to warrant his trial for that offence if it had been committed within the jurisdiction of the court;

(*b*) where that person is alleged to be unlawfully at large after conviction of the offence, that he has been so convicted and appears to be so at large,

the court shall, unless his committal is prohibited by any other provision of this Act, commit him to custody to await his return thereunder; but if the court is not so satisfied or if the committal of that person is so prohibited, the court shall discharge him from custody.

Application for habeas corpus, etc.

8.—(1) Where a person is committed to custody under section 7 of this Act, the court shall inform him in ordinary language of his right to make an application for habeas corpus, and shall forthwith give notice of the committal to the Commissioner.

(2) A person committed to custody under the said section 7 shall not be returned under this Act—

(*a*) in any case, until the expiration of the period of fifteen days beginning with the day on which the order for his committal is made;

(*b*) if an application for habeas corpus is made in his case, so long as proceedings on that application are pending.

(3) On any such application the High Court may, without prejudice to any other jurisdiction of the court, order the person committed to be discharged from custody if it appears to the court that—

(*a*) by reason of the trivial nature of the offence of which he is accused or was convicted; or

(*b*) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or

(*c*) because the accusation against him is not made in good faith in the interests of justice,

it would, having regard to all the circumstances, be unjust or oppressive to return him.

(4) On any such application the High Court may receive additional evidence relevant to the exercise of their jurisdiction under section 4 of this Act or under subsection (3) of this section.

(5) For the purposes of this section proceedings on an application for habeas corpus shall be treated as pending until any appeal in those proceedings to the Fiji Court of Appeal is disposed of; and an appeal shall be treated as disposed of at the expiration of the time within which the appeal may be brought or, where leave to appeal is required, within which the application for leave may be made, if the appeal is not brought or the application made within that time.

Order for return to requesting country.

9.—(1) Where a person is committed to await his return and is not discharged by order of the High Court, the Commissioner may by warrant order him to be returned to the country by which the request for his return was made unless the return of that person is prohibited, or prohibited for the time being, by section 4 of this Act or this section, or the Commissioner decides under this section to make no such order in his case.

(2) An order shall not be made under this section in the case of a person who is serving a sentence of imprisonment or detention, or is charged with an offence, in the Territory—

(*a*) in the case of a person serving such a sentence, until the sentence has been served ;

(*b*) in the case of a person charged with an offence, until the charge is disposed of or withdrawn and, if it results in a sentence of imprisonment (not being a suspended sentence), until the sentence has been served.

(3) The Commissioner shall not make an order under this section in the case of any person if it appears to the Commissioner, on the grounds mentioned in section 8(3) of this Act, that it would be unjust or oppressive to return that person, and may decide to make no order under this section in the case of a person accused or convicted of an offence in the United Kingdom or a United Kingdom dependency if he considers, on any such grounds as are mentioned in paragraphs (*a*) to (*c*) of section 4(1) of this Act, that the order ought not to be made.

(4) The Commissioner may decide to make no order under this section in the case of a person accused or convicted of a relevant offence not punishable with death in the Territory if that person could be or has been sentenced to death for that offence in the country by which the request for his return is made.

(5) The Commissioner may decide to make no order under this section for the return of a person committed in consequence of a request made on behalf of any country if another request for his return under this Act, or a requisition for his surrender under the Extradition Act 1870(**a**), has been made on behalf of another country and it appears to the Commissioner, having regard to all the circumstances of the case and in particular—

(*a*) the relative seriousness of the offences in question ;

(*b*) the date on which each such request or requisition was made ; and

(*c*) the nationality or citizenship of the person concerned and his ordinary residence,

that preference should be given to the other request or requisition.

(6) Notice of the issue of a warrant under this section shall forthwith be given to the person to be returned thereunder.

Discharge in case of delay in returning.

10.—(1) If any person committed to await his return is in custody in the Territory under this Act after the expiration of the following period, that is to say—

(*a*) in any case, the period of two months beginning with the first day on which, having regard to section 8(2) of this Act, he could have been returned ;

(*b*) where a warrant for his return has been issued under section 9 of this Act, the period of one month beginning with the day on which that warrant was issued,

he may apply to the High Court for his discharge.

(2) If upon any such application the court is satisfied that reasonable notice of the proposed application has been given to the Commissioner, the court may, unless sufficient cause is shown to the contrary, by order direct the applicant to be discharged from custody and, if a warrant for his return has been issued under the said section 9, quash that warrant.

Evidence.

11. (1) In any proceedings under this Act, including proceedings on an application for habeas corpus in respect of a person in custody thereunder

(*a*) a document, duly authenticated, which purports to set out evidence given on oath in the United Kingdom or a designated Commonwealth

(**a**) 1870 c. 52.

country or the Republic of Ireland or a United Kingdom dependency (other than the Territory) shall be admissible as evidence of the matters stated therein ;

(*b*) a document, duly authenticated, which purports to have been received in evidence, or to be a copy of a document so received, in any proceeding in any such country or dependency shall be admissible in evidence ;

(*c*) a document, duly authenticated, which certifies that a person was convicted on a date specified in the document of an offence against the law of, or of a part of, any such country or dependency shall be admissible as evidence of the fact and date of the conviction.

(2) A document shall be deemed to be duly authenticated for the purposes of this section—

(*a*) in the case of a document purporting to set out evidence given as aforesaid, if the document purports to be certified by a judge or magistrate or officer in or of the country or dependency in question to be the original document containing or recording that evidence or a true copy of such a document ;

(*b*) in the case of a document which purports to have been received in evidence as aforesaid or to be a copy of a document so received, if the document purports to be certified as aforesaid to have been, or to be a true copy of a document which has been, so received ;

(*c*) in the case of a document which certifies that a person was convicted as aforesaid, if the document purports to be certified as aforesaid,

and in any such case the document is authenticated either by the oath of a witness or by the official seal of the Secretary of State or of a Minister of the designated Commonwealth country or of the Republic of Ireland or of the Governor or a Minister, secretary or other officer administering a department of the Government of the dependency, as the case may be.

(3) In this section "oath" includes affirmation or declaration ; and nothing in this section shall prejudice the admission in evidence of any document which is admissible in evidence apart from this section.

Custody.

12.—(1) Any person remanded or committed to custody under section 7 of this Act shall be committed to the like institution as a person charged with an offence before the court of committal.

(2) If any person who is in custody by virtue of a warrant under this Act escapes out of custody, he may be retaken in any part of the Territory in like manner as a person escaping from custody under a warrant for his arrest issued in that part in respect of an offence committed therein.

(3) Where a person, being in custody in any part of the Territory whether under this Act or otherwise, is required to be removed in custody under this Act to another part of the Territory and is so removed by sea or by air, he shall be deemed to continue in legal custody until he reaches the place to which he is required to be removed.

(4) A warrant under section 9 of this Act for the return of any person to any country shall be sufficient authority for all persons to whom it is directed and all constabulary officers to receive that person, keep him in custody and convey him into the jurisdiction of that country.

Form of warrants and orders.

13.—(1) Any warrant or order to be issued or made by the Commissioner under any of the foregoing provisions of this Act shall be given under the hand of the Commissioner.

(2) The Commissioner may by order prescribe the form of any warrant or order to be issued or made under the foregoing provisions of this Act.

Treatment of persons returned from the United Kingdom, Commonwealth countries, the Republic of Ireland and United Kingdom dependencies

Restriction upon proceedings for other offences.

14.—(1) This section applies to any person accused or convicted of an offence under the law of the Territory who is returned to the Territory—

(*a*) from the United Kingdom, under the Act ;

(*b*) from any designated Commonwealth country or from the Republic of Ireland under any law of that country corresponding with the Act ;

(*c*) from any United Kingdom dependency, under the Act or under any corresponding law of that dependency.

(2) A person to whom this section applies shall not, during the period described in subsection (3) of this section, be dealt with in the Territory for or in respect of any offence committed before he was returned to the Territory other than—

(*a*) the offence in respect of which he was returned ;

(*b*) any lesser offence proved by the facts proved for the purposes of securing his return ; or

(*c*) any other offence in respect of which the Government of the country or Governor of the dependency from which he was returned may consent to his being dealt with.

(3) The period referred to in subsection (2) of this section in relation to a person to whom this section applies is the period beginning with the day of his arrival in the Territory on his return as mentioned in subsection (1) of this section and ending sixty days after the first subsequent day on which he has the opportunity to leave the Territory.

Restoration of persons not tried or acquitted.

15.—(1) This section applies to any person accused of an offence under the law of the Territory who is returned to the Territory as mentioned in section 14(1) of this Act.

(2) If in the case of a person to whom this section applies, either—

(*a*) proceedings against him for the offence for which he was returned are not begun within the period of six months beginning with the day of his arrival in the Territory on being returned ; or

(*b*) on his trial for that offence, he is acquitted or discharged absolutely or conditionally,

the Commissioner may, if he thinks fit, on the request of that person, arrange for him to be sent back free of charge and with as little delay as possible to the country from which he was returned.

Supplemental

Interpretation.

19.—(1) In this Act the following expressions have the meanings hereby assigned to them that is to say:—

"Act" means, in relation to the United Kingdom, the Fugitive Offenders Act 1967 and, in relation to the Territory or to any other United Kingdom dependency, that Act as extended to the Territory or, as the case may be, to that other dependency ;

"application for habeas corpus" means an application for a writ of habeas corpus ad subjiciendum ;

"Commissioner", in relation to the Territory, means the Commissioner of Tuvalu and includes any person or persons administering the government of the Territory ;

"country" includes any territory ;

"dealt with" means tried or returned or surrendered to any country or detained with a view to trial or with a view to such return or surrender ;

" designated Commonwealth country " and " United Kingdom dependency " have the meanings assigned by section 2 of this Act ;

" Governor ", in relation to any country other than the Territory or a country mentioned in subsection (2) of this section, means the person or persons administering the government of that country ;

" High Court " means the High Court of Tuvalu ;

" imprisonment " includes detention of any description ;

" race " includes tribe ;

" Territory ", except where the context otherwise requires, means Tuvalu ;

" United Kingdom " includes the Channel Islands and the Isle of Man.

(2) In this Act references to the Governor shall be construed—

(*a*) in relation to Brunei as references to the Government of Brunei ;

(*b*) in relation to the New Hebrides as references to Her Majesty's High Comissioner for the Western Pacific and, to the extent that authority to perform functions under this Act may be assigned by the High Commissioner to the Resident Commissioner for the New Hebrides, to the Resident Commissioner.

(3) For the purposes of this Act a person convicted of an offence in his absence shall be treated as a person accused of that offence.

21. This Act applies to offences committed before as well as after the coming into force of this Act.

22.—(1) The provisions of this Act other than this section shall come into force on such date as the Commissioner may by order appoint. Commencement.

(2) Different dates may be appointed under this section for different provisions of this Act, and different dates may be so appointed for any such provision or provisions in relation to different countries.

SCHEDULE

Section 3.

Description of Relevant Offences in Designated Commonwealth Countries or the Republic of Ireland

1. Murder of any degree.
2. Manslaughter or culpable homicide.
3. An offence against the law relating to abortion.
4. Maliciously or wilfully wounding or inflicting grievous bodily harm.
5. Assault occasioning actual bodily harm.
6. Rape.
7. Unlawful sexual intercourse with a female.
8. Indecent assault.
9. Procuring, or trafficking in, women or young persons for immoral purposes.
10. Bigamy.
11. Kidnapping, abduction or false imprisonment, or dealing in slaves.
12. Stealing, abandoning, exposing or unlawfully detaining a child.
13. Bribery.

14. Perjury or subornation of perjury or conspiring to defeat the course of justice.
15. Arson or fire-raising.
16. An offence concerning counterfeit currency.
17. An offence against the law relating to forgery.
18. Stealing, embezzlement, fraudulent conversion, fraudulent false accounting, obtaining property or credit by false pretences, receiving stolen property or any other offence in respect of property involving fraud.
19. Burglary, housebreaking or any similar offence.
20. Robbery.
21. Blackmail or extortion by means of threats or by abuse of authority.
22. An offence against bankruptcy law or company law.
23. Malicious or wilful damage to property.
24. Acts done with the intention of endangering vehicles, vessels or aircraft.
25. An offence against the law relating to dangerous drugs or narcotics.
26. Piracy.
27. Revolt against the authority of the master of a ship or the commander of an aircraft.
28. Contravention of import or export prohibitions relating to precious stones, gold and other precious metals.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order extends the provisions of the Fugitive Offenders Act 1967 to Tuvalu subject to exceptions, adaptations and modifications and replaces the Fugitive Offenders (Gilbert and Ellice Islands) Order 1967 as respects Tuvalu.

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