

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2002

CHAPTER XXXVIII

JUDICATURE AMENDMENT ORDINANCE

An ordinance to give effect in Pitcairn law to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand signed at Wellington on 11 October 2002 concerning the holding of Pitcairn trials in New Zealand and other related matters

Ordinances
No. 1 of 2003
No. 3 of 2005

[14 March 2003]

1. This ordinance may be cited as the Judicature Amendment Ordinance.

Citation and
commencement

2.—(1) In this ordinance, unless the context otherwise requires, the words, terms and expressions

Interpretation

Agreement, community-based sentence, country, enforcement order, Governor, hospital order, Minister, Pitcairn accused or accused, Pitcairn Court, Pitcairn defence counsel, Pitcairn Magistrate, Pitcairn offender or offender, Pitcairn Prosecutor, Pitcairn sentence, Pitcairn trial, Pitcairn witness, premises in relation to a Pitcairn Court, **Registrar** in relation to a Pitcairn Court, **sentence of imprisonment and specified investigations trial**

shall each have the same meaning as it has been given in section 4(1) of the Act.

(2) In this ordinance unless the context otherwise requires, **the Act** means the Pitcairn Trials Act 2002 of the Parliament of New Zealand;

the Order means the Pitcairn Order 1970 as from time to time amended.

(3) In this ordinance, unless the context otherwise requires, **trial** has the meaning assigned to it by section 5 of the Act.

3.—(1) This ordinance gives effect in Pitcairn law to the provisions of the Agreement

Purposes and intent of
ordinance

(a) for the sitting of Pitcairn Courts in New Zealand (in accordance with section 5(2A) of the Order) for the purpose of a Pitcairn trial or any part thereof; and

- (b) for the serving or enforcement in New Zealand of sentences imposed by the Pitcairn Court in any such trial.

(2) The purpose of this ordinance is to give the force of law in Pitcairn law to the Agreement and to implement in Pitcairn law the obligations of Pitcairn under the Agreement.

Power to remand persons to Pitcairn Court in New Zealand

4.—(1) In any case to which this section applies, a Pitcairn Court (the remanding Court) may upon the application of the prosecutor or the defendant, or of its own motion, remand any person to appear, by means of travel specified in such order, before a Pitcairn Court sitting in New Zealand for the purposes of a trial there.

(2) This section applies in the following circumstances, namely, that at the time of the making of an order under subsection (1)—

- (a) the remanding Court is sitting at a place within the Islands and
- (b) New Zealand has been appointed by the Governor, acting on the advice of the Chief Justice under section 5(2A) of the Order, as a place outside the Islands where the Court may sit for the purposes of the particular trial.

(3) Every order or warrant of remand under this section shall be in the form prescribed in the schedule to this ordinance.

(4) In the case of the entry to or the removal from New Zealand of a person so remanded by a Pitcairn Court, the Registrar of that Court shall forthwith send a sealed copy of the remand warrant to the Minister.

Bail may be granted for remand

5.—(1) When making an order of remand under section 4, the Court may in its discretion grant bail to the person remanded upon such terms and conditions as it shall think fit, as may be expedient to ensure that the person appears before the Pitcairn Court in accordance with the terms of the order of remand.

(2) A person duly entering into a bail bond in accordance with this section shall be indemnified by the Crown for his or her costs of travel, living expenses and accommodation arising directly from compliance with the order of remand, as settled and approved by the Registrar.

(3) The person remanded shall travel directly to New Zealand in a single journey, which must be approved by the Registrar in advance, and shall notify the Registrar of his or her arrival and appearance before the Pitcairn Court in the host country.

(4) The Registrar shall consider any further claims for

indemnity by the person so remanded and may approve or decline them or if necessary refer them to the Chief Justice for determination.

[5A.—(1) Any person to whom this section applies shall be indemnified by the Crown in like manner as is prescribed by subsections (2) and (4) of section 5.

Further provisions for indemnity

(2) This section applies to any Pitcairn accused or Pitcairn offender who has travelled to New Zealand from another country (other than the Islands) in accordance with or as a result of extradition proceedings taken against him or her in such other country and on or after his or her arrival has been granted bail within New Zealand by a Pitcairn court sitting in New Zealand, whether before or after his or her appearance before such court for the purposes of a trial there.]

(Inserted by Ordinance No. 3 of 2005)

6.—(1) Unless granted bail under section 5, a person remanded to appear before a Pitcairn Court in New Zealand under section 4 shall be detained forthwith under a warrant of arrest and conveyed in custody to New Zealand for surrender to the competent authority in accordance with the procedure in Article 17 or 23 of the Agreement, as the case may be.

Remand in custody

(2) It shall be a condition of every order of remand in custody to a Pitcairn Court in New Zealand that the transfer shall take place and be effected as soon as reasonably possible, and shall be undertaken in a single unbroken voyage by sea direct to New Zealand. Any variation of the means of travel must have the specific approval of the remanding Court.

(3) The person remanded in custody shall be accompanied by one or more prison officers or police officers of the same gender as the person remanded, who shall keep him or her secure and under surveillance at all times, without exercising an unnecessary level of restraint, and having due respect at all times for his or her comfort, dignity and safety, as far as is practicable.

(4) Without prejudice to the generality of the foregoing, the person remanded in custody shall be strictly entitled, during the remand process, to the following rights—

- to communicate in privacy with his or her family on every third day, if necessary facilities are available
- to communicate in privacy with his or her legal adviser on every third day, if necessary facilities are available
- to obtain and receive any necessary medication duly prescribed for his or her welfare
- to be provided with adequate meals and sleeping

facilities

- to be afforded such facilities as are reasonably required for his or her personal hygiene and welfare
- not to be questioned at any time about any matter touching upon a pending trial in the Pitcairn Court
- to be treated, so far as the circumstances permit, with courtesy and respect at all times.

(5) Section 27 of the Justice Ordinance does not apply with respect to a remand in custody under the provisions of this section.

(6) A sealed copy of the warrant of remand referred to in section 4(3) in the possession of the officer or officers accompanying the person remanded shall be at all times sufficient authority and justification for detaining and conveying the said person to New Zealand in accordance with subsection (1).

7.—(1) Upon the making of an order by a Pitcairn Court for the remand of a Pitcairn accused or witness in custody to appear before a Pitcairn Court sitting in New Zealand, the Governor shall make a request to the Minister that the Pitcairn accused or witness may enter New Zealand from another country and be transported through New Zealand territory to a Pitcairn Court's premises in New Zealand for trial in a Pitcairn trial which is to take place in New Zealand.

(2) In making a request under subsection (1), the Governor shall satisfy the Minister that the request relates to a Pitcairn trial which is to take place in New Zealand and that the accused or witness, as the case may be, sought to be transferred is an accused or witness in that trial. The Minister may grant the request subject to any conditions he or she may think fit.

8.—(1) For the purposes of sections 39 to 45 of the Act, the Bail Ordinance 2002, subject only to section 24 of the Justice Ordinance (which prescribes the general procedure for bail in the Magistrate's Court), applies to all proceedings in Pitcairn Courts in New Zealand.

(2) Notwithstanding subsection (1), 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

cap.3

On the making of a remand in custody, the Governor to make request to Minister

Remand on bail
cap. 37
cap. 3

which could not have been imposed under New Zealand law.

9.—(1) At any time in the course of a Pitcairn trial, the persons to whom this section applies may be detained under Pitcairn law and practice at the premises of the Pitcairn Court, for the purpose of allowing the trial to be conducted there on that date.

Detention in premises of Pitcairn court

(2) This section applies to any Pitcairn accused, Pitcairn offender or person subject to a hospital order, who is present in those premises in relation to a trial.

(3) This section also applies to those persons in respect of whom the Pitcairn Court makes an order for detention in the Pitcairn Court's premises, namely—

- (a) a witness giving evidence;
- (b) a person who may have committed contempt of court or an offence against Pitcairn law, within the Pitcairn Court's premises;
- (c) a person found guilty summarily of a contempt of court.

10. Notwithstanding any other provision of Pitcairn law, a Pitcairn accused or a Pitcairn offender who is yet to be sentenced, or otherwise dealt with, may be ordered by a Pitcairn Court sitting in New Zealand to be remanded in custody in prison for any period not exceeding 28 days or for any two or more such periods successively.

Remand in custody in prison

11. A Pitcairn Court sitting in New Zealand may order that a Pitcairn accused or Pitcairn offender be remanded in custody in a hospital or other secure medical facility for psychiatric examination which may help the Court in determining—

Remand for psychiatric examination

- (a) whether the accused is fit to plead or is insane;
- (b) the type and length of any sentence which might be imposed upon the offender or any condition or order which it might impose in conjunction with that sentence

and such order shall remain valid for a period of 14 days from the making thereof or for any two or more such periods successively.

12. A Pitcairn Court sitting in New Zealand may order that a Pitcairn accused be remanded in custody in a hospital or other similar institution during the course of a trial for a period not exceeding 28 days after the making of the order or for two or more such periods successively.

Remand in custody in hospital etc.

13.—(1) In this section—

Pitcairn law means the Mental Health Act 1983 of the United Kingdom (as in force in Pitcairn);

the corresponding provisions means those provisions

Procedure when accused ceases to be unfit to plead

of Pitcairn law which, upon an accused ordered to be detained subject to a restricted hospital order ceasing to be unfit to plead, empower the Secretary of State to remit him or her to Court for trial or result in the discharge of the order by the responsible medical officer with the agreement of the Secretary of State, or by the order of the mental health review tribunal.

(2) Upon the Attorney-General of New Zealand making a direction under section 116 of the Criminal Justice Act 1985 of New Zealand that a Pitcairn accused who is subject to a hospital order made by a Pitcairn Court on the grounds that he or she was unfit to plead, either be brought before the appropriate court or be held thereafter as a patient, shall be recognised and implemented by the Pitcairn Court in all respects as though it had been made under the corresponding provisions of Pitcairn law.

Pitcairn witnesses.

14.—(1) If it is desired that a Pitcairn witness who is in another country (but not imprisoned there) should come to New Zealand for the purpose of giving evidence in a trial before the Pitcairn Court, a request shall be made by the Governor to the Attorney-General of New Zealand to permit the entrance to New Zealand of the Pitcairn witness.

(2) If it is desired that a Pitcairn witness in another country, who is imprisoned there (a foreign prisoner), should come to New Zealand for the purpose of giving evidence in a trial before the Pitcairn Court, be transported through New Zealand territory to the Pitcairn Court's premises and to be held in a New Zealand prison while in New Zealand, the Governor shall make a request to the Attorney-General of New Zealand to authorise the entry, transport and holding of the foreign prisoner as aforesaid.

(3) If it is desired that a Pitcairn witness who is in New Zealand, whether at large or in prison for a Pitcairn offence or a New Zealand offence, attend before a Pitcairn Court sitting in New Zealand and give evidence in a Pitcairn trial, the request made by the Governor shall be dealt with under Part III of the Mutual Assistance in Criminal Matters Act 1992 of the New Zealand Parliament and sections 31 to 38 and 40 to 42 of the said Act shall apply with all necessary modifications as if the request related to the giving of evidence in a Court which is a Court of a foreign country and which is not sitting in New Zealand..

(4) If so requested by the Attorney-General of New Zealand, the Governor shall provide an undertaking that, while a New Zealand prisoner is present in the Pitcairn Court's premises,

he or she will not be released from custody without the prior consent in writing of the Attorney-General of New Zealand, and an undertaking as to any other matters which the Attorney-General thinks appropriate.

(5) If assistance from New Zealand is desired in relation to a Pitcairn trial of a kind other than that referred to in subsection (4), a request must be made by the Governor to the Attorney-General of New Zealand, which shall be dealt with under the said Mutual Assistance in Criminal Matters Act 1992, as applied with necessary modifications.

15.—(1) The Governor may in writing request the Minister to agree to enforce a Pitcairn sentence or hospital order in New Zealand and for that purpose to make an enforcement order.

Enforcement of
Pitcairn sentences

(2) The request of the Governor under subsection (1) shall include the particulars prescribed by Article 18(3) of the Agreement and shall include any further information which he or she considers relevant within the meaning of Article 18(4) of the Agreement.

(3) The Minister may seek from the Governor any relevant information of the kind described in the said article 18(4) and the Governor shall supply the same.

(4) The Governor shall consent to any conditions of enforcement proposed by the Minister.

16.—(1) When a Pitcairn offender is sentenced by a Pitcairn Court, the offender shall be detained in custody for the period determined under subsection (3) or (4) as if he or she were remanded in custody between conviction and sentence.

Interim status of
offenders pending
decisions on
enforcement

(2) Notwithstanding subsection (1), the Minister may order the release of an offender sentenced only to a community-based sentence, subject to any conditions he or she may think fit.

(3) An offender ceases to be liable to be detained under this section on the date

- (a) on which the chief executive of the Department of Corrections of New Zealand receives notice from the Minister that an enforcement order will not be made;
- (b) which is 28 days after the sentence was imposed, unless the said chief executive has been advised that a request for enforcement has been made, in which case paragraph (c) applies;
- (c) which is three months after the sentence was imposed, unless, before that date—
 - (i) an enforcement order is made; or

- (ii) the Minister by order extends the said period by three months, for the reason that the offender has commenced an appeal against conviction or sentence and he or she considers that the decision should be delayed pending the outcome of the appeal.

17.—(1) When a Pitcairn Court makes a hospital order in relation to a person, the person must be detained in a hospital as if he or she were a special patient as defined in section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 of the Parliament of New Zealand.

(2) A person subject to a hospital order may not be detained under this section after the date

- (a) on which the Director of Mental Health receives notice that an enforcement order will not be made;
- (b) which is 28 days after the order was made, unless the Director is advised that a request for enforcement has been made, in which case paragraph (c) applies;
- (c) which is three months after the order was made, unless
 - (i) an enforcement order is made; or
 - (ii) the Minister by order extends the said period by three months for the reason that the person has commenced an appeal to the Pitcairn Court against the hospital order and he or she considers that the decision as to an enforcement order should be delayed pending the outcome of the appeal.

18.—(1) In the circumstances described in subsection (2), the Minister must amend, or if appropriate cancel, the relevant enforcement order in a manner which gives effect to the actions of the Pitcairn Court.

(2) The circumstances 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 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) The references in subsection (2) to a Pitcairn Court include a court sitting outside New Zealand to which the conviction, sentence or order of a Pitcairn Court has been appealed.

(4) If a Pitcairn sentence the subject of an enforcement order

Interim status of person subject to hospital order pending decision on enforcement

Amendment or cancellation of enforcement orders

has been affected by the exercise of the prerogative of mercy under Pitcairn law, the Minister must give effect thereto by amending or cancelling the enforcement order accordingly.

Regulations

(5) The Minister may cancel an enforcement order on the request of the Governor—

on the grounds that the Pitcairn sentence or hospital order is to be enforced elsewhere than in New Zealand; if the Minister is satisfied that, in all the circumstances, the order ought to be cancelled.

19. The Governor may make regulations for all or any of the following purposes—

prescribing the form of notices and other documents for the implementation of this ordinance;
providing for any other matters contemplated by this ordinance, necessary for its administration, or necessary for giving it full effect.

(Section 4(3))

SCHEDULE**WARRANT FOR REMAND IN CUSTODY**

To all police officers on Pitcairn Island

Whereas (a) _____ of (b) _____ has been charged upon the complaint of the Pitcairn Public Prosecutor with the offence(s) set out in the charge sheet(s) annexed hereto

And whereas this Court being satisfied that it is necessary or expedient that (a) _____ of (b) _____ should appear before the Magistrate's/Supreme Court of Pitcairn sitting at (c) _____ Auckland, New Zealand, for the purposes of the trial of the charge(s) against the abovenamed (a) _____

You the said police officers are therefore commanded to take the said (a) _____ to the Pitcairn Island Prison and there safely deliver him/her together with this warrant to the warder in charge of the said prison who is hereby directed to receive the said (a) and thence to release him/her to the appointed police or prison escort, together with this warrant, to be conveyed in custody aboard the first available ship bound directly for New Zealand in good accommodation and with full enjoyment of his/her rights under the law

And further the said (a) _____ is upon arrival in New Zealand to be forthwith surrendered in custody to the Pitcairn Magistrate's Court/Supreme Court at (c) _____ either directly or by means of transfer by the New Zealand Police.

Dated at Adamstown, Pitcairn Island, this _____ day of _____ 200

(seal) _____ Magistrate/Judge

- (a) Insert full name of defendant/witness
- (b) Insert address of defendant/witness
- (c) Insert address of New Zealand Courthouse

Order under section 5(2A) of the Pitcairn Order 1970 (28 March 2003) is now spent and superceded by provisions of the Constitution of Pitcairn, the Judicature (Courts) Ordinance (cap 2) and the Notice under s43(4) of the Constitution of Pitcairn (p lxvi)

**Order designating premises in New Zealand for use by
Pitcairn Courts (1 May 2003) is now spent.**