

in the name and on the
Second I hereby assent to
1974.



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1973, No. 15

An Act to give effect to the provisions of the Hague Convention for the Suppression of Unlawful Seizure of Aircraft, the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, and the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, and for matters incidental thereto

(17 January 1974)

BE IT ENACTED by the Legislative Assembly of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title - This Act may be cited as the Aviation Offences Act 1973.

2. Interpretation - (1) In this Act, unless the context otherwise requires,-

"Aircraft" has the same meaning as in the Civil Aviation Act 1964 of the New Zealand Parliament:

"Commander", in relation to an aircraft, means the pilot for the time being in lawful command of the aircraft:

"Cook Islands" includes the territorial waters of the Cook Islands:

"Cook Islands aircraft" means any aircraft ordinarily operating in the Cook Islands and required to be registered in New Zealand under the Civil Aviation Act 1964 of the New Zealand Parliament:

"Military service" includes naval and air-force service; and a certificate by the Minister responsible for Civil Aviation that any aircraft is or is not used in military service for the purposes of this Act shall be conclusive evidence of the fact certified:

"Ordinarily resident in the Cook Islands" has the same meaning as in section 3 of the Crimes Act 1969:

"The Hague Convention" means the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on the 16th day of December 1970:

"The Montreal Convention" means the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on the 23rd day of September 1971:

"The Tokyo Convention" means the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on the 14th day of September 1963.

(2) For the purposes of this Act, an aircraft is in flight from the time when all its external doors are closed after embarkation until the time when any external door is opened for disembarkment:

Provided that in the case of a forced landing an aircraft is in flight until the time when the competent authorities of the country in which the forced landing takes place, or, in the case of a forced landing in a place that is not within the territorial limits of any country, the competent authorities of any country, assume responsibility for the aircraft and for persons and property on board the aircraft.

(3) For the purposes of this Act, an aircraft is in service from the time when pre-flight preparation of the aircraft by ground personnel or by the aircraft's crew begins for a specific flight until either -

- (a) The flight is cancelled; or
- (b) Twenty-four hours after the aircraft, having commenced the flight, lands; or
- (c) The aircraft, having commenced the flight, makes a forced landing and any competent authorities referred to in subsection (2) of this section assume responsibility for the aircraft and for persons and property on board the aircraft; or
- (d) The aircraft, having commenced the flight, ceases to be in flight, -

whichever is the latest.

Offences Relating to Aircraft

3. Hijacking - Everyone commits the crime of hijacking and is liable on conviction to imprisonment for life, who, while on board an aircraft in flight, whether in or outside the Cook Islands, unlawfully, by force or by threat of force or by any form of intimidation, seizes or exercises control, or attempts to seize or exercise control, of that aircraft.

4. Offences in connection with hijacking - (1) Everyone who, while on board an aircraft in flight outside the Cook Islands, does or omits anything which, if done or omitted by that person in the Cook Islands, would be an offence, commits that offence if the act or omission occurred in connection with the offence of hijacking.

(2) Without limiting the generality of subsection (1) of this section, an act or omission by any person shall be deemed to occur in connection with the offence of hijacking if it was done or omitted with intent -

- (a) To commit or facilitate the commission of the offence of hijacking; or
- (b) To avoid the detection of himself or of any other person in the commission of the offence of hijacking; or
- (c) To avoid the arrest or facilitate the flight of himself or of any other person upon the commission of the offence of hijacking.

5. Other offences relating to aircraft - Everyone commits an offence and is liable on conviction to imprisonment for a term not exceeding 14 years, who, whether in or outside the Cook Islands, -

- (a) On board an aircraft in flight, commits an assault which is likely to endanger the safety of the aircraft; or
- (b) Destroys an aircraft in service; or
- (c) Causes damage to an aircraft in service which renders the aircraft incapable of flight or which is likely to destroy the aircraft, or to cause damage to the aircraft which will render it incapable of flight, or which is likely to endanger the safety of the aircraft in flight; or
- (d) Places or causes to be placed on an aircraft in service anything which is likely to destroy the aircraft, or to cause damage to the aircraft

which will render it incapable of, flight, or which is likely to endanger the safety of the aircraft in flight; or

- (e) Destroys, damages, or interferes with the operation of any air-navigation facility used in international air-navigation or in air-navigation between the Cook Islands and any place outside the Cook Islands, where the destruction, damage, or interference is likely to endanger the safety of an aircraft in flight; or
- (f) Endangers the safety of an aircraft in flight by communicating to any other person any information which the person supplying the information knows to be false.

6. Offences deemed to be included in extradition treaties - (1) For the purposes of the Extradition Act 1965 of the New Zealand Parliament, and any Order in Council made under section 3 of that Act requested and consented to by the Government of the Cook Islands in accordance with Article 88 of the Constitution of the Cook Islands, or any Orders in Council referred to in section 21 of that Act, the offence of hijacking (including aiding, abetting, inciting, counselling, or procuring any person to commit that offence, inciting, counselling, or attempting to procure any person to commit that offence when it is not in fact committed, and being an accessory after the fact to that offence) shall, if not already described in the treaty, be deemed to be an offence described in any extradition treaty extending to the Cook Islands concluded before the commencement of this section, and for the time being in force between New Zealand and any foreign country which is a party to the Hague Convention. A certificate given under the hand of the Minister of Foreign Affairs of New Zealand that any foreign country is a party as aforesaid shall be sufficient evidence of that fact.

(2) For the purposes of the Extradition Act 1965 of the New Zealand Parliament, and any Order in Council made under section 3 of that Act requested and consented to by the Government of the Cook Islands in accordance with Article 88 of the Constitution of the Cook Islands, or any Order in Council referred to in section 21 of that Act, each offence described in section 5 of this Act (including attempting to commit that offence, aiding, abetting, inciting, counselling, or procuring any person to commit that offence, inciting, counselling, or attempting to procure any person to commit that offence when it is not in fact committed, and being an accessory after the fact to that offence) shall be deemed to be an offence described in any extradition treaty extending to the Cook Islands concluded before the commencement of this section and for the time being in force between New Zealand and any foreign country which is a party to the Montreal Convention. A certificate given under the hand of the Minister of Foreign Affairs of New Zealand that any foreign country is a party as aforesaid shall be sufficient evidence of that fact.

(3) Where, pursuant to the provisions of subsection (1) or subsection (2) of this section, any offence is deemed to be an offence described in an extradition treaty extending to the Cook Islands, a person whose surrender is sought under the Extradition Act 1965 of the New Zealand Parliament in respect of an act of omission which amounts to that offence shall be liable to be surrendered in accordance with the

provisions of that Act, whether the act or omission occurred before or after the date on which the offence was deemed to be an offence described in the extradition treaty.

(4) For the purposes of this section, the expression "foreign country" includes any territory for whose international relations the Government of a foreign country is responsible and to which the extradition treaty and the Hague Convention or, as the case may be, the Montreal Convention extends.

7. Surrender of offenders - (1) Where the surrender of a person is sought under either the Extradition Act 1965 of the New Zealand Parliament or the Fugitive Offenders Act 1969 in respect of any act or omission which amounts to the offence of hijacking or to any offence described in section 5 of this Act (including attempting to commit any of the offences so described, aiding, abetting, inciting, counselling, or procuring any person to commit the offence of hijacking or any of the offences so described, inciting, counselling, or attempting to procure any person to commit the offence of hijacking or any of the offences so described when it is not in fact committed, and being an accessory after the fact to the offence of hijacking or any of the offences so described), and for which the person whose surrender is sought could be tried and punished in the country seeking surrender, being a country which is a party to the Hague Convention or the Montreal Convention, as the case may require, that act or omission shall be deemed to have been committed within the jurisdiction of that country notwithstanding that it was committed outside the territory of that country. A certificate given under the hand of the Minister of Foreign Affairs of New Zealand that a country is a party to either Convention shall be sufficient evidence of that fact.

(2) For the purposes of this section, the term "country" includes any territory for whose international relations the Government of a country is responsible and to which the extradition treaty (if any) and the Hague Convention or, as the case may be, the Montreal Convention, extends.

8. Application of sections 3, 4, and 5 - (1) Nothing in section 3 or section 4 of this Act shall apply if both the place of take-off and the place of actual landing of the aircraft (not being a Cook Islands aircraft) are in the territory of the country in which the aircraft is registered, or, in the case of an aircraft that is subject to joint or international registration, in the territory of one of the countries having an interest in the aircraft, unless -

- (a) The alleged offender is a person ordinarily resident in the Cook Islands; or
- (b) The act or omission occurred in the Cook Islands; or
- (c) The alleged offender is present in the Cook Islands.

(2) Nothing in paragraph (a), paragraph (b), paragraph (c), paragraph (d), or paragraph (f) of section 5 of this Act shall apply if both the place of take-off and the place of actual or intended landing of the aircraft (not being a Cook Islands aircraft) are in the territory of a country in which the aircraft is registered, or, in the case of an aircraft that is subject to joint or international

registration, in the territory of one of the countries having an interest in the aircraft, unless -

- (a) The alleged offender is a person ordinarily resident in the Cook Islands; or
- (b) The act or omission occurred in the Cook Islands.
- (3) Nothing in section 3 or section 4 or paragraph (a), paragraph (b), paragraph (c), paragraph (d), or paragraph (f) of section 5 of this Act shall apply to aircraft used in military, customs, or police service (not being aircraft used for the purposes of any of the Armed Forces of New Zealand in the Cook Islands or of the Cook Islands Customs or of the Cook Islands Police), unless -
 - (a) The alleged offender is a person ordinarily resident in the Cook Islands; or
 - (b) The act or omission occurred in the Cook Islands.

9. Application of certain provisions of Crimes Act - Nothing in section 7 of the Crimes Act 1969 (which relates to jurisdiction in respect of crimes on ships or aircraft beyond the Cook Islands) or in section 412 of that Act (which requires the consent of the Minister of Justice to proceedings in certain cases for offences on ships or aircraft) shall apply with respect to the offence of hijacking or to any of the offences described in section 4 of this Act committed in connection with the offence of hijacking.

Taking Firearms, Explosives, Etc., on to Aircraft

10. Taking firearms, explosives, etc., on to aircraft - (1) Everyone commits a crime, and is liable on conviction to imprisonment for a term not exceeding 5 years, who, without lawful authority or reasonable excuse, or without the permission of the owner or operator of the aircraft or of a person duly authorised by either of them to give such permission, takes or attempts to take on board any aircraft -

- (a) Any firearm; or
- (b) Any other dangerous or offensive weapon or instrument of any kind whatsoever; or
- (c) Any ammunition; or
- (d) Any explosive substance or device, or any other injurious substance or device of any kind whatsoever which could be used to endanger the safety of the aircraft or of persons on board the aircraft.

(2) For the purposes of this section, the term "firearm" means any gun, rifle, or pistol, whether acting by force of explosives or not; and includes any such gun, rifle, or pistol which for the time being is not capable of discharging any shot, bullet, or other missile, but which by its completion or the replacement of any component part or parts or the correction or repair of any defect or defects, would be so capable; and also includes any such gun, rifle, or pistol which is for the time being dismantled.

Search of Passengers, Baggage, and Cargo

11. Search of passengers, baggage, and cargo - (1)
Any member of the Cook Islands Police, or any officer of Customs, or any employee or agent of the carrier authorised by the carrier for the purpose may, with the consent of the passenger, search any passenger and his baggage before the passenger boards any aircraft in the Cook Islands pursuant to any contract providing for the carriage of the passenger by air from any place in the Cook Islands to any other place (whether in the Cook Islands or elsewhere).

(2) If the passenger declines to allow himself or his baggage to be searched, the carrier may refuse to carry him.

(3) A carrier shall not be liable to any civil proceeding, other than a proceeding in respect of any right that the passenger may have for the recovery of the fare or any part thereof, by reason of the fact that the carrier has refused to carry a passenger who has declined to allow himself or his baggage to be searched.

(4) The following provisions, shall apply with respect to any search made pursuant to subsection (1) of this section:

(a) The passenger shall not be required to remove any article of clothing (other than a coat or similar article), for the purpose of being searched:

(b) Except where the search is made by means of any mechanical or electrical or electronic or other similar device, no female shall be searched except by a female.

(5) Any employee or agent of the carrier authorised by the carrier for the purpose may examine any cargo before the cargo is loaded on to any aircraft in the Cook Islands by air from a place in the Cook Islands to any other place (whether in the Cook Islands or elsewhere).

12. Search of persons declining to allow search -
(1) Where -

(a) Pursuant to subsection (2) of section 11 of this Act a carrier refuses to carry a person who has declined to allow himself or his baggage to be searched; and

(b) A member of the Cook Islands Police has reasonable grounds to suspect that a crime against this Act in relation to the aircraft on which that person was to be carried has been, is being, or is likely to be, committed, whether by that person or by any other person, -

the member of the Police may, without warrant, search that first-mentioned person and his baggage, and may detain him for the purposes of that search, and may take possession of any article referred to in paragraph (a), paragraph (b), paragraph (c), or paragraph (d) of section 10 of this Act found in the course of that search.

(2) The refusal of any person to allow himself or his baggage to be searched pursuant to the term implied by subsection (1) of section 11 of this Act shall not of itself constitute reasonable grounds for suspecting that a crime against this Act in relation to the aircraft has been, is being, or is likely to be, committed.

(3) Every member of the Cook Islands Police exercising the power of search conferred by subsection (1) of this section shall identify himself to the person searched, and shall also tell him that the search is being made pursuant to that subsection. He shall also, if not in uniform and if so required, produce evidence that he is a member of the Cook Islands Police.

13. Evidence of offences - Nothing found in the course of a search or examination made pursuant to section 11 or section 12 of this Act shall be admissible as evidence in any criminal proceedings against the person who, or whose baggage, has been searched, or, as the case may be, the consignor of any cargo that has been examined, other than proceedings in respect of an offence against this Act or the offence of treason or any offence punishable by imprisonment for life or for a term of three years or more, or in respect of an offence against section 3 of the Arms Ordinance 1954 (which relates to the unlawful carriage or possession of firearms, ammunition, or explosives), or in respect of an offence against the Narcotics Act 1965.

Powers of Aircraft Commander

14. Powers of aircraft commander - (1) Without limiting the provisions of section 62 of the Crimes Act 1969, if the commander of an aircraft in flight, wherever that aircraft may be, has reasonable grounds to believe that any person on board the aircraft has done or is about to do on board the aircraft -

- (a) Anything which is an offence under the law of the country in which the aircraft is registered or the law of the Cook Islands (not being a law of a political nature or a law based on racial or religious discrimination); or
- (b) Anything (whether an offence or not) which jeopardises or may jeopardise -
 - (i) The safety of the aircraft or of persons or property on board the aircraft; or
 - (ii) Good order and discipline on board the aircraft, -
the commander may take with respect to that person such reasonable measures, including restraint, as may be necessary -
- (c) To protect the safety of the aircraft or of persons or property on board the aircraft; or
- (d) To maintain good order and discipline on board the aircraft; or
- (e) To enable the commander to disembark or deliver that person in accordance with subsection (4) or subsection (5) of this section.

(2) Any member of the crew of an aircraft and any other person on board the aircraft may, at the request or with the authority of the commander of the aircraft, and any member of the crew shall if so required by the commander, assist in restraining any person whom the commander is entitled under subsection (1) of this section to restrain. Any member of the crew and any other person

on board the aircraft may, without the commander's authority, take with respect to any person on board the aircraft such reasonable measures, including restraint, as he has reasonable grounds to believe are immediately necessary to protect the safety of the aircraft or of persons or property on board the aircraft.

(3) Any restraint imposed on any person on board an aircraft under the powers conferred by subsection (1) or subsection (2) of this section shall not be continued after the aircraft ceases to be in flight, unless the commander of the aircraft notifies the appropriate authorities of the country or territory in which the aircraft ceases to be in flight, either before or as soon as reasonably practicable after that time, that a person on board is under restraint and of the reasons for such restraint, but, provided that notification has been given, restraint may be continued -

- (a) For any period (including the period of any further flight) between that time and the first occasion thereafter on which the commander is able with the requisite consent of the appropriate authorities to disembark or deliver the person under restraint in accordance with subsection (4) or subsection (5) of this section; or
- (b) If the person under restraint agrees to continue his journey under restraint on board that aircraft.

(4) If the commander of an aircraft has reasonable grounds to believe that a person on board the aircraft has done or is about to do on board the aircraft anything (whether an offence or not) which jeopardises or may jeopardise -

- (a) The safety of the aircraft or of persons or property on board the aircraft; or
- (b) Good order and discipline on board the aircraft, - he may, if he considers it necessary to do so in order to protect the safety of the aircraft, disembark that person in any country or territory in which the aircraft may be.

(5) If the commander of an aircraft has reasonable grounds to believe that any person on board the aircraft has done on board the aircraft anything which in the commander's opinion is a serious offence under the law of the country in which the aircraft is registered or under the law of the Cook Islands, he may deliver that person -

- (a) In the Cook Islands, to any member of the Cook Islands Police; or
- (b) In any country which is a party to the Tokyo Convention, to any person exercising functions corresponding to those of a member of the Cook Islands Police.

(6) If the commander of an aircraft disembarks any person pursuant to subsection (4) of this section, in the case of a Cook Islands aircraft, in any country, or, in the case of any other aircraft, in the Cook Islands, he shall report the fact of, and the reasons for, that disembarkation to an appropriate authority in the country or territory of disembarkation (being, in the Cook Islands, a member of the Cook Islands Police).

(7) If the commander of an aircraft intends to deliver any person in accordance with subsection (5) of this section in the Cook Islands or, in the case of a Cook Islands aircraft, in any country which is a party to the Tokyo Convention, he shall, before or as soon as practicable after landing, give notification of his intention and of the reasons for his intention to an appropriate authority in that country, or, in the case of a person to be delivered in the Cook Islands, to a member of the Cook Islands Police.

(8) Any commander of an aircraft who without reasonable cause fails to comply with the requirements of subsection (6) or subsection (7) of this section is liable on conviction to a fine not exceeding \$400.

(9) A person who in good faith imposes reasonable measures, including restraint, on another person in accordance with the provisions of this section is not guilty of an offence and is not liable to any civil proceeding in respect of those measures.

15. Arrest of person delivered to Police - (1) Any member of the Cook Islands Police shall accept delivery of a person whom the commander of an aircraft seeks to deliver to him in accordance with subsection (5) of section 14 of this Act if he has reasonable grounds to suspect that person of having done or omitted on board that aircraft anything that is an offence against this Act or any other Act in force in the Cook Islands.

(2) Where any member of the Cook Islands Police accepts delivery of a person under subsection (1) of this section, he shall forthwith arrest that person.

Miscellaneous Provisions

16. Amendments to other enactments - (1) The First Schedule to the Extradition Act 1965 of the New Zealand Parliament shall have effect as if it had been amended by adding to Part II (as substituted by section 4 (2) of the Extradition Amendment Act 1969 of the New Zealand Parliament and amended by section 3 (2) of the Narcotics Amendment Act 1970 of the New Zealand Parliament), in the appropriate columns thereof, the following words:

"The Aviation Offences Act	3 Hijacking
1973 of the Legislative	
Assembly of the Cook	5 Other offences
Islands	relating to
	aircraft"

(2) The First Schedule to the Fugitive Offenders Act 1969 is hereby amended by adding to the offences specified therein the following:

29 Hijacking
30 An offence against section 5 of the Aviation
Offences Act 1973 of the Legislative
Assembly of the Cook Islands.

17. Minister of Justice's consent required to prosecution - No proceedings for the trial and punishment of any person charged with a crime against section 3 or section 4 or section 5 of this Act shall be instituted in the High Court except with the consent of the Minister of Justice:

Provided that a person charged with any such offence may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Minister of Justice to the institution of a prosecution for the offence has not been obtained, but no further proceedings shall be taken until that consent has been obtained.

18. Aircraft in military, customs, or police service - Nothing in sections 14 and 15 of this Act shall apply to aircraft used in the military, customs, or police service of any country, or of the Cook Islands, or of any territory for whose international relations the Government of a country is responsible.

19. Joint registration of aircraft - Where an aircraft is subject to joint or international registration, it shall be deemed for the purposes of this Act to be registered in the country which, according to the records of the International Civil Aviation Organisation, is the country of registration.

20. Other Acts not affected - Nothing in this Act shall be construed to limit or affect the operation of any provision of the Entry, Residence and Departure Act 1971-72, or, except as expressly provided in this Act, of any provision of the Crimes Act 1969, or of any of the provisions of Parts V, VI and VIII of the Cook Islands Act 1915 of the New Zealand Parliament.

This Act is administered by the Minister in Charge of Civil Aviation.