



ANALYSIS

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1992-93, No. 24

An Act to provide for the status of visiting forces

(14 July 1993)

BE IT ENACTED by the Parliament 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 Visiting Forces Act 1992-93.
2. Interpretation - (1) In this Act unless the context otherwise requires -

"civilian component" means the civilian personnel accompanying a visiting force and employed by the service authorities of the sending country who are not nationals of, nor ordinarily resident in the Cook Islands;

"dependent", in relation to a member of a visiting force or civilian component, means -

- (a) the spouse of that member;
- (b) a person who is wholly or mainly maintained by that member or in his custody, charge or care;
- (c) a person who forms part of that member's family; or
- (d) a person in domestic employment of that member's household, not being a national of, nor ordinarily resident in the Cook Islands;

"High Court" means the High Court of the Cook Islands;

"member", in relation to a visiting force, means a member of the forces of a sending country, being one of its members for the time being appointed to serve with that visiting force;

"Minister" means the Minister of Foreign Affairs;

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"sending country", in relation to a visiting force, is a country specified in or designated under section 3;

"service authorities" means naval, military or air force authorities empowered by the law of a sending country to exercise command or jurisdiction over the members of a visiting force or civilian component of that country and their dependents;

"service court" means a court established under the service law of a sending country and includes any authority of that country who under its law is empowered to review the proceedings of such a court or to try or investigate charges brought against persons subject to the service law of that country;

"service establishment" means land held or occupied by the service authorities of a sending country for the purposes of a visiting force;

"service installation" means any building, structure or other work whether or not on a service establishment, constructed or adapted for use for the purposes of a visiting force;

"service law", in relation to a country, means the law governing all or any of the forces of that country;

"service organisation" means an organisation authorised by the service authorities to accompany a visiting force in order to provide for the needs of the members, civilian component and dependents;

"visiting force" means any body, contingent or detachment of the forces of a sending country, being a body, contingent or detachment for the time being stationed in the Cook Islands on the invitation or with the consent of the Government of the Cook Islands.

(2) In determining for the purposes of this Act whether a person is, or was at any time, ordinarily resident in the Cook Islands, no account shall be taken of any period during which that person has been or intends to be present in the Cook Islands while that person is a member of a visiting force or civilian component or a dependant of such member.

(3) References in this Act to members of a visiting force or civilian component of a sending country and their dependents or service organisations include members of a visiting force or civilian component of that country and their dependents or service organisations who are present in the Cook Islands while in transit to any other country.

3. Application - (1) The countries in relation to which this Act shall have effect are -

- (a) New Zealand; and
- (b) any country designated under subsection (2).

(2) Where it appears to the Queen's Representative, in respect of any country other than New Zealand that, having regard to any arrangements for mutual defence to which the Government of the Cook Islands and the Government of that country are parties, it is expedient that any of the provisions of this Act should have effect in relation to that country, the Queen's Representative may by Order in Executive Council designate that country for the purposes of the provisions in question.

(3) An Order under subsection (2) may provide that insofar as this Act has effect in relation to any country designated in the Order, it shall have effect subject to such limitations, adaptations or modifications as may be specified in the Order.

4. Regard for Custom - The Cook Islands Government may inform the Service authorities of a sending country of Cook Islands customs particularly affecting their presence in the Cook Islands, and the members of the visiting force and civilian component of that sending country shall have regard to such customs.

5. Criminal and disciplinary jurisdiction - (1) The High Court and the service courts and service authorities of a sending country shall have criminal and disciplinary jurisdiction in accordance with this section.

(2) The service courts and service authorities of a sending country may within the Cook Islands exercise over members of any visiting force of that country and all other persons who, being neither nationals of nor ordinarily resident in the Cook Islands, are for the time being subject to the service law of that country otherwise than as members of that country's forces -

(a) all criminal and disciplinary jurisdiction conferred on them by the law of the sending country; and

(b) exclusive jurisdiction with respect to offences punishable by the law of the sending country but not by the law of the Cook Islands.

(3) The High Court shall exercise over members of any visiting force of a sending country and all other persons for the time being subject to the service law of that country otherwise than as members of that country's forces -

(a) all criminal and disciplinary jurisdiction with respect to offences committed within the Cook Islands and punishable by the law of the Cook Islands; and

(b) exclusive jurisdiction with respect to offences punishable by the law of the Cook Islands but not by the law of the sending country.

(4) Where the High Court and the service courts or service authorities of a sending country shall have the right to exercise jurisdiction concurrently, the service courts and service authorities of that country shall have the primary right to exercise jurisdiction in respect of -

(a) offences solely against the property or security of that sending country;

(b) offences solely against the person or property of a member of the visiting force, civilian component or service organisation of that sending country;

(c) offences arising out of any act or omission of a member of the visiting force, civilian component or service organisation of that sending country in the performance of official duty,

and in respect of any other offence the High Court shall have the primary right to exercise jurisdiction.

(5) Where the Minister shall issue a certificate to the effect that an offence is one referred to in paragraphs (a), (b) or (c) of subsection (4), or that the service courts or service authorities shall have the primary right to exercise jurisdiction, that certificate shall be conclusive evidence of the facts stated therein.

(6) Where any sentence has, whether within or outside the Cook Islands, been passed by a service court or service authority of a sending country upon a person who immediately before the sentence was passed was subject to the jurisdiction of that court or authority in accordance with this section, then for the purposes of any proceedings in the High Court, the sentence imposed by the service court or service authority shall be deemed to be within the jurisdiction of that court and in accordance with the law of that country, and if executed according to the tenor of the sentence shall be deemed to have been lawfully executed.

(7) For the purpose of enabling the service courts and service authorities of a sending country to exercise more effectively the powers referred to in this section, the Commissioner of Police, where so requested by the service authorities of that country, may by general or special orders direct members of the Cook Islands Police to arrest any person alleged to have committed an offence punishable under the law of that country, and to hand that person over to the service authorities of that country.

(8) Subsection (2) shall not apply where at the time the offence is alleged to have been committed, the alleged offender was a person not subject to the jurisdiction of the service courts or service authorities of the country in question.

(9) Nothing in this section shall prevent a person from being tried by the High Court in a case where the Minister certifies, either before or in the course of the trial, that the service authorities of the sending country have notified him that they do not propose to deal with the case under the law of that country.

(10) The High Court and a service court or service authority of a sending country shall not pass a sentence of death in relation to any offence in respect of which a member of a visiting force or civilian component of that country shall be convicted.

(11) Nothing in this section shall be construed as derogating from any other enactment restricting the prosecution of any proceedings or requiring the consent of any authority to the prosecution thereof.

6. Offenders tried by service courts - (1) Where a person has been tried by a service court of a sending country in the exercise of the powers referred to in section 5, that person shall not be tried for the same offence by the High Court.

(2) Where a person who has been convicted by a service court or service authorities of a sending country in the exercise of the powers in section 5 is convicted by the High Court for a different offence, but it appears to the High Court that the conviction by the service court or service authority was wholly or partly in respect of acts or omissions in respect of which that person is convicted by the High Court, the High Court shall have regard to the sentence of the service court or service authorities in determining the sentence to be imposed.

(3) Nothing in this section shall prevent the service courts or service authorities of a sending country from trying a member of the visiting force of that country and other person who is for the time being subject to the service law of that country, otherwise than as a member of that country's forces, for any violation of rules of discipline arising from an act or omission which constituted an offence for which that member or other person was tried by the High Court.

7. Arrest and custody of offenders - Subject to section 11, nothing in sections 5, and 6 shall affect -

- (a) any powers of arrest, search, entry, seizure or custody exercisable under the law of the Cook Islands with respect to offences committed or believed to have been committed against that law;
- (b) any obligation of any person in respect of a recognisance or bail bond entered into in consequence of his arrest, or the arrest of any other person, for such an offence; or
- (c) any power of the High Court to remand (whether on bail or in custody) a person brought before the Court in connection with such an offence.
- (d) the application of the provisions of Part IVA of the Constitution to any proceedings before a service court or service authorities.

8. Privileges - (1) No tax, fee, duty, levy, impost, landing fee, port charge or similar imposition that otherwise would be payable shall be imposed upon or collected from service authorities, service organisations, members of a visiting force or the civilian component or dependents of such member in respect of -

- (a) their arrival, presence or authorised conduct in or exit from the Cook Islands notified to the relevant Cook Islands authorities and;
- (b) their stores and equipment required in connection with their authorised presence in the Cook Islands;
- (c) their baggage personal effects and other property (other than cigarettes cigars tobacco and spirituous liquors in excess of any allowance permitted by law) for their personal use;

Provided that this subsection shall have no application to any stores, equipment, baggage, personal effects and other property to which this subsection applies that shall be disposed of transferred or sold to a person corporate or otherwise resident in the Cook Islands other than in such manner as may be prescribed.

(2) A member of a visiting force of a sending country shall not require a passport or visa for the purposes of entering or departing the Cook Islands provided that member shall be issued with and be in possession of from the service authority of that country -

- (a) a personal identity card containing a photograph of the holder and his or her full name, date of birth, service rank and number;
- (b) an individual or collective order certifying the status of the person or persons to whom it is issued;
- (c) such documents as shall certify that Cook Islands law in relation to health and quarantine requirements have been satisfied.

(3) A member of the civilian component and a dependent of such member, or a dependent of a member of a visiting force shall, for the purposes of entering and departing the Cook Islands, be in possession of a valid passport and either -

- (a) a visa issued by the relevant Cook Islands authorities; or
- (b) a certificate issued by the service authorities certifying that the holder is a member of the civilian component or a dependent of such member or a dependent of a member of the visiting force.

(4) No vehicle aircraft or vessel belonging to or under hire or charter (other than from persons who are nationals of or ordinarily resident in the Cook Islands) to the visiting force or civilian component of a sending country shall be required to be registered licensed surveyed or tested while in the Cook Islands in connection with the authorised presence of that force or civilian component.

(5) A member of a visiting force or civilian component of a sending country who is the holder of a licence issued by the service authorities of that country for the purposes of operating or assisting in operating a vehicle aircraft or vessel belonging to or under hire or charter (other than from persons who are nationals of or ordinarily resident in the Cook Islands) to that force or civilian component in connection with the authorised presence of that force or civilian component, shall not be required to undergo any examination or test or be the holder of a similar or equivalent licence issued by the relevant Cook Islands authorities.

(6) Subject to authorisation of the service authorities of a sending country, a member of a visiting force of that country and in accordance with that authorisation shall be permitted to possess carry and use firearms in connection with the authorised presence of that force or civilian component.

(7) This section shall be subject to any reservations that may be prescribed in any designating order made pursuant to section 3(2) and shall take effect notwithstanding any enactment to the contrary.

9. Security - (1) The service authorities may take such measures as they think necessary to ensure the security of service establishments and service installations and of persons and property in them.

(2) Service authorities may raise and maintain a police force for the purposes specified in subsection (1) and every member of that police force shall have, within service establishments and service installations, all the powers that are exercisable by members of the Cook Islands Police according to the law of the Cook Islands.

(3) Notwithstanding subsection (2), members of a visiting force and of a police force raised and maintained by the service authorities of such force shall have the sole right to police service establishments and installations and to arrest and search there any person suspected of having committed an offence within any such establishment or installation.

10. Exemption from labour law - (1) The service authorities of a visiting force shall be exempt from any enactment regulating the engagement and discharge of civilian labour recruited in the Cook Islands by or on behalf of such service authorities:

Provided that the other conditions of service and pay of any workman so employed shall, as far as possible, be no less favorable than those obtaining in comparable employment in the Cook Islands.

(2) No proceedings in respect of the pay, terms of service, or discharge of a member of a visiting force or civilian component shall be brought in the High Court.

11. Evidence - (1) For the purposes of this Act -

- (a) a certificate issued by or on behalf of the service authorities of a sending country, stating that at a time specified in the certificate a person so specified either was or was not a member of a visiting force or civilian component of that country or a dependant of such a member, shall in any proceedings in the High Court be sufficient evidence of the fact so stated unless the contrary is proved;
- (b) a certificate issued by or on behalf of the service authorities of a sending country stating, as regards a person specified in the certificate that -
 - (i) on a date so specified that person was sentenced by a service court of that country to such punishment as is specified in the certificate;
 - (ii) that person is, or was at a time so specified, detained in custody in pursuance of a sentence passed on him by a service court of that country or pending or during the trial by such a court of a charge brought against him; or
 - (iii) that person has been tried, at the time and place specified in the certificate, by a service court of that country for an offence so specified;

shall in any proceedings in the High Court be conclusive evidence of the facts so stated.

(2) Where a person is charged with an offence against the law of the Cook Islands and at the time when the offence is alleged to have been committed that person was a member of a visiting force or a member of a civilian component of such a force, a certificate issued by or on behalf of the service authorities of the sending country, stating that the alleged offence, if committed by that person, arose out of and in the course of that person's duty as a member of that force or component, as the case may be, shall in any such proceedings be sufficient evidence of that fact.

12. Repeals - The Visiting Forces Act 1939 (an enactment of the General Assembly of New Zealand) is repealed insofar as it applies to the Cook Islands.

This Act is administered by the Ministry of Foreign Affairs.