

STATUTE OF WESTMINSTER ADOPTION BILL

EXPLANATORY MEMORANDUM

1. The purpose of this Bill is to adopt sections 2, 3, 4, 5, and 6 of the Statute of Westminster, 1931. That Statute is set out in the Schedule to the Bill.

2. The Statute was passed by the Parliament of the United Kingdom on 11th December, 1931, at the request and with the concurrence of all the self-governing Dominions—the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State (now Eire), and Newfoundland. The concurrence of New Zealand was given by resolutions agreed to by the House of Representatives on 21st July, 1931, and by the Legislative Council on 24th July, 1931 (see N.Z. Parliamentary Debates, 1931, pp. 633, 685, 688).

3. Section 10 of the Statute provides that none of the sections now proposed to be adopted (sections 2-6) shall apply as part of the law of Australia or New Zealand or Newfoundland unless adopted by the Parliament of the Dominion concerned. Subsection (2) of section 10 enables any such Parliament to revoke at any time the adoption of any of those sections.

4. Sections 2-6 of the Statute were adopted by the Commonwealth of Australia by the Statute of Westminster Adoption Act, 1942. Newfoundland has ceased to be a self-governing Dominion, and New Zealand is therefore the only Dominion to which the sections do not now apply. (The whole Act applied to Canada, South Africa, and Eire, without adoption, from the time of its enactment.)

5. The preamble to the Statute (which already applies to New Zealand) refers to "the free association of the members of the British Commonwealth of Nations . . . united by a common allegiance to the Crown", and recites that "it is in accord with the established constitutional position that no law hereafter made by the Parliament of the United Kingdom shall extend to any of the said Dominions as part of the law of that Dominion otherwise than at the request and with the consent of that Dominion".

6. The effect of the sections proposed to be adopted is as follows:—

Section 2 provides that the Colonial Laws Validity Act, 1865, shall not apply to any law made after the commencement of the Statute (11th December, 1931) by the Parliament of a Dominion, and, by subsection (2), also provides that no law made after that date by a Dominion Parliament shall be void or inoperative on the ground that it is repugnant to the law of England or to any existing or future Act of the United Kingdom Parliament, and that a Dominion Parliament may repeal or amend any United Kingdom Act in so far as it is part of the law of the Dominion. (Section 8 of the Statute provides that this does not extend the existing restricted power of the New Zealand Parliament to alter the New Zealand Constitution Act.)

For the Colonial Laws Validity Act, 1865, of the United Kingdom Parliament, see Reprint of Statutes, Volume I, page 1003. Section 2 of that Act provides that any law of a "colony" shall be void if and so far as it is repugnant to the provisions of any Act of the United Kingdom Parliament extending to that colony. The Dominions are "colonies" within the meaning of the Act.

Section 3 declares that a Dominion Parliament has full power to make laws having extra-territorial operation. It is already recognized that in some respects our legislation must necessarily operate outside New Zealand to be effective, but there are legal doubts as to the exact extent of that extra-territorial operation and of our Parliament's powers in this connection.

Section 4 provides that no Act of the United Kingdom Parliament passed after 11th December, 1931, shall extend to a Dominion as part of the law of that Dominion unless it is expressly declared in the Act that the Dominion has requested and consented to the enactment thereof. (Clause 3 of the present Bill provides that the consent of New Zealand under this section is to be given by Parliament.)

Section 5 provides that sections 735 and 736 of the Merchant Shipping Act, 1894, shall not apply to the Parliament of a Dominion.

The Merchant Shipping Act, 1894, re-enacted an earlier United Kingdom Act of 1854. Section 735 empowers the legislature of any "British possession" (which at present includes New Zealand) to repeal any provision of the Merchant Shipping Act relating to ships registered in that possession (except certain provisions relating to emigrant ships). But the repeal has no effect until the approval of His Majesty is proclaimed in the possession. Section 736 empowers the legislature of any British possession (including New Zealand) to regulate its own coasting trade, but this is made subject to three conditions. First, the Act must contain a suspending clause that it shall not come into force until His Majesty's pleasure thereon has been signified in the British possession. Secondly, all British ships must be treated in the same manner as ships of the British possession. Thirdly, where, before 13th May, 1869, rights or privileges have been granted to foreign ships in respect of the coasting trade, those rights and privileges are to continue to be enjoyed.

Section 6 provides that section 4 of the Colonial Courts of Admiralty Act, 1890 (which requires certain laws to be reserved for His Majesty's assent), and so much of section 7 of that Act as requires the approval of His Majesty in Council to any rules of Court regulating the procedure of a Colonial Court of Admiralty, shall cease to have effect in any Dominion as from 11th December, 1931.

7. Broadly, the legal effect of adopting sections 2 to 6 of the Statute of Westminster will be—

- (a) It will no longer be even remotely possible to contend or hold that an Act of the New Zealand Parliament is invalid, in whole or in part, by reason of some technical "repugnancy" to the laws of England (section 2 of the Statute):

- (b) The adoption of the sections will remove any legal doubts as to whether legislation passed by the New Zealand Parliament for the peace, order, and good government of New Zealand can, where deemed necessary by that Parliament or where the circumstances demand, have extra-territorial operation (section 3 of the Statute):
- (c) The Parliament of the United Kingdom gives an assurance that Acts passed by it in the future will apply to New Zealand only at the request and with the consent of New Zealand (section 4 of the Statute):
- (d) New Zealand will no longer be bound to go through the quite unnecessary formality of reserving for the King's assent any of its legislation dealing with shipping or with Courts of Admiralty (sections 5 and 6 of the Statute).

8. Clause 3 of the Bill provides that our consent to the application to New Zealand of any future Acts of the United Kingdom Parliament is to be given by the Parliament of New Zealand. Subclause (2) of clause 3 confirms the application to New Zealand of all United Kingdom Acts passed between the commencement of the Statute of Westminster and the passing of this Bill, in so far as those Acts purport to apply to New Zealand.

Right Hon. Mr. Fraser

STATUTE OF WESTMINSTER ADOPTION

ANALYSIS

Title.	}	3. Consent of New Zealand to United Kingdom legislation to be given by Parliament. Schedule.
1. Short Title.		
2. Adoption of Statute of Westminster, 1931.		

A BILL INTITULED

AN ACT to adopt certain Sections of the Statute of Westminster, 1931. Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Statute of Westminster Adoption Act, 1947. Short Title.

2. Sections two, three, four, five, and six of the Act of the Parliament of the United Kingdom cited as the Statute of Westminster, 1931 (which Act is set out in the Schedule to this Act), are hereby adopted, and the adoption of the said sections shall have effect from the commencement of this Act. Adoption of Statute of Westminster, 1931. 22 Geo. V, c. 4

3. (1) For the purposes of section four of the said Statute of Westminster, 1931, the request and consent of New Zealand to the enactment of any Act of the Parliament of the United Kingdom shall be made and given by the Parliament of New Zealand, and not otherwise. Consent of New Zealand to United Kingdom legislation to be given by Parliament

(2) Every Act of the Parliament of the United Kingdom passed after the commencement of the Statute of Westminster, 1931, and before the commencement of this Act, that purports to apply to New Zealand, or to extend to New Zealand as part of the law of New Zealand, shall be deemed so to apply and extend and to have always so applied and extended according to its tenor, notwithstanding that it may not be expressly declared in any such Act that New Zealand has requested, and consented to, the enactment thereof. 5 10

Schedule.

SCHEDULE

STATUTE OF WESTMINSTER, 1931 (22 GEO. V, c. 4)

AN ACT to give Effect to certain Resolutions passed by Imperial Conferences held in the years 1926 and 1930.

[11th December, 1931]

WHEREAS the delegates of His Majesty's Governments in the United Kingdom, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland, at Imperial Conferences holden at Westminster in the years of our Lord nineteen hundred and twenty-six and nineteen hundred and thirty did concur in making the declarations and resolutions set forth in the Reports of the said Conferences:

And whereas it is meet and proper to set out by way of preamble to this Act that, inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom:

And whereas it is in accord with the established constitutional position that no law hereafter made by the Parliament of the United Kingdom shall extend to any of the said Dominions as part of the law of that Dominion otherwise than at the request and with the consent of that Dominion:

And whereas it is necessary for the ratifying, confirming and establishing of certain of the said declarations and resolutions of the said Conferences that a law be made and enacted in due form by authority of the Parliament of the United Kingdom:

And whereas the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland have severally requested and consented to the submission of a measure to the Parliament of the United Kingdom for making such provision with regard to the matters aforesaid as is hereafter in this Act contained:

Now, therefore, be it enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. In this Act the expression "Dominion" means any of the following Dominions, that is to say, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland.

Meaning of "Dominion" in this Act.

2. (1) The Colonial Laws Validity Act, 1865, shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion.

Validity of laws made by Parliament of a Dominion.
28 and 29 Vict. c. 63

(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion.

3. It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.

Power of Parliament of Dominion to legislate extra-territorially.

4. No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof.

Parliament of United Kingdom not to legislate for Dominion except by consent.

5. Without prejudice to the generality of the foregoing provisions of this Act, sections seven hundred and thirty-five and seven hundred and thirty-six of the Merchant Shipping Act, 1894, shall be construed as though reference therein to the Legislature of a British possession did not include reference to the Parliament of a Dominion.

Powers of Dominion Parliaments in relation to merchant shipping.
57 and 58 Vict. c. 60

6. Without prejudice to the generality of the foregoing provisions of this Act, section four of the Colonial Courts of Admiralty Act, 1890 (which requires certain laws to be reserved for the signification of His Majesty's pleasure or to contain a suspending clause), and so much of section seven of that Act as requires the approval of His Majesty in Council to any rules of Court for regulating the practice and procedure of a Colonial Court of Admiralty, shall cease to have effect in any Dominion as from the commencement of this Act.

Powers of Dominion Parliaments in relation to Courts of Admiralty.
53 and 54 Vict. c. 27

7. (1) Nothing in this Act shall be deemed to apply to the repeal, amendment or alteration of the British North America Acts, 1867 to 1930, or any order, rule or regulation made thereunder.

Saving for British North America Acts and application of the Act to Canada.

(2) The provisions of section two of this Act shall extend to laws made by any of the Provinces of Canada and to the powers of the legislatures of such Provinces.

(3) The powers conferred by this Act upon the Parliament of Canada or upon the legislatures of the Provinces shall be restricted to the enactment of laws in relation to matters within the competence of the Parliament of Canada or of any of the legislatures of the Provinces respectively.

Saving for
Constitution
Acts of
Australia and
New Zealand.

8. Nothing in this Act shall be deemed to confer any power to repeal or alter the Constitution or the Constitution Act of the Commonwealth of Australia or the Constitution Act of the Dominion of New Zealand otherwise than in accordance with the law existing before the commencement of this Act.

Saving with
respect to
States of
Australia.

9. (1) Nothing in this Act shall be deemed to authorise the Parliament of the Commonwealth of Australia to make laws on any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia.

(2) Nothing in this Act shall be deemed to require the concurrence of the Parliament or Government of the Commonwealth of Australia in any law made by the Parliament of the United Kingdom with respect to any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia, in any case where it would have been in accordance with the constitutional practice existing before the commencement of this Act that the Parliament of the United Kingdom should make that law without such concurrence.

(3) In the application of this Act to the Commonwealth of Australia the request and consent referred to in section four shall mean the request and consent of the Parliament and Government of the Commonwealth.

Certain sections
of Act not to
apply to
Australia, New
Zealand or
Newfoundland
unless adopted.

10. (1) None of the following sections of this Act, that is to say, sections two, three, four, five and six, shall extend to a Dominion to which this section applies as part of the law of that Dominion unless that section is adopted by the Parliament of the Dominion, and any Act of that Parliament adopting any section of this Act may provide that the adoption shall have effect either from the commencement of this Act or from such later date as is specified in the adopting Act.

(2) The Parliament of any such Dominion as aforesaid may at any time revoke the adoption of any section referred to in subsection (1) of this section.

(3) The Dominions to which this section applies are the Commonwealth of Australia, the Dominion of New Zealand and Newfoundland.

Meaning of
"Colony" in
future Acts.
52 and 53 Vict.
c. 63

11. Notwithstanding anything in the Interpretation Act, 1889, the expression "Colony" shall not, in any Act of the Parliament of the United Kingdom passed after the commencement of this Act, include a Dominion or any Province or State forming part of a Dominion.

Short title.

12. This Act may be cited as the Statute of Westminster, 1931.