

REPATRIATION OF PRISONERS ACT 2002



**BERMUDA
2002 : 9**

REPATRIATION OF PRISONERS ACT 2002

[Date of Assent: 20 May 2002]

[Operative Date: 18 March 2005]

WHEREAS it is expedient to provide for the transfer of prisoners between Bermuda and other countries to which the Council of Europe Convention on the Transfer of Sentenced Persons extends;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

Citation

1 This Act may be cited as the Repatriation of Prisoners Act 2002.

Definitions

2 In this Act—

"British overseas territory" has the meaning given to that expression by section 50(1) of the British Nationality Act 1981 of the United Kingdom;

"the Convention" means the Council of Europe Convention on the Transfer of Sentenced Persons done at Strasbourg and opened for signature on 21 March 1983;

"Convention country" means a country or territory to which the Convention extends;

"international arrangements" includes any arrangements between Bermuda and a British overseas territory;

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"Minister" means the Minister responsible for corrections and prisons;

"order" includes any sentence, direction, warrant or other means of giving effect to the decision of a court or tribunal;

"prisoner" means a person detained in a prison, hospital or other institution by virtue of an order made in the course of the exercise by courts and tribunals of their criminal jurisdiction in respect of the transfer of whom an agreement has been made under section 3(1)(b);

(2) In this Act a reference to criminal jurisdiction, in relation to a court or tribunal in a country or territory outside Bermuda, includes a reference to any jurisdiction which would be a criminal jurisdiction but for the age or incapacity of the persons in respect of whom it is exercised.

Issue of warrant for transfer

3 (1) Where—

- (a) the Convention has been extended to Bermuda and international arrangements have been made for the transfer between Bermuda and a Convention country of persons to whom subsection (7) applies;
- (b) the Attorney-General and the appropriate authority of a Convention country have agreed to the transfer pursuant to the Convention of a particular prisoner; and
- (c) the prisoner has consented to being transferred in accordance with those arrangements,

the Attorney-General shall issue a warrant providing for the transfer of the prisoner into or out of Bermuda.

(2) The Attorney-General shall not issue a warrant under this Act, and, if he has issued one, shall revoke it, in any case where after the duty under subsection (1) has arisen and before the transfer in question takes place circumstances arise, or are brought to the Attorney-General's attention, which in his opinion make it inappropriate that the transfer should take place.

(3) The Attorney-General shall not issue a warrant under this Act providing for the transfer of any person into Bermuda unless—

- (a) that person is a Commonwealth citizen within the meaning of the British Nationality Act 1981;
- (b) the transfer appears to the Attorney-General to be appropriate having regard to any close ties which that person has with Bermuda; or

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(c) it appears to the Attorney-General that the transfer is such a transfer for the purpose of the temporary return of the prisoner to Bermuda as may be provided for by virtue of section 6(1)(b).

(4) The Attorney-General shall not issue a warrant under this Act, other than one superseding an earlier warrant, unless he is satisfied that all reasonable steps have been taken to inform the prisoner in writing in his own language—

(a) of the substance, so far as relevant to the prisoner's case, of the international arrangements in accordance with which it is proposed to transfer him;

(b) of the effect in relation to the prisoner of the warrant which it is proposed to issue in respect of him under this Act;

(c) in the case of a transfer into Bermuda, of the effect in relation to the prisoner of the law relating to his detention under that warrant (including the effect of any enactment or instrument under which he may be released earlier than provided for by the terms of the warrant);

(d) in the case of a transfer out of Bermuda, of the effect in relation to the prisoner of so much of the law of the country or territory to which he is to be transferred as has effect with respect to transfers under those arrangements; and

(e) of the powers of the Attorney-General under section 8;

and, the Attorney-General shall not issue a warrant superseding an earlier warrant under this Act unless the requirements of this subsection were fulfilled in relation to the earlier warrant.

(5) The Attorney-General shall not issue a warrant under this Act unless he is satisfied that the consent given for the purposes of subsection (1)(c) was given in a manner authorised by the international arrangements in accordance with which the prisoner is to be transferred and was so given either—

(a) by the prisoner himself; or

(b) in circumstances where it appears to the Attorney-General inappropriate by reason of the physical or mental condition or the youth of the prisoner for the prisoner to act for himself, by a person appearing to the Attorney-General to be an appropriate person to have acted on the prisoner's behalf.

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(6) A consent given for the purposes of subsection (1)(c) shall not be capable of being withdrawn after a warrant has been issued in respect of the prisoner; and, accordingly, a purported withdrawal of that consent after that time shall not affect the validity of the warrant, or of any provision which by virtue of section 8 subsequently supersedes provisions of that warrant, or of any direction given in relation to the prisoner under section 4(3).

(7) This subsection applies to a person if he is for the time being required to be detained in a prison, a hospital or any other institution either—

- (a) by virtue of an order made in the course of the exercise by a court or tribunal in Bermuda, or in any country or territory outside Bermuda, of its criminal jurisdiction; or
- (b) under the provisions of this Act or any similar provisions of the law of any country or territory outside Bermuda.

(8) In subsection (7)(b) the reference to provisions similar to the provisions of this Act shall be construed as a reference to any provisions which have effect with respect to the transfer between different countries and territories (or different parts of a country or territory) of persons who are required to be detained in prisons, hospitals or other institutions by virtue of orders made in the course of the exercise by courts and tribunals of their criminal jurisdiction.

Transfer out of Bermuda

4 (1) The effect of a warrant providing for the transfer of the prisoner out of Bermuda shall be to authorise—

- (a) the taking of the prisoner to any place in Bermuda and his delivery, at a place of departure from Bermuda, into the custody of a person representing the appropriate authority of the country or territory to which the prisoner is to be transferred; and
- (b) the removal of the prisoner by the person to whom he is so delivered to a place outside Bermuda.

(2) Subject to subsections (3) to (5), the order by virtue of which the prisoner is required to be detained at the time such a warrant is issued in respect of him shall continue to have effect after his removal from Bermuda so as to apply to him if he is again in Bermuda at any time when under that order he is to be, or may be, detained.

(3) If, at any time after the removal of the prisoner from Bermuda, it appears to the Attorney-General appropriate to do so in order that effect may be given to the international arrangements in accordance with which the prisoner was transferred, the Attorney-

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General may give a direction varying the order referred to in subsection (2) or providing for that order to cease to have effect.

(4) The power by direction under subsection (3) to vary the order referred to in subsection (2) shall include power by direction—

- (a) to provide for how any period during which the prisoner is, by virtue of a warrant under this Act, out of Bermuda is to be treated for the purposes of that order; and
- (b) to provide for the prisoner to be treated as having been released on licence under the Prisons Act 1979.

(5) Except in relation to any period during which a restriction order is in force in respect of the prisoner, subsection (2) shall not apply in relation to a hospital order; and, accordingly, a hospital order shall cease to have effect in relation to the prisoner—

- (a) at the time of his removal from Bermuda if no restriction order is in force in respect of him at that time; and
- (b) if at that time a restriction order is in force in respect of him, as soon after his removal as the restriction order ceases to have effect.

(6) In subsection (5)—

"hospital order" means an order made by a court under section 33(1) or (2) or section 34 of the Mental Health Act 1968 authorising the admission to and detention in a hospital of any person;

"restriction order" means an order restricting discharge made by the Supreme Court under section 38(1) or 40 of the Mental Health Act 1968.

(7) References in this section to the order by virtue of which the prisoner is required to be detained at the time a warrant under this Act is issued in respect of him include references to any order by virtue of which he is required to be detained after the order by virtue of which he is required to be detained at that time ceases to have effect.

Transfer into Bermuda

5 (1) The effect of a warrant providing for the transfer of the prisoner into Bermuda shall be to authorise—

- (a) the bringing of the prisoner into Bermuda from a place outside Bermuda;
- (b) the taking of the prisoner to such place in Bermuda, being a place at which effect may be given to the

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provisions contained in the warrant by virtue of paragraph (c), as may be specified in the warrant; and

- (c) the detention of the prisoner in Bermuda in accordance with such provisions as may be contained in the warrant, being provisions appearing to the Attorney-General to be appropriate for giving effect to the international arrangements in accordance with which the prisoner is transferred.

(2) Subject to section 6(2) to (4), a provision shall not be contained by virtue of subsection (1)(c) in a warrant under this Act unless it satisfies the following two conditions, that is to say—

- (a) it is a provision with respect to the detention of a person in a prison, a hospital or any other institution; and
- (b) it is a provision which at the time the warrant is issued may be contained in an order made either—
 - (i) in the course of the exercise of its criminal jurisdiction by a court in Bermuda; or
 - (ii) otherwise than by a court but for the purpose of giving effect to an order made as mentioned in subparagraph (i).

(3) In determining for the purposes of subsection (1)(c) what provisions are appropriate for giving effect to the international arrangements mentioned in that paragraph, the Attorney-General shall, to the extent that it appears to him consistent with those arrangements to do so, have regard to the inappropriateness of the warrant's containing provisions which—

- (a) are equivalent to more than the maximum penalties (if any) that may be imposed on a person who, in Bermuda, commits an offence corresponding to that in respect of which the prisoner is required to be detained in the country or territory from which he is to be transferred; or
- (b) are framed without reference to the length—
 - (i) of the period during which the prisoner is, but for the transfer, required to be detained in that country or territory; and
 - (ii) of so much of that period as will have been, or be treated as having been, served by the prisoner when the said provisions take effect.

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(4) Subject to subsection (6) and the Schedule to this Act, a provision contained by virtue of subsection (1)(c) in a warrant under this Act shall for all purposes have the same effect as the same provision contained in an order made as mentioned in sub-paragraph (i) or, as the case may be, sub-paragraph (ii) of subsection (2)(b).

(5) A provision contained by virtue of subsection (1)(c) in a warrant under this Act shall take effect with the delivery of the prisoner to the place specified in the warrant for the purposes of subsection (1)(b).

(6) Subsection (4) shall not confer any right of appeal on the prisoner against provisions contained by virtue of subsection (1)(c) in a warrant under this Act.

(7) The Schedule to this Act shall have effect, subject to section 6(4), with respect to the operation of certain enactments in relation to provisions contained by virtue of subsection (1)(c) in a warrant under this Act.

(8) For the purposes of determining whether at any particular time any such order as is mentioned in subsection (2)(b) could have been made as so mentioned, there shall be disregarded both—

- (a) any requirement that certain conditions must be satisfied before the order is made; and
- (b) any restriction on the minimum period in respect of which the order may be made.

Temporary return

6 (1) A single warrant under this Act may provide for the transfer of the prisoner both out of and into (or into and out of) Bermuda if it appears to the Attorney-General that the transfers are to be for the purpose of the temporary return of the prisoner either—

- (a) from Bermuda to a country or territory outside Bermuda from which he has previously been transferred into Bermuda under this Act or any other enactment; or
- (b) to Bermuda from a country or territory outside Bermuda to which he has previously been transferred from Bermuda under this Act.

(2) The provisions contained by virtue of section 5(1)(c) in a warrant under this Act issued for the purpose of the temporary return of the prisoner to a country or territory outside Bermuda may, where the prisoner is required when that warrant is issued to be detained in accordance with provisions so contained in an earlier warrant under this Act, require the prisoner to continue, after his return to Bermuda, to be detained in accordance with those earlier provisions.

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(3) A warrant issued under this Act containing, with respect to provisions contained in an earlier warrant, any such requirement as is referred to in subsection (2), shall provide that any period during which the prisoner is out of Bermuda and is in custody is to be treated (except to such extent as may be specified in the warrant in order that effect may be given to the international arrangements in question) as a period during which the prisoner is detained under the provisions contained in the earlier warrant.

(4) The provisions contained by virtue of section 5(1)(c) in a warrant under this Act issued for the purpose of the temporary return of the prisoner to Bermuda may require the prisoner to be detained in accordance with any order which on his return will apply in respect of him in pursuance of section 4(2); and the Schedule to this Act shall not apply in relation to the provisions so contained in such a warrant.

Operation of warrant and retaking prisoners

7 (1) Where a warrant has been issued under this Act the following provisions of this section shall have effect for the purposes of the warrant, except (without prejudice to section 5(4) or any enactment contained otherwise than in this Act) in relation to any time when the prisoner is required to be detained in accordance with provisions contained in the warrant by virtue of section 5(1)(c).

(2) The prisoner shall be deemed to be in the legal custody of the Attorney-General at any time when, being in Bermuda or on board a British ship, a British aircraft or a British hovercraft, he is being taken under the warrant to or from any place, or being kept in custody under the warrant.

(3) The Attorney-General may designate any person as a person who is for the time being authorised for the purposes of the warrant to take the prisoner to or from any place under the warrant, or to keep the prisoner in custody under the warrant.

(4) A person authorised by or for the purposes of the warrant to take the prisoner to or from any place or to keep the prisoner in custody shall have all the powers, authority, protection and privileges of a police officer in Bermuda.

(5) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by a police officer and taken to any place which he may be taken under the warrant under this Act.

(6) In subsection (2)—

"British aircraft" means a British-controlled aircraft within the meaning of section 92 of the Civil Aviation Act 1982 of the United Kingdom (application of criminal law to aircraft), or one of Her Majesty's aircraft;

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"British hovercraft" means a British-controlled hovercraft within the meaning of the said section 92 as applied in relation to hovercraft by virtue of provision made under the Hovercraft Act 1968, or one of Her Majesty's hovercraft; and

"British ship" means a British ship within the meaning of the Merchant Shipping Act 1894 of the United Kingdom, or one of Her Majesty's ships;

and in this subsection references to Her Majesty's aircraft, hovercraft or ships are references to the aircraft, hovercraft or as the case may be, ships which belong to, or are exclusively employed in the service of, Her Majesty in right of the government of the United Kingdom.

Revocation etc. of warrants

8 (1) Subject to section 3(4), if at any time it appears to the Attorney-General appropriate, in order that effect may be given to any such arrangements as are mentioned in section 3(1)(a) or in a case falling within section 3(2), for a warrant under this Act to be revoked or varied, he may, as the case may require—

(a) revoke that warrant; or

(b) revoke that warrant and issue a new warrant under this Act containing provision superseding some or all of the provisions of the previous warrant.

(2) Subject to subsection (3)(c), the provision that may be contained in a new warrant issued by virtue of subsection (1)(b) shall be any provision that could have been contained in the previous warrant.

(3) A new warrant issued by virtue of subsection (1)(b) may provide—

(a) that a provision contained in it is to be treated as having taken effect when the provisions which that provision supersedes took effect;

(b) that things done under or for the purposes of the superseded provisions are, accordingly, to be treated as having been done under or for the purposes of the provision contained in the new warrant; and

(c) that an enactment in force at the time the new warrant is issued is, for the purposes of subsection (2) or this subsection, to be treated as having been in force when the superseded provisions took effect.

(4) The powers conferred by this section shall be exercisable notwithstanding any defect in the warrant which is revoked.

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Expenses

9 (1) Subject to subsection (2), any expenses incurred by the Attorney-General for the purposes of this Act shall be defrayed out of money provided by the Legislature.

(2) Subject to subsections (3) and (4), it shall be the duty of the Attorney-General, in the case of the transfer of a person into Bermuda under this Act, to secure the payment to him by that person, or from some other source, of the amount of any expenses incurred by him in connection with the conveyance of that person to Bermuda; and for this purpose the Attorney-General shall have the same power as in any other case where he assists the return of a person to Bermuda to require a person to give an undertaking to pay the Attorney-General the whole or any part of the amount, to enforce such an undertaking and to make such other arrangements for recovering that amount as he thinks fit.

(3) Subsection (2) shall not apply to the extent that in any case it appears to the Attorney-General that it would be unreasonable for him to exercise any of the powers conferred by that subsection either because of the exceptional circumstances of the case or because the means of the prisoner are insufficient to meet the expenses and their recovery, whether immediately or at some future time, from the prisoner or from any other source is impracticable.

(4) The expenses mentioned in subsections (2) and (3) shall not include—

- (a) any expenses of providing an escort for a person transferred into Bermuda under this Act; or
- (b) any expenses of the conveyance of such a person beyond the place at which he first arrives in Bermuda.

(5) The Attorney-General shall pay any sums received by him by virtue of subsection (2) into the Consolidated Fund.

Certificates

10 In any proceedings, the certificate of the Attorney-General—

- (a) that a particular country or territory is a party to any such international arrangements as are mentioned in section 3(1)(a);
- (b) that the appropriate authority of a country or territory which is such a party has agreed to the transfer of a particular person in accordance with any such arrangements; or
- (c) that, for the purposes of any provision of this Act, a particular person is or represents the appropriate authority of any country or territory,

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shall be conclusive of the matter certified.

Commencement

11 This Act comes into operation on such date as the Minister may appoint by notice published in the Gazette.

SCHEDULE

Section 5

Operation of Certain Enactments in Relation to the Prisoner

Application of Schedule

1. This Schedule applies where a warrant is issued under this Act providing for the transfer of the prisoner into Bermuda; and in this Schedule "the relevant provisions" means the provisions contained in the warrant by virtue of section 5(1)(c) of this Act or, in the case of a warrant which contains such a requirement as is referred to in section 6(2) of this Act, the provisions in accordance with which the prisoner continues, in pursuance of that requirement, to be detained.

Release on licence

2. (1) In determining for the purpose of section 12 of the Prisons Act 1979 (release on licence) whether the prisoner has at any time served one third of his sentence or the specified period mentioned in subsection (1) of that section the prisoner's sentence shall, subject to sub-paragraph (2), be deemed to begin with the day on which the relevant provisions take effect.

(2) If the warrant specifies a period to be taken into account for the purposes of this paragraph the prisoner's sentence and the amount he has served shall, so far only as the question whether he has served one third of his sentence is concerned, be deemed to be increased by that period.

Persons under the age of 18

3. (1) Where the prisoner has not attained the age of 18 years at the time the warrant containing the relevant provisions is issued and the relevant provisions include provision equivalent to a sentence under section 43 of the Young Offenders Act 1950 (corrective training), the prisoner may be detained in the senior training school.

Mental health legislation

4. (1) References in the Mental Health Act 1968 to the date of an order under that Act shall have effect, in relation to any of the relevant

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provisions which is equivalent to such an order, as references to the day on which the relevant provisions take effect.

(2) Where the relevant provisions include provision equivalent to a hospital order within the meaning of the said Act or such an order and an order restricting discharge within the meaning of that Act, the prisoner may (in addition to any application he may make under that Act) apply to a Mental Health Review Tribunal at any time in the period of six months beginning with the day on which the relevant provisions take effect.

Rehabilitation of offenders

5 The relevant provisions shall be disregarded for the purposes of the application, in relation to any offence of which the prisoner was convicted in a country or territory outside Bermuda, of the Rehabilitation of Offenders Act 1977.