

CHAPTER 102

TRANSFER OF OFFENDERS

ARRANGEMENT OF SECTIONS

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SCHEDULE — Operation of Certain Laws in relation to the Offender

CHAPTER 102

TRANSFER OF OFFENDERS

An Act to make provision for facilitating the transfer between The Bahamas and other countries of persons serving sentences for criminal offences. *11 of 1992*

*[Assent 19th May, 1992]
[Commencement 1st July, 1992]*

1. This Act may be cited as the Transfer of Offenders Act, 1992. Short title
2. (1) In this Act — Interpretation and evidence
- “order” includes any sentence, direction, warrant or other means of giving effect to the decision of a court or tribunal;
- “Minister” means the Minister charged with the responsibility for prisons; and
- “the offender” has the meaning given by section 3(1)(b).
- (2) In any proceedings, the certificate of the Minister —
- (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,
- shall be conclusive of the matter certified.
- (3) On the transfer of an offender referred to in section 5 documents supplied by the foreign state from which the offender is transferred setting out the finding of guilt and where the offender has been sentenced, the

sentence imposed are, if they purport to be signed by a judicial official or director of place of confinement of the foreign state, in the absence of evidence to the contrary, evidence of the facts alleged therein without proof of the signature or official character of the person by whom they purport to be signed.

Issue of warrant
for transfer

3. (1) Subject to the following provisions of this section where —

- (a) The Bahamas is a party to international arrangements providing for the transfer between The Bahamas and a country or territory outside The Bahamas of persons to whom subsection (7) applies; and
- (b) the Minister and the appropriate authority of that country or territory have each agreed to the transfer under those arrangements of a particular person (in this Act referred to as “the offender”); and
- (c) the offender has consented to being transferred in accordance with the arrangements,

the Minister shall issue a warrant providing for the transfer of the offender into or out of The Bahamas.

(2) The Minister 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 Minister’s attention, which in his opinion make it inappropriate that the transfer should take place.

(3) The Minister shall not issue a warrant under this Act providing for the transfer of any person into The Bahamas unless that person is a citizen of The Bahamas or the holder of a certificate of permanent residence issued under the Immigration Act and who is the spouse of a citizen.

(4) The Minister 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 offender in writing in his own language —

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- (a) of the substance, so far as relevant to the offender's case of the international arrangements in accordance with which it is proposed to transfer him;
 - (b) of the effect in relation to the offender of the warrant which it is proposed to issue in respect of him;
 - (c) in the case of a transfer into The Bahamas of the effect in relation to the offender 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 The Bahamas, of the effect in relation to the offender; and
 - (e) of the powers of the Minister under section 7,

and the Minister 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 Minister 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 offender is to be transferred and was so given either —

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

(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 offender; 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 7 subsequently supersedes provisions of that warrant, or of any direction given in relation to the offender 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 The Bahamas or in any country or territory outside The Bahamas 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 The Bahamas.

(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
The Bahamas

4. (1) The effect of a warrant providing for the transfer of the offender out of The Bahamas shall be to authorise, notwithstanding anything to the contrary in any other law, the surrender of the offender by the authority from whose custody he is being transferred and —

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

(2) Subject to subsections (3) to (5), the order by virtue of which the offender 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 The Bahamas so as to apply to him if he is again in The Bahamas 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 offender from The Bahamas it appears to the Minister appropriate to do so in order that effect may be given to the international arrangements in accordance with which the offender was transferred, the Minister 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 offender is, by virtue of a warrant under this Act out of The Bahamas is to be treated for the purposes of that order; and
- (b) to provide for the offender to be treated as having been —
 - (i) released on licence under the Prisons Act; or
 - (ii) released on licence under the Children and Young Persons (Administration of Justice) Act.

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(5) References in this section to the order by virtue of which the offender 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.

5. (1) The effect of a warrant providing for the transfer of the offender into The Bahamas shall be to authorise —

Transfer into The
Bahamas

- (a) the bringing of the offender into The Bahamas from a place outside The Bahamas;
- (b) the taking of the offender to such place in The Bahamas, being a place at which effect may be given to the provisions contained in the warrant by virtue of paragraph (c), as may be specified in the warrant; and
- (c) the detention of the offender in any part of The Bahamas in accordance with such provisions as may be contained in the warrant, being provisions appearing to the Minister to be appropriate for giving effect to the international arrangements in accordance with which the offender is transferred.

(2) 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 The Bahamas; 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 paragraph (c) of subsection (1) what provisions are appropriate for giving effect to the international arrangement mentioned in that paragraph, the Minister shall, to the extent that it appears to him, consistent with those arrangements to do so, have regard to the inappropriateness of the warrant containing provisions which —

- (a) are equivalent to more than the maximum penalties (if any) that may be imposed on a person who, in The Bahamas commits an offence corresponding to that in respect of which the offender 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 offender 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 offender when the said provisions take effect.

Schedule

(4) Subject to subsection (6) and the Schedule, 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 subparagraph (i) or, as the case may be, subparagraph (ii) of subsection (2)(b) and without

prejudice to the foregoing, for the purpose of The Bahamas giving effect to any international arrangements the finding of the guilt and the sentence, if any, by the court of a foreign state of an offender who is transferred to The Bahamas shall be deemed a finding of guilt and a sentence imposed by a court of competent jurisdiction in The Bahamas for a criminal offence.

(5) A provision contained by virtue of subsection (1)(c) in a warrant under this Act shall take effect with the delivery of the offender 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 shall have effect, with respect to the operation of certain laws 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.
- (9) An offender who is transferred to The Bahamas —
- (a) shall be credited with any time toward completion of his sentence that was credited to him at the date of his transfer by the foreign state in which he was convicted and sentenced; and
 - (b) is eligible to earn remission as if he had been committed to custody on the date of his transfer pursuant to a sentence imposed by a court in The Bahamas.

6. (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 offender is required to be detained in accordance with provisions contained in the warrant by virtue of section 5(1)(c).

Operation of
warrant and
retaking
prisoners

(2) The offender shall be deemed to be in lawful custody undergoing a sentence of imprisonment at any time when being in The Bahamas or on board a Bahamian registered vessel or a Bahamian registered aircraft he is being taken under the warrant to or from any place or being kept in custody under the warrant.

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

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

(5) If the offender escapes or is unlawfully at large, he may be arrested without warrant by a police officer and taken to any place to which he may be taken under the warrant under this Act without prejudice to any other liability imposed upon him by any other law.

(6) In subsection (2) —

“Bahamian registered vessel” means a vessel registered under the Merchant Shipping Act;

“Bahamian registered aircraft” means an aircraft registered under the Civil Aviation Act.

7. (1) Subject to section 3(4), if at any time it appears to the Minister 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.

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Revocation, etc,
of warrants

(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.

8. (1) Subject to subsection (2) any expenses incurred by the Minister for the purposes of this Act shall be charged upon the Consolidated Fund.

Expenses

(2) Subject to subsections (3) and (4), it shall be the duty of the Minister, in the case of a transfer of a person into The Bahamas under this Act, to secure the payment to him by that person, or from some other source of the amount of the expenses incurred by the Minister in connection with the conveyance of that person to The Bahamas; and for this purpose the Minister shall have the power if necessary to require a person to give an undertaking to pay to the Government of The Bahamas the whole or any part of that amount which undertaking may be sued upon in any court of summary jurisdiction as a civil debt due to the Government.

(3) Subsection (2) shall not apply to the extent that in any case it appears to The Minister 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 offender are insufficient to meet the expenses, and their recovery, whether immediately or at some future time, from the offender 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 The Bahamas under this Act; or
 - (b) any expenses of the conveyance of such a person beyond the place at which he first arrives in The Bahamas.
- (5) The Minister shall pay any sums received by him by virtue of subsection (2) into the Consolidated Fund.

SCHEDULE (Section 5)

OPERATION OF CERTAIN LAWS IN RELATION TO THE OFFENDER

Application of Schedule.

1. This Schedule applies where a warrant is issued under the Act providing for the transfer of the offender into The Bahamas; and in this Schedule “the relevant provisions” means the provisions contained in the warrant by virtue of section 5(1)(c).

Release on licence.

2. (1) In determining for the purposes of any law whether an offender has at any time served a specific period of his sentence the offender’s sentence shall, subject to subparagraph (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 offender’s sentence and the amount he has served shall be deemed to be increased by that period in so far as the question whether he has served a specific period of his sentence is concerned.

Rehabilitation of Offenders Act, 1991.
No. 11 of 1991

3. The relevant provisions shall be disregarded for the purposes of the application, in relation to any offence of which the offender was convicted in a place outside The Bahamas, of the Rehabilitation of Offenders Act, 1991, except section 3(3) (person not rehabilitated unless he serves sentence).

The Firearms Act.

4. Where the relevant provisions include provision equivalent to such a sentence as is mentioned in section 32 of the Firearms Act (possession of firearm by person previously convicted of crime) that section shall apply in relation to the offender as if for the reference in that section to the period of five years from the date so mentioned there were substituted a reference to the period of five years from the day on which the relevant provisions take effect.