

**THE DEPORTATION (COMMONWEALTH
CITIZENS) ACT**

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THE DEPORTATION (COMMONWEALTH
CITIZENS) ACT

Cap. 96.
Act
8 of 1962
S. 16.

[11th July, 1942.]

1. This Act may be cited as the Deportation (Commonwealth Citizens) Act. Short title.

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

“convicted person” means a person in respect of whom any court certifies to the Minister that he has been convicted, either by that court or by any inferior court from which his case has been brought by way of appeal, of any offence punishable with imprisonment, otherwise than only in default of payment of a fine;

“dependant” in relation to another person means—

- (a) the wife of such person if she is not living apart from him under a decree of a competent court or a deed of separation; or
- (b) the child or step-child under the age of sixteen years, of such person; or
- (c) an adopted child under the age of sixteen years, having been adopted by such person in a manner recognized by law;

“deportation order” means an order requiring the person in respect of whom it is made to leave and remain out of the Island;

“destitute person” means a person who is, or is likely to be, a charge upon public funds by reason of mental or

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bodily health or of insufficiency of means to support himself and his dependants (if any);

“Judge” means a Judge of the Supreme Court sitting in Chambers, or a Resident Magistrate who is specially authorized by the Minister to enquire and report in respect of any matter under this Act;

“person charged” means a person in respect of whom it is alleged that there are grounds for making a deportation order or restriction order or security order under this Act and includes a person in respect of whom such an order has been made;

“prohibited immigrant” means a person who has entered the Island contrary to the provisions of the Immigration Restriction (Commonwealth Citizens) Act;

“restriction order” means an order prohibiting the person in respect of whom it is made from entering, or from leaving, an area within the Island without the consent of the officer specified in the order;

“security order” means an order requiring the person in respect of whom it is made to give security in one or more sureties in such amount and for such time as may be therein specified to keep the peace and to be of good behaviour, or for indemnifying public funds for all costs, charges and expenses incurred in his regard, or for both such purposes, as may be appropriate in the case;

“undesirable person” means a person who is or has been conducting himself so as to be dangerous to peace, good order, good government, or public morals.

(2) For the purposes of this Act a person shall be deemed to belong to the Island if he is a Commonwealth citizen and—

(a) was born in the Island or of parents who at the time of his birth were domiciled in the Island; or

- (b) has been ordinarily resident in the Island continuously for a period of seven years or more and since the completion of such period of residence has not been ordinarily resident in any other Commonwealth country continuously for a period of seven years or more; or
- (c) became a citizen of Jamaica by registration or by naturalization; or 8/1962
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- (d) is a dependant of a person to whom any of the foregoing paragraphs of this subsection applies.

(3) For the purposes of this Act a person shall be deemed to be an immigrant Commonwealth citizen if he is a Commonwealth citizen at the date of the service upon him of a notice under section 7 or, in the case of a convicted person, the date upon which he is charged with the offence, and has been resident in the Island for less than the following periods immediately before that date and not otherwise— 8/1962
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- (a) in the case of a prohibited immigrant, a period of six months;
- (b) in the case of a convicted person or of an undesirable person, a period of two years; and
- (c) in the case of a destitute person, a period of one year:

Provided that in determining whether any person is an immigrant Commonwealth citizen, any period during which a deportation order, a restriction order, or a security order, made under this Act has been in force as respects that person shall not be taken into account.

3. Subject to the provisions of this Act, the Minister may, if he thinks fit, make a deportation order in respect of an immigrant Commonwealth citizen who does not belong to the Island and who is— Power to
make
deportation
orders.

- (a) a convicted person in respect of whom the court certifying to the Minister that he has been convicted recommends that a deportation order should be made in his case, either in addition to or in lieu of sentence; or
- (b) an undesirable person; or
- (c) a destitute person; or
- (d) a prohibited immigrant.

Power to
make
restriction
orders.

4. Subject to the provisions of this Act, the Minister may, if he thinks fit, make a restriction order in respect of any Commonwealth citizen who is—

- (a) a convicted person in respect of whom the court certifying to the Minister that he has been convicted recommends that a deportation order or a restriction order should be made in his case, either in addition to or in lieu of sentence; or
- (b) an undesirable person.

Power to
make
security
orders.

5.—(1) Subject to the provisions of this Act, the Minister may, if he thinks fit, make a security order in respect of any Commonwealth citizen who is—

- (a) a convicted person in respect of whom the court certifying to the Minister that he has been convicted recommends that a deportation order or a restriction order or a security order in conjunction with either of those orders should be made in his case, either in addition to or in lieu of sentence; or
- (b) an undesirable person;
or, in the case of an immigrant Commonwealth citizen who does not belong to the Island—
- (c) a destitute person; or
- (d) a prohibited immigrant.

(2) Where a security order is made, a deportation order or a restriction order, as in the case may be lawful and desirable shall be made in conjunction therewith to come into force upon default of compliance with the security order within a time therein fixed, but not otherwise.

(3) Where a security order has been complied with, the order shall, for the purposes of this Act, be deemed to remain in force so long as the security given thereunder subsists, and where a security order is revoked such security shall cease to have effect.

6.—(1) No deportation order, restriction order or security order shall be made under this Act except— Procedure for making orders.

(a) where a court has in accordance with the provisions of this Act given a certificate recommending that an order should be made; or

(b) where a Judge has, in accordance with the provisions of sections 7 and 8, made a report on the case, and the Minister is satisfied that such order may properly be made.

(2) When making an order under this Act the Minister shall have regard to the findings of fact and any conclusions of law as stated in the Judge's report, but he shall not be bound by any recommendations made by the Judge.

7.—(1) A notice shall be served upon the person charged specifying, with sufficient particulars to give him reasonable information as to the nature of the facts alleged against him, the grounds upon which it is alleged that an order may be made against him under this Act, and requiring him to show cause, before a Judge at a time to be stated in the notice, why such order should not be made in respect of him. Service of notice and arrest.

(2) In any case where it is intended to take proceedings against any person under this Act on the ground that he is an undesirable person, and it is represented on oath or affidavit to a Judge that that person is an undesirable person, the Judge may issue a warrant for his arrest, and if the notice mentioned in subsection (1) has not already been served upon him it shall be so served not later than twenty-four hours after his apprehension.

Powers of
Judge.

8.—(1) At the time appointed in the notice served under section 7, or at any adjournment of the hearing, the Judge shall take such evidence upon oath as is tendered in support of the charges, and the witnesses may be cross-examined by the person charged or his counsel, and the person charged may on his own behalf call such witnesses and tender such other evidence as may be relevant upon the questions at issue.

(2) The Judge, after considering the evidence adduced before him and making any further investigations which he may consider to be desirable, shall make a report to the Minister setting out his findings of fact and his conclusions on any questions of law involved, and, if he thinks fit, making a recommendation as to the issue in the case of any order or orders under this Act.

Detention
in custody
pending
decision.

9. Where a Judge or a court recommends the making of a deportation order or restriction order or security order on the grounds that the person charged is an undesirable person, prohibited immigrant, or a convicted person, the person charged may, if the Judge or court, as the case may be, so orders, be detained in such manner as the Judge or court may direct pending the decision of the Minister for a period not exceeding twenty-eight days, and shall be deemed to be in legal custody whilst so detained.

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10.—(1) Every security order and every deportation order shall be in the prescribed form. Contents of orders.

(2) Every restriction order shall be in the prescribed form and shall state the area or areas which the person to whom it relates is prohibited from entering or leaving.

(3) A deportation order or restriction order may be expressed to be in force for a time limited therein or for an unlimited time, and, when the person charged is not taken into custody pending the execution thereof shall prescribe a time within which the person charged may of his own volition comply therewith.

(4) A restriction order may require the person charged to report himself to the nearest administrative officer or officer of police at intervals of not less than thirty days.

11.—(1) As soon as practicable after a deportation order or restriction order or security order is made, a copy thereof shall be served upon the person charged together with a summary of the findings of fact and conclusions of law as stated in the report made under section 8. Execution of orders.

(2) A person with respect to whom a security order has been made may be detained in such manner as may be directed by the Minister until such order has been complied with:

Provided that, without prejudice to the provisions of subsections (3) and (4), where the security order is not complied with, no person shall be detained under this subsection for a period exceeding twenty-eight days.

(3) Subject to the provisions of subsection (5), a person with respect to whom a deportation order is in force may be detained in such manner as may be directed by the Minister, and may be placed on a ship about to

leave the Island and shall be deemed to be in legal custody while so detained and until the ship finally leaves the Island.

(4) Subject to the provisions of subsection (5), a person with respect to whom a restriction order is in force may be detained in such manner as may be directed by the Minister so far as necessary for the purpose of removing him from any place which he is prohibited from entering or to any place which he is prohibited from leaving, and shall be deemed to be in legal custody while so detained.

(5) No person shall be detained under subsection (3) or subsection (4) for a period exceeding twenty-eight days and, if at the expiration of such period he has not been removed or deported, the restriction order or deportation order, as the case may be, shall cease to have effect.

(6) The Master of a ship about to call at any port outside the Island shall, if so required by the Minister or by an Immigration Officer, receive a person against whom a deportation order has been made and his dependants (if any) on board the ship and afford him and them a passage to that port and proper accommodation and maintenance during the passage.

Expenses.

12.—(1) Where a deportation order is made, the Minister may, if he thinks fit, apply any money or property of the person charged in payment of the whole or any part of the expenses of or incidental to the voyage from the Island and the maintenance until departure of that person and his dependants (if any).

(2) Where a restriction order is made, the Minister may, if he thinks fit, apply any money or property of the person charged in payment of the whole or any part of the expenses of or incidental to the removal of that person to

any place in pursuance of that order and, if necessary, the maintenance of that person while the order is in force.

(3) Except so far as they are defrayed under the preceding subsections any such expenses shall be payable out of public funds.

13. If a person in respect of whom a security order or restriction order or deportation order is made under this Act has been sentenced to any term of imprisonment, such sentence shall be served before the order is carried into effect, unless the Governor-General otherwise directs.

Persons
undergoing
sentence.

14.—(1) The Minister by order may from time to time alter, vary, or revoke, any deportation order or restriction order or security order, and may attach to any such altered or varied order such conditions as he may think fit.

Revocation
and varia-
tion of
orders.

(2) Any order made under subsection (1) may be expressed to have effect for the duration of the order thereby altered or varied, or for any lesser period.

(3) As soon as practicable after an order has been made under this section a copy thereof shall be served upon or sent to the person in respect of whom it is made.

15.—(1) If a person in respect of whom a restriction order is in force—

Penalties for
breach of
orders.

- (a) leaves or attempts to leave or enters or attempts to enter any area in contravention of the provisions of the order; or
- (b) wilfully neglects or refuses to report himself as ordered; or
- (c) wilfully fails to observe any condition attached to such order,

he shall be liable on summary conviction before a Resident Magistrate to imprisonment with hard labour for a term

not exceeding six months or to a fine not exceeding one hundred dollars or to both such imprisonment and fine, and to be again removed under the original order, and the provisions of sections 11, 12 and 13 shall apply accordingly.

(2) If a person in respect of whom a deportation order is in force—

- (a) returns or attempts to return to the Island in contravention of the provisions of the order; or
- (b) having re-entered the Island under any condition attached to such order wilfully fails to observe such condition,

he shall be liable on summary conviction before a Resident Magistrate to imprisonment with hard labour for a term not exceeding six months or to a fine not exceeding one hundred dollars or both such imprisonment and fine, and to be again deported under the original order, and the provisions of sections 11, 12 and 13 shall apply accordingly.

(3) Nothing in this section shall prevent the making of a restriction order or a deportation order in accordance with the provisions of this Act in consequence of a conviction for an offence under this Act.

Penalty for
harbouring.

16. Any person who, without lawful excuse, knowingly harbours or conceals any person who—

- (a) is within the Island or an area thereof in contravention of the terms of a deportation order or restriction order; or
- (b) having entered the Island or any area thereof in accordance with the order, has wilfully failed to observe any condition attached to such order,

shall on summary conviction before a Resident Magistrate be liable to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred dollars.

17. No proceedings shall be instituted under this Act except by the Director of Public Prosecutions or with his previous sanction in writing. Institution of proceedings.

18. In any proceedings under this Act— Evidence.

- (a) the burden of proof that the person charged belongs to the Island shall be upon that person;
- (b) a document purporting to be an order made under this Act shall, until the contrary is proved, be presumed to be such an order; and
- (c) any order made under this Act shall be presumed, until the contrary is proved, to have been validly made and to have been made on the date upon which it purports to have been made.

19. The Minister may make regulations for the better carrying out of the provisions of this Act. Regulations.