



# Repatriation of Prisoners Act 1984

## 1984 CHAPTER 47

An Act to make provision for facilitating the transfer between the United Kingdom and places outside the British Islands of persons for the time being 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. [26th July 1984]

BE IT ENACTED by the Queen'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 Issue of warrant for transfer**

- (1) Subject to the following provisions of this section, where—
  - (a) the United Kingdom is a party to international arrangements providing for the transfer between the United Kingdom and a country or territory outside the British Islands of persons to whom subsection (7) below applies, and
  - (b) the Secretary of State 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 prisoner"), and
  - (c) the prisoner has consented to being transferred in accordance with those arrangements,the Secretary of State shall issue a warrant providing for the transfer of the prisoner into or out of the United Kingdom.
- (2) The Secretary of State 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) above has arisen and before the transfer in question takes place circumstances arise, or are brought to the Secretary of State's attention, which in his opinion make it inappropriate that the transfer should take place.
- (3) The Secretary of State shall not issue a warrant under this Act providing for the transfer of any person into the United Kingdom unless—
  - (a) that person is a British citizen ; or

- (b) the transfer appears to the Secretary of State to be appropriate having regard to any close ties which that person has with the United Kingdom ; or
  - (c) it appears to the Secretary of State that the transfer is such a transfer for the purpose of the temporary return of the prisoner to the United Kingdom as may be provided for by virtue of section 4(1)(b) below.
- (4) The Secretary of State 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 the United Kingdom, 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 the United Kingdom, 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 Secretary of State under section 6 of this Act;and, the Secretary of State 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 Secretary of State shall not issue a warrant under this Act unless he is satisfied that the consent given for the purposes of subsection (1)(c) above 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 Secretary of State 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 Secretary of State to be an appropriate person to have acted on the prisoner's behalf.
- (6) A consent given for the purposes of subsection (1)(c) above 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 6 below subsequently supersedes provisions of that warrant, or of any direction given in relation to the prisoner under section 2(3) below.
- (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 United Kingdom, or in any country or territory outside the British Islands, of its criminal jurisdiction ; or
  - (b) under the provisions of this Act or any similar provisions of the law of any part of the United Kingdom or of the law of any country or territory outside the British Islands.

- (8) In subsection (7)(b) above 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.

## **2 Transfer out of the United Kingdom**

- (1) The effect of a warrant providing for the transfer of the prisoner out of the United Kingdom shall be to authorise—
- (a) the taking of the prisoner to any place in any part of the United Kingdom and his delivery, at a place of departure from the United Kingdom, 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 the United Kingdom.
- (2) Subject to subsections (3) to (5) below, 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 the United Kingdom so as to apply to him if he is again in the United Kingdom 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 the United Kingdom, it appears to the Secretary of State appropriate to do so in order that effect may be given to the international arrangements in accordance with which the prisoner was transferred, the Secretary of State may give a direction varying the order referred to in subsection (2) above or providing for that order to cease to have effect.
- (4) The power by direction under subsection (3) above to vary the order referred to in subsection (2) above 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 the part of the United Kingdom in which that order has effect is to be treated for the purposes of that order; and
  - (b) to provide for the prisoner to be treated as having been—
    - (i) released on licence under section 60 or 61 of the Criminal Justice Act 1967 (release on licence of, respectively, persons serving determinate sentences and persons sentenced to imprisonment for life etc.); or
    - (ii) released on licence under section 206(2) of the Criminal Procedure (Scotland) Act 1975 (release on licence of children convicted on indictment) or released under section 58A(3) of the Children and Young Persons (Scotland) Act 1937 (release of children committed for residential training); or
    - (iii) released on licence under section 23 of the Prison Act (Northern Ireland) 1953 or discharged on licence under section 73 of the Children and Young Persons Act (Northern Ireland) 1968 (release and discharge on licence of, respectively, persons serving imprisonment for life and young persons in detention for grave crimes); or
    - (iv) for the purposes of Part II of the Treatment of Offenders (Northern Ireland) Order 1976 (conviction within certain period after

discharge), discharged from prison or a young offenders centre in pursuance of rules made under section 13 of the said Act of 1953.

(5) Except in relation to any period during which a restriction order is in force in respect of the prisoner, subsection (2) above 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 the United Kingdom 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) above—

" hospital order " means an order made under section 37 of the Mental Health Act 1983, section 175 or 376 of the Criminal Procedure (Scotland) Act 1975 or section 48 of the Mental Health Act (Northern Ireland) 1961 or any order or direction made under another enactment but having the same effect as an order made under one of those sections ; and

" restriction order " means an order made under section 41 of the said Act of 1983, section 178 or 379 of the said Act of 1975 or section 53 of the said Act of 1961 or any order or direction made under another enactment but having the same effect as an order made under one of those sections.

(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.

### **3 Transfer into the United Kingdom**

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

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

(2) Subject to section 4(2) to (4) below, a provision shall not be contained by virtue of subsection (1)(c) above 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 part of the United Kingdom in which the prisoner is to be detained; or
  - (ii) otherwise than by a court but for the purpose of giving effect to an order made as mentioned in sub-paragraph (i) above.
- (3) In determining for the purposes of paragraph (c) of subsection (1) above what provisions are appropriate for giving effect to the international arrangements mentioned in that paragraph, the Secretary of State 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 the part of the United Kingdom in which the prisoner is to be detained, 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.
- (4) Subject to subsection (6) below and the Schedule to this Act, a provision contained by virtue of subsection (1)(c) above 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) above.
- (5) A provision contained by virtue of subsection (1)(c) above 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) above.
- (6) Subsection (4) above shall not confer any right of appeal on the prisoner against provisions contained by virtue of subsection (1)(c) above in a warrant under this Act.
- (7) The Schedule to this Act shall have effect, subject to section 4(4) below, with respect to the operation of certain enactments in relation to provisions contained by virtue of subsection (1)(c) above 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) above 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.

#### **4 Temporary return**

- (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) the United Kingdom if it appears to the Secretary of State that the transfers are to be for the purpose of the temporary return of the prisoner either—

- (a) from the United Kingdom to a country or territory out side the British Islands from which he has previously been transferred into the United Kingdom under this Act or any other enactment; or
  - (b) to the United Kingdom from a country or territory out side the British Islands to which he has previously been transferred from the United Kingdom under this Act.
- (2) The provisions contained by virtue of section 3(1)(c) above in a warrant under this Act issued for the purpose of the temporary return of the prisoner to a country or territory outside the British Islands 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 the part of the United Kingdom in which the provisions contained in the earlier warrant have effect, to be detained in accordance with those earlier provisions.
- (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) above, shall provide that any period during which the prisoner is out of the part of the United Kingdom in which the provisions contained in the earlier warrant have effect 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 3(1)(c) above in a warrant under this Act issued for the purpose of the temporary return of the prisoner to the United Kingdom 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 2(2) above; and the Schedule to this Act shall not apply in relation to the provisions so contained in such a warrant.

## **5 Operation of warrant and retaking prisoners**

- (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 3(4) above 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 3(1)(c) above.
- (2) The prisoner shall be deemed to be in the legal custody of the Secretary of State at any time when, being in the United Kingdom 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 Secretary of State 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 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—
- (a) of a constable in any part of the United Kingdom in which that person is for the time being ; or
  - (b) if he is outside the United Kingdom, of a constable in the part of the United Kingdom to or from which the prisoner is to be taken under the warrant.

- (5) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by a constable and taken to any place to which he may be taken under the warrant under this Act.
- (6) In subsection (2) above—
- " British aircraft " means a British-controlled aircraft within the meaning of section 92 of the Civil Aviation Act 1982 (application of criminal law to aircraft), or one of Her Majesty's aircraft;
- " 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, 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.
- (7) In subsection (5) above " constable ", in relation to any part of the United Kingdom, means any person who is a constable in that or any other part of the United Kingdom or any person who, at the place in question has, under any enactment (including subsection (4) above), the powers of a constable in that or any other part of the United Kingdom.

## **6 Revocation etc. of warrants**

- (1) Subject to section 1(4) above, if at any time it appears to the Secretary of State appropriate, in order that effect may be given to any such arrangements as are mentioned in section 1(1)(a) above or in a case falling within section 1(2) above, 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) below, the provision that may be contained in a new warrant issued by virtue of subsection (1)(b) above shall be any provision that could have been contained in the previous warrant.
- (3) A new warrant issued by virtue of subsection (1)(b) above 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) above 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.

## 7 Expenses

- (1) Subject to subsection (2) below, any expenses incurred by the Secretary of State for the purposes of this Act shall be defrayed out of money provided by Parliament.
- (2) Subject to subsections (3) and (4) below, it shall be the duty of the Secretary of State, in the case of the transfer of a person into the United Kingdom 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 the United Kingdom ; and for this purpose the Secretary of State shall have the same power as in any other case where he assists the return of a person to the United Kingdom to require a person to give an undertaking to pay the Secretary of State the whole or any part of that amount, to enforce such an undertaking and to make such other arrangements for recovering that amount as he thinks fit.
- (3) Subsection (2) above shall not apply to the extent that in any case it appears to the Secretary of State 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) above shall not include—
  - (a) any expenses of providing an escort for a person transferred into the United Kingdom under this Act; or
  - (b) any expenses of the conveyance of such a person beyond: the place at which he first arrives in the United Kingdom.
- (5) The Secretary of State shall pay any sums received by him by virtue of subsection (2) above into the Consolidated Fund.

## 8 Interpretation and certificates

- (1) In this Act, except in so far as the context otherwise requires—
  - " international arrangements " includes any arrangements between the United Kingdom and a colony ;
  - " order " includes any sentence, direction, warrant or other means of giving effect to the decision of a court or tribunal; and
  - "the prisoner" has the meaning given by section 1(1)(b) above.
- (2) In this Act a reference to criminal jurisdiction, in relation to a court or tribunal in a country or territory outside the British Islands, 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.
- (3) In any proceedings, the certificate of the Secretary of State—
  - (a) that a particular country or territory is a party to any such international arrangements as are mentioned in section 1(1)(a) above,
  - (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.

**9 Short title, commencement and extent**

- (1) This Act may be cited as the Repatriation of Prisoners Act 1984.
- (2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (3) This Act extends to Northern Ireland.
- (4) Her Majesty may by Order in Council make provision for extending the provisions of this Act, with such exceptions, adaptations and modifications as may be specified in the Order, to any of the Channel Islands, to the Isle of Man or to any colony.

## SCHEDULE

Section 3.

### 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 the United Kingdom ; and in this Schedule " the relevant provisions" means the provisions contained in the warrant by virtue of section 3(1) (c) of this Act or, in the case of a warrant which contains such a requirement as is referred to in section 4(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 purposes of section 60 of the Criminal Justice Act 1967 (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) below, 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.

#### *Life imprisonment*

- 3        Where the relevant provisions include provision equivalent to a sentence in relation to which section 61 of the Criminal Justice Act 1967 (release on licence, on the recommendation of the Parole Board and after consultation with the Lord Chief Justice or Lord Justice General and with the trial judge if available, of person sentenced to life imprisonment etc.) applies, subsection (1) of that section shall be deemed to have effect in relation to the prisoner as if the words " together with the trial judge if available " were omitted.

#### *Persons under the age of 21*

- 4        (1) Where the prisoner has not attained the age of 21 years at the time the warrant containing the relevant provisions is issued and the relevant provisions include provision equivalent to a sentence under section 6 or 8 of the Criminal Justice Act 1982 (youth custody and custody for life)—
- (a) subsections (1) to (7) of section 12 of that Act (accommodation of persons sentenced under section 6 or 8) shall not apply in relation to the prisoner ; and
  - (b) the prisoner may be detained-
    - (i) in a youth custody centre,
    - (ii) in a remand centre, or
    - (iii) in a prison,
 as the Secretary of State may from time to time direct.
- (2) Where—

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- (a) at the time the warrant containing the relevant provisions is issued the prisoner is not less than 16 years of age but has not attained the age of 21 years, and
  - (b) the relevant provisions include provision equivalent to an order imposing detention under section 207 or 415 of the Criminal Procedure (Scotland) Act 1975 (restriction on detention of persons under 21 years of age),
- the provisions of those sections which require that, in certain circumstances, a person shall be detained in a specified type of institution shall not apply in relation to the prisoner, and the prisoner may be detained—
- (i) in a young offenders institution, or
  - (ii) in a prison,
- as the Secretary of State may from time to time direct.

#### *Mental health legislation*

- 5 (1) References in—
- (a) the Mental Health Act 1983, and
  - (b) the Mental Health Act (Northern Ireland) 1961,
- to the date of an order under either of those Acts shall have effect, in relation to any of the relevant 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 of 1983 or such an order and a restriction order 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.
- (3) References howsoever expressed in—
- (a) the Mental Health (Scotland) Act 1984, and
  - (b) the Criminal Procedure (Scotland) Act 1975,
- to the date of an order of the type referred to in the definition of hospital order or restriction order in section 2(6) of this Act shall have effect, in relation to any of the relevant provisions which is equivalent to such an order, as a reference to the day on which the relevant provisions take effect.
- (4) Where the relevant provisions include provisions equivalent in Scotland to such an order, the prisoner may at any time in the period of six months beginning with the day on which the relevant provisions take effect, appeal to the Sheriff to order his discharge; and (without prejudice to section 3(4) of this Act) in any appeal under this paragraph the provisions of the said Act of 1984 in respect of appeals by a patient subject to such an order apply to an appeal by the prisoner where he is subject to any such equivalent provision as they apply to a patient who is subject to such an order.

#### *Rehabilitation of offenders*

- 6 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 the British Islands, of—
- (a) the Rehabilitation of Offenders Act 1974, except section 1(2)(person not rehabilitated unless he serves sentence etc.); and

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- (b) the Rehabilitation of Offenders (Northern Ireland) Order 1978, except Article 3(2) (person not rehabilitated unless he serves sentence etc.).

*The Representation of the People Act 1981*

- 7 For the purposes of section 1 of the Representation of the People Act 1981 (disqualification of certain offenders for membership of the House of Commons), the prisoner shall, while detained in accordance with the relevant provisions, be deemed to be detained in pursuance of the order in pursuance of which, at the time of his transfer into the United Kingdom, he was required to be detained in the country or territory from which he was transferred.

*The Firearms (Northern Ireland) Order 1981*

- 8 Where the relevant provisions include provision equivalent to such a sentence as is mentioned in paragraph (2) of Article 22 of the Firearms (Northern Ireland) Order 1981 (possession of firearm by person previously convicted of crime), that paragraph shall apply in relation to the prisoner as if for the reference in that paragraph to the period of eight years from the date so mentioned there were substituted a reference to the period of eight years from the day on which the relevant provisions take effect.