



Criminal Justice and Immigration Act 2008

2008 CHAPTER 4

PART 6

INTERNATIONAL CO-OPERATION IN RELATION TO CRIMINAL JUSTICE MATTERS

Repatriation of prisoners

94 Issue of warrant transferring responsibility for detention and release of an offender to or from the relevant Minister

After section 4 of the Repatriation of Prisoners Act 1984 (transfer into the United Kingdom) insert—

“Transfer of responsibility for detention and release of offender present outside the country or territory in which he is required to be detained

4A Issue of warrant transferring responsibility for detention and release of offender

- (1) This section enables responsibility for the detention and release of a person to whom subsection (2) or (3) applies to be transferred between the relevant Minister in the United Kingdom and the appropriate authority in a country or territory outside the British Islands.
- (2) A person falls within this subsection if that person—
 - (a) is a person to whom section 1(7) applies by virtue of—
 - (i) an order made in the course of the exercise by a court or tribunal in any part of the United Kingdom of its criminal jurisdiction; or

Status: This is the original version (as it was originally enacted).

- (ii) any of the provisions of this Act or any similar provisions of the law of any part of the United Kingdom; and
 - (b) is present in a country or territory outside the British Islands.
- (3) A person falls within this subsection if that person—
- (a) is a person to whom section 1(7) applies by virtue of —
 - (i) an order made in the course of the exercise by a court or tribunal in a country or territory outside the British Islands of its criminal jurisdiction; or
 - (ii) any provisions of the law of such a country or territory which are similar to any of the provisions of this Act; and
 - (b) is present in the United Kingdom.
- (4) Terms used in subsection (2)(a) and (3)(a) have the same meaning as in section 1(7).
- (5) 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 responsibility for the detention and release of persons to whom subsection (2) or (3) applies,
 - (b) the relevant Minister and the appropriate authority of that country or territory have each agreed to the transfer under those arrangements of responsibility for the detention and release of a particular person to whom subsection (2) or (3) applies (in this Act referred to as “the relevant person”), and
 - (c) in a case in which the terms of those arrangements provide for the transfer of responsibility to take place only with the relevant person’s consent, that consent has been given,
- the relevant Minister shall issue a warrant providing for the transfer of responsibility for the detention and release of the relevant person from that Minister (where subsection (2) applies) or to that Minister (where subsection (3) applies).
- (6) The relevant Minister shall not issue a warrant under this section providing for the transfer of responsibility for the detention and release of a person to the relevant Minister unless—
- (a) that person is a British citizen;
 - (b) the transfer appears to the relevant Minister to be appropriate having regard to any close ties which that person has with the United Kingdom.
- (7) The relevant Minister shall not issue a warrant under this section where, after the duty in subsection (5) has arisen, circumstances arise or are brought to his attention which in his opinion make it inappropriate that the transfer of responsibility should take place.
- (8) The relevant Minister shall not issue a warrant under this section (other than one superseding an earlier warrant) unless he is satisfied that all reasonable steps have been taken to inform the relevant person in writing in his own language—
- (a) of the substance, so far as relevant to the case, of the international arrangements in accordance with which it is proposed to transfer responsibility for his detention and release;

Status: This is the original version (as it was originally enacted).

- (b) of the effect in relation to the relevant person of the warrant which it is proposed to issue under this section;
- (c) in the case of a person to whom subsection (2) applies, of the effect in relation to his case of so much of the law of the country or territory concerned as has effect with respect to transfers under those arrangements of responsibility for his detention and release;
- (d) in the case of a person to whom subsection (3) applies, of the effect in relation to his case of the law relating to his detention under that warrant and subsequent release (including the effect of any enactment or instrument under which he may be released earlier than provided for by the terms of the warrant); and
- (e) of the powers of the relevant Minister under section 6;

and the relevant Minister shall not issue a warrant superseding an earlier warrant under this section unless the requirements of this subsection were fulfilled in relation to the earlier warrant.

- (9) A consent given for the purposes of subsection (5)(c) shall not be capable of being withdrawn after a warrant under this section has been issued in respect of the relevant person; 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 subsequently supersedes provisions of that warrant, or of any direction given in relation to the prisoner under section 4B(3).
- (10) In this section “relevant Minister” means—
 - (a) the Scottish Ministers in a case where the person who is the subject of the proposed transfer of responsibility is—
 - (i) a person to whom subsection (2) applies who is for the time being required to be detained at a place in Scotland; or
 - (ii) a person to whom subsection (3) applies, if it is proposed that he will be detained at a place in Scotland;
 - (b) the Secretary of State, in any other case.

4B Transfer of responsibility from the United Kingdom

- (1) The effect of a warrant under section 4A relating to a person to whom subsection (2) of that section applies shall be to transfer responsibility for the detention and release of that person from the relevant Minister (as defined in section 4A(10)) to the appropriate authority of the country or territory in which he is present.
- (2) Subject to subsections (3) to (6), the order by virtue of which the relevant person is required to be detained at the time such a warrant is issued in respect of him shall continue to have effect after the transfer of responsibility so as to apply to him if he comes to be 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 transfer of responsibility, it appears to the relevant Minister appropriate to do so in order that effect may be given to the international arrangements in accordance with which the transfer took place, the relevant Minister may give a direction—
 - (a) varying the order referred to in subsection (2); or
 - (b) providing for the order to cease to have effect.

Status: This is the original version (as it was originally enacted).

- (4) In subsection (3) “relevant Minister” means—
 - (a) the Scottish Ministers, where Scotland is the part of the United Kingdom in which the order referred to in subsection (2) has effect; and
 - (b) the Secretary of State in any other case.
- (5) The power by direction under subsection (3) to vary the order referred to in subsection (2) includes power by direction—
 - (a) to provide for how any period during which the detention and release of the relevant person is, by virtue of a warrant under section 4A, the responsibility of a country or territory outside the United Kingdom is to be treated for the purposes of the order; and
 - (b) to provide for the relevant person to be treated as having been released or discharged as mentioned in any paragraph of section 2(4)(b).
- (6) Except in relation to any period during which a restriction order is in force in respect of the relevant person, subsection (2) shall not apply in relation to a hospital order; and, accordingly, a hospital order shall cease to have effect in relation to that person—
 - (a) at the time of the transfer of responsibility, 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 the transfer of responsibility as the restriction order ceases to have effect.
- (7) In subsection (6) “hospital order” and “restriction order” have the same meaning as in section 2(6).
- (8) References in this section to the order by virtue of which a person is required to be detained at the time a warrant under section 4A 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.

4C Transfer of responsibility to the United Kingdom

- (1) The effect of a warrant under section 4A relating to a person to whom subsection (3) of that section applies shall be to transfer responsibility for the detention and release of that person to the relevant Minister (as defined in section 4A(10)) and to authorise—
 - (a) the taking of that person in custody to such place in any part of the United Kingdom as may be specified in the warrant, being a place at which effect may be given to the provisions contained in the warrant by virtue of paragraph (b); and
 - (b) the detention of that person in any part of the United Kingdom in accordance with such provisions as may be contained in the warrant, being provisions appearing to the relevant Minister to be appropriate for giving effect to the international arrangements in accordance with which responsibility for that person is transferred.
- (2) A provision shall not be contained by virtue of subsection (1)(b) in a warrant under section 4A unless it satisfies the following two conditions, that is to say—

Status: This is the original version (as it was originally enacted).

- (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 person 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).
- (3) Section 3(3) applies for determining for the purposes of paragraph (b) of subsection (1) above what provisions are appropriate for giving effect to the international arrangements mentioned in that paragraph in a relevant person's case as it applies for the purposes of section 3(1)(c) in the case of a prisoner who is to be transferred into the United Kingdom.
- (4) Subject to subsection (6) and Part 2 of the Schedule to this Act, a provision contained by virtue of subsection (1)(b) in a warrant under section 4A 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)(b) in a warrant under section 4A shall take effect with the delivery of the relevant person to the place specified in the warrant for the purposes of subsection (1)(a).
- (6) Subsection (4) shall not confer any right of appeal on the relevant person against provisions contained by virtue of subsection (1)(b) in a warrant under this section.
- (7) Part 2 of the Schedule to this Act shall have effect with respect to the operation of certain enactments in relation to provisions contained by virtue of subsection (1)(b) in a warrant under section 4A.
- (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.”