



# Colonial Prisoners Removal Act 1884

1884 CHAPTER 31 47 and 48 Vict

An Act to make further provision respecting the removal of Prisoners and Criminal Lunatics from Her Majesty's possessions out of the United Kingdom. [28th July 1884]

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**Modifications etc. (not altering text)**

C1 Preamble omitted under authority of [Statute Law Revision Act 1898 \(c. 22\)](#)

*Preliminary*

**1 Short title.**

This Act may be cited as the Colonial Prisoners Removal Act 1884.

*Prisoners Removal*

**2 Removal of prisoners from British possessions in certain cases.**

Where as regards a prisoner undergoing sentence of imprisonment in any British possession for any offence it appears to the removing authority herein-after mentioned either—

- (a) that it is likely that the life of the prisoner will be endangered or his health permanently injured by further imprisonment in such British possession; or
- (b) that the prisoner belonged, at the time of committing the said offence, to [<sup>F1</sup>Her Majesty's regular military or naval forces]; or
- (c) that the offence was committed wholly or partly beyond the limits of the said British possession; or
- (d) that by reason of there being no prison in the said British possession in which the prisoner can properly undergo his sentence or otherwise the removal of the prisoner is expedient for his safer custody or for more efficiently carrying his sentence into effect; or,

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- (e) that the prisoner belongs to a class of persons who under the law of the said British possession are subject to removal under this Act;
- in any such case the removing authority may, subject nevertheless to the regulations in force under this Act, order such prisoner to be removed to any British possession or to the United Kingdom to undergo his sentence or the residue thereof.

#### Textual Amendments

**F1** Words substituted by [Armed Forces Act 1981 \(c.55, SIF 7:1\)](#), s. 20(1), [Sch. 3 para. 4](#)

#### Modifications etc. (not altering text)

**C2** References to Her Majesty's regular military forces to be construed as including references to the Air Force: S.R. & O. 1945/1275 (Rev. 1 p. 920: 1945 I, p. 8), Sch.

### 3 Return of removed prisoner.

- (1) Where a prisoner has been removed in pursuance of this Act, a Secretary of State or the Government of a British possession to which the prisoner has been so removed, may order the prisoner, for the purpose of undergoing the residue of his sentence, to be returned to the British possession from which he was removed.
- (2) If a Secretary of State or the Government of a British possession to which a prisoner is removed under this Act, requires the prisoner to be returned for discharge to the British possession from which he was removed, the prisoner shall, in accordance with the regulations under this Act, be returned to the said British possession for the purpose of being there discharged at the expiration of his sentence. In any other case a prisoner when discharged at the expiration of his sentence shall be entitled to be sent free of cost to the British possession from which he was removed;  
Provided that where a prisoner at the date of his sentence belonged to the Royal Navy or to Her Majesty's regular military forces, *nothing* in this section shall require such prisoner to be returned to the British possession from which he was removed, or entitle him to be sent there free of cost.

#### Modifications etc. (not altering text)

**C3** References to Her Majesty's regular military forces to be construed as including references to the Air Force: S.R. & O. 1945/1275 (Rev. 1 p. 920: 1945 I, p. 8), Sch.

### 4 Regulations as to removal.

- (1) It shall be lawful for Her Majesty in Council from time to time to make, and when made, revoke and vary regulations as to the removal, return, and discharge of prisoners under this Act.
- (2) The regulations may provide for varying the conditions of a sentence of imprisonment passed in a British possession, where they differ from the conditions of a sentence of imprisonment in the part of Her Majesty's dominions to which the prisoner is removed, with a view to bringing them into conformity with the latter conditions, but the prisoner shall not by reason of such variation undergo an imprisonment of any longer duration; and where the latter conditions appear to a Secretary of State to be more severe than the former conditions, the Secretary of State may remit a portion of the imprisonment, so

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that the punishment undergone by the prisoner shall not in the opinion of the Secretary of State be more severe than the punishment to which the prisoner was originally sentenced, and the sentence of imprisonment shall, so long as the prisoner remains in the part of Her Majesty's dominions to which he is removed, be carried into effect as if the conditions thereof as so varied were the conditions of the original sentence.

- (3) The regulations may also provide for the forms to be used under this Act and generally for the execution of this Act.
- (4) All regulations made under this section shall be . . . <sup>F2</sup>laid before . . . <sup>F2</sup>Parliament . . . <sup>F2</sup>.

#### Textual Amendments

<sup>F2</sup> Words repealed by [Statute Law \(Repeals\) Act 1986 \(c.12\)](#), s. 1(1), [Sch. 1 Pt. XII](#)

## 5 Removing authority.

The removing authority for the purposes of this Act shall be a Secretary of State acting with the concurrence of the Government of every British possession concerned.

## 6 Evidence of act of government of British possession or Secretary of State.

- (1) The concurrence of the Government of a British possession, and any requisition by the Government of a British possession, may be given or made by the Governor in Council or such other authority as may be from time to time provided by the law of that possession, but shall be signified by writing under the hand of the Governor or of the Colonial Secretary or of any other officer appointed in this behalf by the law of that possession.
- (2) Any writing purporting to give such concurrence or make such requisition, and to be signed by the Governor or Colonial Secretary or other officer for the time being, shall be conclusive evidence that the concurrence of or requisition by the Government of the British possession has been duly given or made according to law; and any writing purporting to be under the hand of a Secretary of State, and to order the removal of a prisoner from a British possession, shall be conclusive evidence that such order has been duly given by the Secretary of State, and every such writing as above in this section mentioned shall be admissible in evidence in any court in Her Majesty's dominions without further proof.

## 7 Warrant for removal of prisoner.

- (1) Where the removal of a prisoner from a British possession is ordered in pursuance of this Act, a Secretary of State or the Governor of the British possession may by warrant under his hand direct the prisoner to be removed to the part of Her Majesty's dominions mentioned in the said order, and for that purpose to be delivered into the custody of the persons named or described in the warrant or some one or more of them, and to be held in custody and conveyed by sea or otherwise to the said part of Her Majesty's dominions, there to undergo his sentence, or the residue thereof, until returned in pursuance of this Act or discharged, and such warrant shall be forthwith executed according to the tenor thereof.

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- (2) Where a prisoner is to be returned to a British possession, a Secretary of State or the Governor of the possession in which he has been undergoing his sentence, shall issue a like warrant, which shall be duly executed according to the tenor thereof.
- (3) Every warrant purporting to be issued in pursuance of this Act, and to be under the hand of a Secretary of State or Governor of a British possession, shall be received in evidence in every court of justice in Her Majesty's dominions without further proof, and shall be evidence of the facts therein stated, and all acts done in pursuance of such warrant shall be deemed to have been authorised by law.

## **8 Dealing with removed prisoner.**

- (1) Every prisoner removed in pursuance of this Act shall, until he is returned in pursuance of this Act, be dealt with in the part of Her Majesty's dominions to which he is removed, in like manner as if his sentence (with such variation, if any, of the conditions thereof as may have been duly made in pursuance of regulations under this Act) had been duly awarded in that part, and shall be subject accordingly to all laws and regulations in force in that part, with the following qualifications, that his conviction judgment and sentence may be questioned in the part of Her Majesty's dominions from which he has been removed in the same manner as if he had not been removed, and that his sentence may be remitted and his discharge ordered in the same manner and by the same authority as if he had not been removed.
- (2) The officer in charge of any prison, on request by any person having the custody of a prisoner under a warrant issued in pursuance of this Act, and on payment or tender of a reasonable amount for expenses, shall receive such prisoner and detain him for such reasonable time as may be requested by the said person for the purpose of the proper execution of the warrant.

## **9 Escape of prisoner from custody.**

- (1) If a prisoner while in custody in pursuance of this Act, or under a warrant issued in pursuance of this Act escapes, by breach of prison or otherwise, out of custody, he may be retaken in the same manner as a person convicted of a crime against the law of the place to which he escapes may be retaken upon an escape.
- (2) A person guilty of the offence of so escaping or of attempting so to escape, or of aiding or attempting to aid any such prisoner so to escape, may be tried in any of the following parts of Her Majesty's dominions, namely, the part to which and the part from which the prisoner is being removed or returned, and the part in which the prisoner escapes, and the part in which the offender is found, and such offence shall be deemed to be an offence against the law of the part of Her Majesty's dominions in which he may be so tried, and for all purposes of and incidental to the apprehension, trial, and punishment of the person accused of such offence, and of and incidental to any proceedings and matters preliminary, incidental to or consequential thereon, and of and incidental to the jurisdiction of any court constable or officer with reference to such offence, and to the person accused thereof, such offence shall be deemed to have been committed in the said part, and such person may be punished in accordance with the <sup>M1</sup>Courts (Colonial) Jurisdiction Act 1874.

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#### Marginal Citations

M1 1874 c. 27.

### *Criminal Lunatics*

## 10 Application of Act to removal of criminal lunatics.

- (1) The provisions of this Act shall apply to a person in custody as a criminal lunatic in like manner, so far as consistent with the tenor thereof, as they apply to a prisoner undergoing sentence of imprisonment; and separate regulations may be made by Her Majesty in Council under this Act in relation to criminal lunatics and (subject to those regulations) all laws and regulations in force in the part of Her Majesty's dominions in which a criminal lunatic removed or returned is for the time being in custody under a warrant issued in pursuance of this Act, shall apply to such criminal lunatic as if he had become a criminal lunatic in that part.
- (2) Where a person, who is a criminal lunatic by reason of being unfit to be tried for an offence, is removed in pursuance of this Act, and a Secretary of State or the Government of the British possession to or from which such person was removed considers that such person has become sufficiently sane to be tried for the said offence, and requires him to be returned for trial to the British possession from which he was removed, he shall, in accordance with the regulations under this Act be returned as a prisoner to the said British possession for the purpose of being there tried for the said offence, and shall be removed thither in custody in like manner as if he had been arrested under a warrant on a charge for the said offence.
- [<sup>F3</sup>(3) Without prejudice to the foregoing provisions of this section, where a criminal lunatic is removed to England and Wales, then—
  - (a) except where he is a criminal lunatic by virtue of having been convicted of an offence and afterwards certified or otherwise lawfully proved to be insane, the Secretary of State may [<sup>F4</sup> by warrant direct that he is to be detained in such hospital, within the meaning given by section 145(1) of the Mental Health Act 1983, as may be specified in the direction; and any such direction shall have the same effect as a hospital order under section 37 of that Act together with a restriction order under section 41 of that Act <sup>F5</sup> ...; ]
  - (b) in the said excepted case, the Secretary of State may give the like direction in respect of him under [<sup>F6</sup>section 47] of that Act (with or without a direction under [<sup>F6</sup>section 49] thereof) as may be given in the case of a person serving a sentence of imprisonment with respect to whom the Secretary of State is satisfied as mentioned in subsection (1) of that section.]
- [<sup>F7</sup>(4) Without prejudice to the foregoing provisions of this section, where a criminal lunatic is removed to Scotland, then—
  - (a) except where he is a criminal lunatic by virtue of having been convicted of an offence and afterwards certified or otherwise lawfully proved to be insane, the Secretary of State may give the like direction in respect of him under [<sup>F8</sup>section 69 of the Mental Health (Scotland) Act 1984] as may be given in the case of a person to whom that section applies;
  - (b) in the said excepted case, the Secretary of State may give the like direction in respect of him under section [<sup>F9</sup>71] of that Act (with or without a direction

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under section [<sup>F9</sup>72]thereof) as may be given in the case of a person serving a sentence of imprisonment with respect to whom the Secretary of State is satisfied as mentioned in subsection (1) of that section]

#### Textual Amendments

- F3** S. 10(3) added (E.W.) by [Mental Health Act 1959 \(c. 72\)](#), **Sch. 7 Pt. I**
- F4** Words in s. 10(3)(a) substituted (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), s. 60, **Sch. 10 para. 1**; S.I. 2005/579, art. 3(g)
- F5** Words in s. 10(3)(a) repealed (1.10.2007 for E.W., 3.11.2008 in so far as not already in force) by [Mental Health Act 2007 \(c. 12\)](#), ss. 40(3)(c), 56(1), **Sch. 11 Pts. 8** (with s. 40(7)); S.I. 2007/2798, art. 2(d); S.I. 2008/1900, art. 2(p)
- F6** Words substituted by [Mental Health Act 1983 \(c.20, SIF 85\)](#), s. 148(1)(2), **Sch. 4 para. 3**
- F7** S. 10(4) added (S.) by [Mental Health \(Scotland\) Act 1960 \(c. 61\)](#), **Sch. 4**
- F8** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c.36, SIF 85\)](#), **Sch. 3 para. 2(a)**
- F9** Figure substituted by [Mental Health \(Scotland\) Act 1984 \(c.36, SIF 85\)](#), **Sch. 3 para. 2(b)**

#### Miscellaneous

### 11 Cost of removal.

- (1) The cost of the removal of any prisoner or criminal lunatic under this Act and of his maintenance while in confinement, and of his return, and of his being sent after discharge to any place, shall be paid in such manner as may be arranged between the Governments of the British possessions concerned and the Secretary of State, subject, as regards any cost to be paid out of moneys provided by Parliament, to the consent of the Treasury.
- (2) Nothing in this Act shall affect any power to recover the expenses of removing or returning any prisoner or criminal lunatic from the property of such prisoner or criminal lunatic or otherwise.

### 12 Power of legislature of British possession to pass laws for carrying Act into effect.

If the legislature of a British possession pass any law—

- (a) for determining the authority by whom and the manner in which any jurisdiction, power, or concurrence under this Act is to be exercised or given; or
- (b) for payment of the costs incurred in the removal, maintenance, return, or sending back after discharge of a prisoner or criminal lunatic; or
- (c) for dealing in such possession with prisoners or criminal lunatics removed thereto in pursuance of this Act; or
- (d) for making any class of prisoners subject to removal under this Act; or
- (e) otherwise in any manner for the carrying of this Act or any part thereof into effect as regards the said possession,

it shall be lawful for Her Majesty in Council to direct that such law or any part thereof shall with or without modification or alteration be recognised and given effect to throughout Her Majesty's dominions and on the high seas as if it were part of this Act.

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### 13 Power as to making and revocation of Orders in Council.

- (1) It shall be lawful for Her Majesty in Council from time to time to make Orders for the purposes of this Act, and to revoke and vary any Order so made, . . . <sup>F10</sup>.
- (2) An Order in Council made for the purposes of this Act shall be laid before Parliament . . . <sup>F10</sup>.

#### Textual Amendments

**F10** Words repealed by [Statute Law \(Repeals\) Act 1986 \(c.12\)](#), s. 1(1), [Sch. 1 Pt. XII](#)

### 14 Application of Act to Channel Islands and Isle of Man.

This Act shall extend to the Channel Islands and Isle of Man as if they were part of England and the United Kingdom.

14A . . . . . <sup>F11</sup>

#### Textual Amendments

**F11** [S. 14A](#) (inserted by S.R. & O. 1937/230 (Rev. X p. 545; 1937 p. 963) Sch. Pt. II) repealed by [Statute Law Repeals Act 1976 \(c. 16\)](#), [Sch. 1 Pt. XIV](#)

14B . . . . . <sup>F12</sup>

#### Textual Amendments

**F12** [S. 14B](#) (inserted by S.R. & O. 1937/230 (Rev. X p. 545; 1937 p. 963) Sch. Pt. II) repealed by [Burma Independence Act 1947 \(11&12 Geo. 6 c. 3\)](#), [Sch. 2](#)

### 15 Application of Act to place under foreign jurisdiction Acts.

It shall be lawful for Her Majesty in Council from time to time to direct that this Act shall apply, as if, subject to the conditions, exceptions, and qualifications (if any) contained in the Order, any place out of Her Majesty's dominions in which Her Majesty has jurisdiction, and which is named in the Order, were a British possession and part of Her Majesty's dominions, and to provide for carrying into effect such application.

### 16 Savings.

- (1) . . . . . <sup>F13</sup>
- (2) This Act shall not affect any agreement made either before or after the passing of this Act under the <sup>M2</sup>Colonial Prisoners Removal Act 1869 . . . <sup>F14</sup>

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#### Textual Amendments

**F13** S. 16(1) repealed by [Revision of Army and Air Force Acts \(Transitional Provisions\) Act 1955 \(c. 20\), Sch. 4](#)

**F14** Words repealed by [Statute Law Revision Act 1963 \(c. 30\)](#)

#### Marginal Citations

**M2** 1869 c. 10.

17 ..... <sup>F15</sup>

#### Textual Amendments

**F15** S. 17 repealed by [Statute Law \(Repeals\) Act 1976 \(c. 16\), Sch. 1 Pt. XIV](#)

### 18 Definitions.

In this Act, unless the context otherwise requires, . . . <sup>F16</sup>, the following expressions have the following meanings; that is to say,

The expression “British possession” does not include any place within the United Kingdom, the Isle of Man, or the Channel Islands, but includes all other territories and places being part of Her Majesty’s dominions, and all territories and places within Her Majesty’s dominions . . . <sup>F16</sup> and are under one legislature shall be deemed to be one British possession . . . <sup>F17</sup>

. . . <sup>F18</sup>

The expression “legislature” where there are local legislatures, as well as a central legislature, means the central legislature only . . . <sup>F17</sup>

. . . <sup>F19</sup>

The expression “Governor” means any person or persons administering the government of a British possession . . . <sup>F17</sup>

The expression “Colonial Secretary” includes a person performing the like duties as a Colonial Secretary, whether known as Government Secretary, Chief Secretary to the Government, or by any other title.

The expression “prison” includes any place for the confinement or detention of prisoners whether convicted or unconvicted.

The expression “sentence of imprisonment” means any sentence involving confinement in a prison, whether combined or not with labour, and whether known as penal servitude, imprisonment with hard labour, rigorous imprisonment, imprisonment, or otherwise, and includes a sentence awarded by way of commutation as well as an original sentence passed by the court.

The expression “criminal lunatic” means a person detained in custody by reason of his having been charged with an offence, and either found to have been insane at the time of such offence, or found or certified or otherwise lawfully proved to be unfit on the ground of his insanity to be tried for the same, and includes a person convicted of an offence and afterwards certified or otherwise lawfully proved to be insane.



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#### Textual Amendments

- F16** Words repealed by [Statute Law \(Repeals\) Act 1976 \(c. 16\)](#), [Sch. 1 Pt. VII](#)
- F17** Words repealed by S.R. & O. 1937+/230 (Rev. X, p. 545: 1937, p. 963), Sch. Pt. II
- F18** Definition of “India” repealed by S.R. & O. 1937/230 (Rev. X, p. 545: 1937, p. 963), Sch. Pt. II
- F19** Definition of “Secretary of State” repealed by [Statute Law Revision Act 1898 \(c. 22\)](#)

**Changes to legislation:**

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