



# Repatriation of Prisoners Act 1984

## 1984 CHAPTER 47

*[<sup>F1</sup>Transfer of prisoners to or from the United Kingdom]*

### Textual Amendments

- F1** S. 1 cross-heading inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 26 para. 10](#); S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)

### 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 [<sup>F2</sup>relevant 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 prisoner”), and
  - [<sup>F3</sup>(c) in a case in which the terms of those arrangements provide for the prisoner to be transferred only with his consent, the prisoner's consent has been given,]
- the [<sup>F2</sup>relevant Minister] shall issue a warrant providing for the transfer of the prisoner into or out of the United Kingdom.
- (2) The [<sup>F2</sup>relevant Minister] shall not issue a [<sup>F4</sup>warrant under this section], 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 [<sup>F2</sup>relevant Minister]’s attention, which in his opinion make it inappropriate that the transfer should take place.
- (3) The [<sup>F2</sup>relevant Minister] shall not issue a [<sup>F5</sup>warrant under this section] 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 [<sup>F2</sup>relevant Minister] to be appropriate having regard to any close ties which that person has with the United Kingdom; or

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- (c) it appears to the [F<sup>2</sup>relevant Minister] 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 [F<sup>2</sup>relevant Minister] shall not issue a [F<sup>6</sup>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 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 <sup>F7</sup>...,
  - (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 [F<sup>2</sup>relevant Minister] under section 6 of this Act;
- and, the [F<sup>2</sup>relevant Minister] shall not issue a warrant superseding an earlier [F<sup>6</sup>warrant under this section] unless the requirements of this subsection were fulfilled in relation to the earlier warrant.
- (5) [F<sup>8</sup>In such a case as is referred to in subsection (1)(c) above, the relevant Minister shall not issue a [F<sup>9</sup>warrant under this section] unless he is satisfied that the prisoner's consent 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 [F<sup>2</sup>relevant Minister] 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 [F<sup>2</sup>relevant Minister] 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 [F<sup>10</sup>under this section] 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 [F<sup>11</sup>any of] 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.
- [F<sup>12</sup>(7A) In subsection (7)(a) the reference to an order made by a court or tribunal in the United Kingdom in the course of the exercise of its criminal jurisdiction includes an order made (anywhere) by—

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- (a) the Court Martial;
  - (b) the Service Civilian Court;
  - (c) the Court Martial Appeal Court; or
  - (d) the Supreme Court on an appeal brought from the Court Martial Appeal Court.]
- (8) In subsection (7)(b) above the reference to provisions similar to [<sup>F13</sup>any of] the provisions of this Act shall be construed as a reference to any provisions which have effect with respect to [<sup>F14</sup>—
- (a) 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<sup>F15</sup>; or
  - (b) the transfer between different countries and territories (or different parts of a country or territory) of responsibility for the detention and release of persons who are required to be so detained in one of those countries or territories (or parts of a country or territory) but are present in the other country or territory (or part of a country or territory).]
- [<sup>F16</sup>(9) In this section “relevant Minister” means—
- (a) the Scottish Ministers in a case where the person who is the subject of the proposed transfer is for the time being required to be detained in a prison, a hospital or any other institution either—
    - (i) in Scotland; or
    - (ii) in the country or territory referred to in subsection (1)(b) above if it is proposed to transfer him from that country or territory to Scotland;  
<sup>F17</sup>...
  - [<sup>F18</sup>(aa) the Department of Justice in Northern Ireland in a case where the person who is the subject of the proposed transfer is for the time being required to be detained in a prison, a hospital or any other institution either—
    - (i) in Northern Ireland; or
    - (ii) in the country or territory referred to in subsection (1)(b) above if it is proposed to transfer him from that country or territory to Northern Ireland; and]
  - (b) the Secretary of State in any other case.]

#### Textual Amendments

- F2** Words in s. 1(1)-(5) substituted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 75(2)(a)**
- F3** S. 1(1)(c) substituted (15.1.2007) by Police and Justice Act 2006 (c. 48), **ss. 44(2)**, 53(1); S.I. 2006/3364, art. 2(f)
- F4** Words in s. 1(2) substituted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 11(2)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F5** Words in s. 1(3) substituted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 11(2)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F6** Words in s. 1(4) substituted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 11(3)(a)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F7** Words in s. 1(4)(b) repealed (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), Sch. 26 para. 11(3)(b), **Sch. 28 Pt. 6**; S.I. 2008/1586, art. 2(1), Sch. 1 paras. 48(g)50(6)
- F8** Words in s. 1(5) substituted (15.1.2007) by Police and Justice Act 2006 (c. 48), **ss. 44(3)**, 53(1); S.I. 2006/3364, art. 2(f)

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- F9** Words in s. 1(5) substituted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 11(4)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F10** Words in s. 1(6) inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 11(5)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F11** Words in s. 1(7)(b) inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 11(6)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F12** S. 1(7A) inserted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by Armed Forces Act 2006 (c. 52), s. 383(2), **Sch. 16 para. 98**; S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- F13** Words in s. 1(8) inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 11(7)(a)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F14** Words in s. 1(8) inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 11(7)(b)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F15** S. 1(8)(b) and word inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 11(7)(c)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F16** S. 1(9) inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. 1 para. 75(2)(b)**
- F17** Word in s. 1(9)(a) omitted (12.4.2010) by virtue of The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 8 para. 2(a)** (with arts. 28-31)
- F18** S. 1(9)(aa) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 8 para. 2(b)** (with arts. 28-31)

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

- C1** Ss. 1-8: certain functions made exercisable in or as regards Scotland (30.6.1999) by S.I. 1999/1748, arts. 4(1), 8(1), **Sch. 2 para. 1(1)-(10)**
- C2** S. 1 amendments made by 2006 c. 48, s. 44(2)(3) extended (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), **ss. 96(1)**, 153(7); S.I. 2008/1586, art. 2(1), Sch. 1 para. 40
- C3** S. 1(7)(a) modified (24.4.2009 for specified purposes, 31.10.2009 in so far as not already in force) by The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059), art. 1(3), **Sch. 1 para. 26**

## 2 Transfer out of the United Kingdom.

[<sup>F19</sup>(1) The effect of a warrant [<sup>F20</sup>under section 1] under section 1 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, his delivery at a place of departure from the United Kingdom into the custody of an appropriate person and his removal by that person from the United Kingdom to a place outside the United Kingdom; or
- (b) the taking of the prisoner to any place in any part of the United Kingdom, his removal from the United Kingdom and his delivery, at the place of arrival from the United Kingdom, into the custody of an appropriate person.

(1A) In subsection (1) “appropriate person” means a person representing the appropriate authority of the country or territory to which the prisoner is to be transferred.]

- (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.

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- (3) If, at any time after the removal of the prisoner from the United Kingdom, it appears to the [<sup>F21</sup>relevant Minister] appropriate to do so in order that effect may be given to the international arrangements in accordance with which the prisoner was transferred, the [<sup>F21</sup>relevant Minister] may give a direction varying the order referred to in subsection (2) above or providing for that order to cease to have effect.

[<sup>F22</sup>(3A) In subsection (3) above, “relevant Minister” means—

- (a) the Scottish Ministers where the order referred to in subsection (2) above relates to a person who has been removed from Scotland by virtue of a warrant issued under section 1 above; <sup>F23</sup> ...
  - [<sup>F24</sup>(aa) the Department of Justice in Northern Ireland where the order referred to in subsection (2) above relates to a person who has been removed from Northern Ireland by virtue of a warrant issued under section 1 above; and]
  - (b) the Secretary of State in any other case.]
- (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 [<sup>F25</sup>warrant under section 1] , 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—
    - [<sup>F26</sup>(i) released on licence under section 28(5) of the Crime (Sentences) Act 1997 or under [<sup>F27</sup>Chapter 6 of Part 12] of the Criminal Justice Act 2003; or]
    - [<sup>F28</sup>(ii) released on licence under section 1(2), (3) or (4), [<sup>F29</sup>1AB,] 2(4) or 7(1) or (2) of the Prisoners and Criminal Proceedings (Scotland) Act 1993;]
    - [<sup>F30</sup>(iii) released subject to a supervised release order made under section 209 of the <sup>M1</sup>Criminal Procedure (Scotland) Act 1995;]
    - (iii) released on licence under [<sup>F31</sup>Article 6(3) of the Life Sentences (Northern Ireland) Order 2001] or discharged on licence [<sup>F32</sup>Article 46 of the Criminal Justice (Children)(Northern Ireland) Order 1998] (release and discharge on licence of, respectively, persons serving imprisonment for life and [<sup>F32</sup>children] in detention for grave crimes); or
    - [<sup>F33</sup>(iiii) released on licence under Article 17 or 19 of the Criminal Justice (Northern Ireland) Order 2008;]
    - (iv) for the purposes of Part II of the <sup>M2</sup>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—

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“hospital order” means an order made under section 37 of the Mental Health Act 1983, section 175 or 376 of the <sup>M3</sup>Criminal Procedure (Scotland) Act 1975 or [<sup>F34</sup>Article 44 of the Mental Health (Northern Ireland) Order 1986]<sup>F35</sup> or a compulsion order under section 57A of the Criminal Procedure (Scotland) Act 1995 ] or any order or direction made under another enactment but having the same effect as an order made under one of [<sup>F34</sup>those provisions]; 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 [<sup>F34</sup>Article 47 of the said Order of 1986] or any order or direction made under another enactment but having the same effect as an order made under one of [<sup>F34</sup>those provisions].

- (7) References in this section to the order by virtue of which the prisoner is required to be detained at the time a [<sup>F36</sup>warrant under section 1] 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.

#### Textual Amendments

- F19** S. 2(1)(1A) substituted for s. 2(1) (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), **ss. 93, 153(7)** (with **Sch. 27 para. 30**); S.I. 2008/1586, art. 2(1), **Sch. 1 para. 37**
- F20** Words in s. 2(1) inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 12(2)**; S.I. 2008/1586, art. 2(1), **Sch. 1 para. 48(g)**
- F21** Words in s. 2(3) substituted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. 1 para. 75(3)(a)**
- F22** S. 2(3A) inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. 1 para. 75(3)(b)**
- F23** Word in s. 2(3A)(a) omitted (12.4.2010) by virtue of The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 8 para. 3(a)** (with arts. 28-31)
- F24** S. 2(3A)(aa) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 8 para. 3(b)** (with arts. 28-31)
- F25** Words in s. 2(4)(a) substituted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 12(3)(a)**; S.I. 2008/1586, art. 2(1), **Sch. 1 para. 48(g)**
- F26** S. 2(4)(b)(i) substituted (4.4.2005) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), **Sch. 32 para. 41** (and with saving in 2008 c. 4, **Sch. 26 para. 12(3)(b)**); S.I. 2005/950, art. 2(1), **Sch. 1 para. 42(19)** (with **Sch. 2**) (as explained (29.7.2005) by S.I. 2005/2122, art. 2; and as amended: (14.7.2008) by 2008 c. 4, **Sch. 26 para. 78, Sch. 28 Pt. 2**; S.I. 2008/1586, **Sch. 1 paras. 48(s), 50(2)(d)**); (30.11.2009) by S.I. 2009/3111, art. 2; (3.12.2012) by S.I. 2012/2905, art. 4; (3.12.2012) by 2012 c. 10, **Sch. 14 para. 17**; S.I. 2012/2906, art. 2(1))
- F27** Words in s. 2(4)(b)(i) substituted (3.12.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), **Sch. 16 para. 4**; S.I. 2012/2906, art. 2(n)
- F28** S. 2(4)(b)(ii) substituted (E.W.S.) (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 3(2)** (with s. 47(2), **Sch. 6 paras. 1, 2**); S.I. 1993/2050, **art. 3(4)**.
- F29** Word in s. 2(4)(b)(ii) inserted (30.4.2021) by Counter-Terrorism and Sentencing Act 2021 (c. 11), s. 50(1)(i), **Sch. 13 para. 50**
- F30** S. 2(4)(b)(iia) inserted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 10(2)(b)**(with s. 33); S.I. 1997/1712, art. 3, **Sch.**
- F31** Words in s. 2(4)(b)(iii) substituted (8.10.2001) by S.I. 2001/2565, **arts. 1(2) 2(2)**; S.R. 2001/337, **art. 2**
- F32** Words in s. 2(4)(b)(iii) substituted (31.1.1999) by S.I. 1998/1504 (N.I. 9), arts. 1(2), **Sch. 5 para. 22**; S.R. 1999/25, **art. 2(c)**
- F33** S. 2(4)(b)(iia) inserted (N.I.) (1.4.2009 for specified purposes) by The Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216), art. 1(4), **Sch. 5 para. 4(1)**; S.R. 2009/120, art. 2, **Sch. 1 para. 18(a)** (with **Sch. 2 paras. 12(3)**)
- F34** Words substituted by S.I. 1986/596, **art. 9**

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**F35** Words in s. 2(6) inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 96(2), 153(7); S.I. 2008/1586, art. 2(1), Sch. 1 para. 40

**F36** Words in s. 2(7) substituted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), Sch. 26 para. 12(4); S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)

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

**C4** Ss. 1-8: certain functions made exercisable in or as regards Scotland (30.6.1999) by S.I. 1999/1748, arts. 4(1), 8(1), Sch. 2 para. 1(1)-(10)

**Marginal Citations**

**M1** 1995 c.46.

**M2** S.I. 1976/226 (N.I. 4.).

**M3** 1975 c. 21.

### 3 Transfer into the United Kingdom.

- (1) The effect of a warrant [<sup>F37</sup>under section 1] 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 [<sup>F38</sup>relevant Minister] 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 [<sup>F39</sup>warrant under section 1] 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 [<sup>F38</sup>relevant 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'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

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- 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 <sup>F40</sup>warrant under section 1] 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 <sup>F41</sup>warrant under section 1].
- (7) <sup>F42</sup>Part 1 of] 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 <sup>F43</sup>warrant under section 1].
- (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.

<sup>F44</sup>(9) .....

<sup>F45</sup>(10) .....

#### Textual Amendments

- F37** Words in s. 3(1) inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 26 para. 13\(2\)](#); S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F38** Words in s. 3(1)(c)(3) substituted (1.7.1999) by S.I. 1999/1820, art. 4, [Sch. 2 Pt. I para. 75\(4\)](#)
- F39** Words in s. 3(2) substituted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 26 para. 13\(3\)](#); S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F40** Words in s. 3(4) substituted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 26 para. 13\(3\)](#); S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F41** Words in s. 3(6) substituted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 26 para. 13\(3\)](#); S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F42** Words in s. 3(7) inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 26 para. 13\(4\)\(a\)](#); S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F43** Words in s. 3(7) substituted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 26 para. 13\(4\)\(b\)](#); S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F44** S. 3(9) repealed (18.12.2003) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(2), Sch. 32 para. 42, [Sch. 37 Pt. 9](#)



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**F45** S. 3(10) repealed (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), Sch. 26 para. 13(5), **Sch. 28 Pt. 6**; S.I. 2008/1586, art. 2(1), Sch. 1 paras. 48(g)50(6)

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

**C5** Ss. 1-8: certain functions made exercisable in or as regards Scotland (30.6.1999) by S.I. 1999/1748, arts. 4(1), 8(1), **Sch. 2 para. 1(1)-(10)**

**[<sup>F46</sup>3A Prosecution of other offences**

- (1) This section applies where—
  - (a) a person has been transferred into [<sup>F47</sup>the United Kingdom] under a warrant under section 1, and
  - (b) the international arrangements in accordance with which the person has been transferred contain a speciality provision.
- (2) The person must not, unless a condition in subsection (3) is met—
  - (a) be prosecuted for any offence committed before the departure of that person from the country or territory from which that person has been transferred, or
  - (b) be detained or otherwise subjected to any restriction of liberty for any offence committed before the departure of that person from the country or territory from which that person has been transferred, other than the offence in respect of which the person has been transferred.
- (3) For the purposes of subsection (2), the conditions are as follows—
  - (a) the person has consented to the transfer;
  - (b) the offence is an offence which is not punishable with imprisonment or another form of detention;
  - (c) the offence is an offence in respect of which the person will not be detained in connection with the person's trial, sentence or appeal;
  - (d) the person is given an opportunity to leave [<sup>F48</sup>the United Kingdom] and—
    - (i) the person does not do so before the end of the permitted period, or
    - (ii) if the person does so before the end of the permitted period, the person subsequently returns to Great Britain;
  - (e) after the transfer has taken place, the person has made a renunciation of the application of subsection (2) to the offence;
  - (f) the appropriate authority of the country or territory from which the person has been transferred consents to the prosecution of the offence.
- (4) For the purpose of subsection (3)(d) the “permitted period” is 45 days starting with the day on which the person's sentence ends.
- (5) For the purpose of subsection (3)(e) a renunciation must be made before a court before which the person may be prosecuted for that offence.
- (6) In this section a “speciality provision” means a provision preventing or limiting the prosecution, detention or other restriction of liberty of the person (“P”) for any offence committed before the departure of P from the country or territory from which P has been transferred, other than for the offence in respect of which P has been transferred.]

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#### Textual Amendments

- F46** S. 3A inserted (E.W.S.) (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), ss. 130, 151\(1\)](#); S.I. 2012/2906, art. 2(f)
- F47** Words in s. 3A(1)(a) substituted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\), regs. 1\(b\), 114\(2\)](#)
- F48** Words in s. 3A(3)(d) substituted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\), regs. 1\(b\), 114\(2\)](#)

#### 4 Temporary return.

- (1) A single [<sup>F49</sup>warrant under section 1] 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 [<sup>F50</sup>relevant Minister] 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 outside the British Islands from which he has previously been transferred into the United Kingdom [<sup>F51</sup>, or from which responsibility for his detention and release has previously been transferred to the United Kingdom,] under this Act or any other enactment; or
  - (b) to the United Kingdom from a country or territory outside the British Islands to which he has previously been transferred [<sup>F52</sup>, or to which responsibility for his detention and release has previously been transferred,] from the United Kingdom under this Act.
- (2) The provisions contained by virtue of section 3(1)(c) above in [<sup>F53</sup>a warrant under section 1] 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 [<sup>F54</sup>earlier warrant under section 1 or section 4A], 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 [<sup>F55</sup>issued under section 1] containing, with respect to provisions contained in an earlier warrant [<sup>F56</sup>under section 1 or section 4A], 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 [<sup>F57</sup>warrant under section 1] 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.
- [<sup>F58</sup>(5) In this section “relevant Minister” means—
- (a) the Scottish Ministers in a case where the prisoner is a person who is either—
    - (i) detained in Scotland and the transfers are for the purpose of a temporary return of the prisoner to a country or territory outside the

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- British Islands from which he has previously been transferred into Scotland under this Act or any other enactment; or
- (ii) detained in a country or territory outside the British Islands to which he has previously been transferred from Scotland under this Act; <sup>F59</sup> ...
- [ the Department of Justice in Northern Ireland in a case where the prisoner is a person who is either—
- <sup>F60</sup>(aa) (i) detained in Northern Ireland and the transfers are for the purpose of a temporary return of the prisoner to a country or territory outside the British Islands from which he has previously been transferred into Northern Ireland under this Act or any other enactment; or
- (ii) detained in a country or territory outside the British Islands to which he has previously been transferred from Northern Ireland under this Act; and]
- (b) the Secretary of State in any other case.]

[<sup>F61</sup>(6) Any reference in subsection (5)(a) to the prisoner having previously been transferred into or from Scotland includes a reference to responsibility for his detention and release having previously been transferred to or from the Scottish Ministers (as the case may be).]

[<sup>F62</sup>(7) Any reference in subsection (5)(aa) to the prisoner having previously been transferred into or from Northern Ireland includes a reference to responsibility for his detention and release having previously been transferred to or from the Department of Justice in Northern Ireland (as the case may be).]

#### Textual Amendments

- F49** Words in s. 4(1) substituted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 14(2)(a)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F50** Words in s. 4(1) substituted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 75(5)(a)**
- F51** Words in s. 4(1)(a) inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 14(2)(b)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F52** Words in s. 4(1)(b) inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 14(2)(c)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F53** Words in s. 4(2) substituted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 14(3)(a)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F54** Words in s. 4(2) substituted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 14(3)(b)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F55** Words in s. 4(3) substituted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 14(4)(a)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F56** Words in s. 4(3) inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 14(4)(b)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F57** Words in s. 4(4) substituted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 14(5)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F58** S. 4(5) inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 75(5)(b)**
- F59** Word in s. 4(5)(a) omitted (12.4.2010) by virtue of The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 8 para. 4(2)(a)** (with arts. 28-31)
- F60** S. 4(5)(aa) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 8 para. 4(2)(b)** (with arts. 28-31)
- F61** S. 4(6) inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 14(6)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)

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**F62** S. 4(7) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), [Sch. 8 para. 4\(3\)](#) (with arts. 28-31)

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

**C6** Ss. 1-8: certain functions made exercisable in or as regards Scotland (30.6.1999) by [S.I. 1999/1748](#), arts. 4(1), 8(1), [Sch. 2 para. 1\(1\)-\(10\)](#)

*<sup>F63</sup>Transfer of responsibility for detention and release of offender present outside the country or territory in which he is required to be detained*

**Textual Amendments**

**F63** Ss. 4A-4C and cross-heading inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), [ss. 94](#), 153(7); [S.I. 2008/1586](#), art. 2(1), [Sch. 1 para. 38](#)

**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
    - (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

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- (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 [<sup>F64</sup>the relevant Minister] (where subsection (2) applies) or to [<sup>F64</sup>the relevant 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;
  - (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—

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- (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;
- [ the Department of Justice in Northern Ireland in a case where the person who
- <sup>F65</sup>(aa) 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 Northern Ireland; or
  - (ii) a person to whom subsection (3) applies, if it is proposed that he will be detained at a place in Northern Ireland;]
- (b) the Secretary of State, in any other case.

#### Textual Amendments

- F64** Words in s. 4A(5) substituted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 8 para. 5(a)** (with arts. 28-31)
- F65** S. 4A(10)(aa) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 8 para. 5(b)** (with arts. 28-31)

#### 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.
- (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; <sup>F66</sup>...
  - [ the Department of Justice in Northern Ireland, where Northern Ireland is the
  - <sup>F67</sup>(aa) 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

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- 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.

#### Textual Amendments

- F66** Word in s. 4B(4) omitted (12.4.2010) by virtue of [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), [Sch. 8 para. 6](#) (with arts. 28-31)
- F67** S. 4B(4)(aa) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), [Sch. 8 para. 6](#) (with arts. 28-31)

#### 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—
- (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

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- (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.]

*[<sup>F68</sup>Persons believed to fall within section 4A(3): powers of arrest and detention*

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**Textual Amendments**

**F68** Ss. 4D-4F and cross-heading inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008](#) (c. 4), [ss. 95, 153\(7\)](#); S.I. 2008/1586, art. 2(1), Sch. 1 para. 39

**4D Arrest and detention with a view to establishing whether a person falls within section 4A(3) etc.**

- (1) The Secretary of State or the Scottish Ministers [<sup>F69</sup>or the Department of Justice in Northern Ireland] may issue a certificate stating that the issuing authority—
- (a) considers that there are reasonable grounds for believing that a person in the United Kingdom is a person falling within section 4A(3), and
  - (b) has requested written confirmation from the country or territory concerned of the details of that person's case.
- (2) The issuing authority may send the certificate (with any other documents appearing to the authority to be relevant) to the appropriate judge with a view to obtaining the issue of a warrant under subsection (3).



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- (3) The appropriate judge may, on receiving the certificate, issue a warrant for the arrest of the person concerned if the judge is satisfied that there are reasonable grounds for believing that the person falls within section 4A(3).
- (4) The warrant may be executed anywhere in the United Kingdom by any designated person (and it is immaterial whether or not he is in possession of the warrant or a copy of it).
- (5) A person arrested under this section shall, as soon as is practicable—
  - (a) be given a copy of the warrant for his arrest; and
  - (b) be brought before the appropriate judge.
- (6) The appropriate judge may order that a person before him who is the subject of a certificate under this section is to be detained from the time the order is made until the end of the period of seven days beginning with the day after that on which the order is made.
- (7) The purpose of an order under subsection (6) is to secure the detention of the person concerned while—
  - (a) written confirmation is obtained from a representative of the country or territory concerned of the details of his case;
  - (b) it is established whether he is a person falling within section 4A(3); and
  - (c) any application for an order under section 4E(6) is made in respect of him.
- (8) Subject to subsection (9), a person detained under such an order may be released at any time during the period mentioned in subsection (6) and shall be released at the end of that period (if not released sooner).
- (9) Subsection (8) ceases to apply to the detained person if, during that period, an order under section 4E is made in respect of him.
- (10) It is immaterial for the purposes of subsection (6) whether or not the person concerned has previously been arrested under this section.

#### Textual Amendments

**F69** Words in s. 4D(1) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), [Sch. 8 para. 7](#) (with arts. 28-31)

#### 4E Arrest and detention with a view to determining whether to issue a warrant under section 4A

- (1) The Secretary of State or the Scottish Ministers [<sup>F70</sup>or the Department of Justice in Northern Ireland] may issue a certificate stating that the issuing authority—
  - (a) considers that a person in the United Kingdom is a person falling within section 4A(3), and
  - (b) has received written confirmation from a representative of the country or territory concerned of the details of that person's case;and it is immaterial for the purposes of this section whether or not the person concerned has been previously arrested or detained under section 4D.

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- (2) The issuing authority may send the certificate (with a copy of the written confirmation mentioned in subsection (1)(b) and any other documents appearing to that authority to be relevant) to the appropriate judge with a view to obtaining the issue of a warrant under subsection (3).
- (3) The appropriate judge may, on receiving the certificate, issue a warrant for the arrest of the person concerned if the judge is satisfied that there are reasonable grounds for believing that the person falls within section 4A(3).
- (4) The warrant may be executed anywhere in the United Kingdom by any designated person (and it is immaterial whether or not that person is in possession of the warrant or a copy of it).
- (5) A person arrested under this section shall, as soon as is practicable—
  - (a) be given a copy of the warrant for his arrest; and
  - (b) be brought before the appropriate judge.
- (6) The appropriate judge may, on the application of the Secretary of State or the Scottish Ministers [<sup>F71</sup>or the Department of Justice in Northern Ireland], order that a person before the judge who—
  - (a) is the subject of a certificate under this section, and
  - (b) the judge is satisfied is a person falling within section 4A(3),
 shall be detained from the time the order is made until the end of the period of fourteen days beginning with the day after that on which the order is made.
- (7) The purpose of an order under subsection (6) is to secure the detention of the person concerned until—
  - (a) it is determined whether to issue a warrant under section 4A; and
  - (b) if so determined, such a warrant is issued.
- (8) Subject to subsection (9), a person detained under such an order may be released at any time during the period mentioned in subsection (6) and shall be released at the end of that period (if not released sooner).
- (9) Subsection (8) ceases to apply to the detained person if, during that period, a warrant under section 4A is issued in respect of him.
- (10) It is immaterial for the purposes of subsection (6) whether or not the person concerned has previously been arrested or detained under section 4D or arrested under this section.

#### Textual Amendments

- F70** Words in s. 4E(1) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), [Sch. 8 para. 8\(a\)](#) (with arts. 28-31)
- F71** Words in s. 4E(6) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), [Sch. 8 para. 8\(b\)](#) (with arts. 28-31)

#### 4F Sections 4D and 4E: supplementary provisions

- (1) This section has effect for the purposes of sections 4D and 4E.

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- (2) A “designated person” is a person designated by the Secretary of State or the Scottish Ministers [<sup>F72</sup>or the Department of Justice in Northern Ireland] .
- (3) The appropriate judge is—
- (a) in England and Wales, any District Judge (Magistrates' Courts) who is designated for those purposes by the Lord Chief Justice after consulting the Lord Chancellor;
  - (b) in Scotland, the sheriff of Lothian and Borders; and
  - (c) in Northern Ireland, any county court judge or resident magistrate who is designated for those purposes by the Lord Chief Justice of Northern Ireland after consulting the Lord Chancellor.
- (4) A designation under subsection (2) or (3)(a) or (c) may be made—
- (a) for the purposes of section 4D or 4E (or both); and
  - (b) for all cases or only for cases (or cases of a description) specified in the designation.
- (5) A designated person shall have all the powers, authority, protection and privileges of a constable in any part of the United Kingdom in which a person who may be arrested under section 4D or 4E is for the time being.]

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**Textual Amendments**

**F72** Words in s. 4F(2) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 8 para. 9** (with arts. 28-31)

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

**C7** S. 4F(3)(c): transfer of functions (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 17 para. 10** (with arts. 28-31)

*[<sup>F73</sup>Supplementary and general provisions]*

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**Textual Amendments**

**F73** S. 5 cross-heading inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), **Sch. 26 para. 15**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)

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

- (1) Where a warrant has been issued [<sup>F74</sup>under section 1] the following provisions of this section [<sup>F75</sup>(apart from subsection (9))] 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 [<sup>F76</sup>relevant Minister] at any time when, being in the United Kingdom or on board a British ship, a British

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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 [<sup>F76</sup>relevant 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 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 <sup>M4</sup>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 <sup>M5</sup>Hovercraft Act 1968, or one of Her Majesty’s hovercraft; and

“British ship” means a British ship within the meaning of the <sup>M6</sup>[<sup>F77</sup>Merchant Shipping Act 1995], or one of Her Majesty’s ships;

and in this subsection reference 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.

[<sup>F78</sup>(8) In this section “relevant Minister” means—

- (a) the Scottish Ministers where the warrant provides for the transfer of a prisoner to or from Scotland; <sup>F79</sup> ...

[ the Department of Justice in Northern Ireland where the warrant provides for the transfer of a prisoner to or from Northern Ireland; and]

- (b) the Secretary of State in any other case.]

[<sup>F81</sup>(9) Where—

- (a) a warrant under section 4A has been issued, and

(b) the relevant person is a person to whom subsection (3) of that section applies, subsections (2) to (8) above apply for the purposes of that warrant (but with the modifications contained in subsection (10)), except (without prejudice to section 4C(4)

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or any enactment contained otherwise than in this Act) in relation to any time when the relevant person is required to be detained in accordance with provisions contained in the warrant by virtue of section 4C(1)(b).

- (10) In their application for the purposes of a warrant under section 4A those subsections shall have effect as if—
- (a) any reference to the warrant under section 1 (however expressed) were a reference to the warrant under section 4A;
  - (b) any reference to the prisoner were a reference to the relevant person;
  - (c) in subsection (4)—
    - (i) in paragraph (a) for “that person” there were substituted “ the authorised person ”; and
    - (ii) paragraph (b) were omitted; <sup>F82</sup>...
  - (d) in subsection (8)(a) for “transfer of a prisoner to or from Scotland” there were substituted “ transfer of responsibility for the detention and release of the relevant person to the Scottish Ministers” [<sup>F83</sup>; and]
  - <sup>F83</sup>(e) [ in subsection (8)(aa) for “transfer of a prisoner to or from Northern Ireland” there were substituted “transfer of responsibility for the detention and release of the relevant person to the Department of Justice]]

#### Textual Amendments

- F74** Words in s. 5(1) substituted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 16(2)(a)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F75** Words in s. 5(1) inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 16(2)(b)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F76** Words in s. 5(2)(3) inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. 1 para. 75(6)(a)**
- F77** S. 5(6): words in definition of “British ship” substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 73** (with s. 312(1))
- F78** S. 5(8) inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. 1 para. 75(6)(b)**
- F79** Word in s. 5(8)(a) omitted (12.4.2010) by virtue of The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 8 para. 10(2)(a)** (with arts. 28-31)
- F80** S. 5(8)(aa) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 8 para. 10(2)(b)** (with arts. 28-31)
- F81** S. 5(9)(10) inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 16(3)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F82** Word in s. 5(10) omitted (12.4.2010) by virtue of The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 8 para. 10(3)** (with arts. 28-31)
- F83** S. 5(10)(e) and preceding word inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 8 para. 10(3)** (with arts. 28-31)

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

- C8** Ss. 1-8: certain functions made exercisable in or as regards Scotland (30.6.1999) by S.I. 1999/1748, arts. 4(1), 8(1), **Sch. 2 para. 1(1)-(10)**

#### Marginal Citations

- M4** 1982 c. 16.  
**M5** 1968 c. 59.

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M6 1995 c. 21.

## 6 Revocation etc. of warrants.

- (1) Subject to section 1(4) above, if at any time it appears to the [<sup>F84</sup>relevant Minister] 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 [<sup>F85</sup>warrant under section 1] 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 [<sup>F86</sup>that section] containing provision superseding some or all of the provisions of the previous warrant.
- [<sup>F87</sup>(1A) Subject to section 4A(8), if at any time it appears to the relevant Minister appropriate, in order that effect may be given to any such arrangements as are mentioned in section 4A(5)(a) for a warrant under section 4A 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 section 4A 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) [<sup>F88</sup> or (1A)(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) [<sup>F89</sup> or (1A)(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.
- [<sup>F90</sup>(5) In this section “relevant Minister” means—
- (a) the Scottish Ministers [<sup>F91</sup>in a case where—
    - (i) the warrant was issued under section 1 and provides for the transfer of the prisoner to or from Scotland; or
    - (ii) the warrant was issued under section 4A and provides for the transfer of responsibility for the detention and release of the relevant person to those Ministers;]
  - [<sup>F92</sup>(aa) the Department of Justice in Northern Ireland in a case where—
    - (i) the warrant was issued under section 1 and provides for the transfer of the prisoner to or from Northern Ireland; or
    - (ii) the warrant was issued under section 4A and provides for the transfer of responsibility for the detention and release of the relevant person to the Department of Justice;]

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(b) the Secretary of State in any other case.]

#### Textual Amendments

- F84** Words in s. 6(1) substituted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 75(7)(a)**
- F85** Words in s. 6(1) substituted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 17(2)(a)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F86** Words in s. 6(1)(b) substituted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 17(2)(b)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F87** S. 6(1A) inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 17(3)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F88** Words in s. 6(2) inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 17(4)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F89** Words in s. 6(3) inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 17(4)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F90** S. 6(5) inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 75(7)(b)**
- F91** Words in s. 6(5)(a) substituted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 17(5)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F92** S. 6(5)(aa) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 8 para. 11** (with arts. 28-31)

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

- C9** Ss. 1-8: Certain functions made exercisable in or as regards Scotland (30.6.1999) by S.I. 1999/1748, arts. 4(1), 8(1), **Sch. 2 para. 1(1)-(10)**

### [<sup>F93</sup>6A Transit

- (1) The relevant Minister may issue a transit order where—
- 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 (2) applies; and
  - the relevant Minister has received a request from the appropriate authority of that country or territory in accordance with those arrangements for the transit of a person to whom subsection (2) applies through a part of [<sup>F94</sup>the United Kingdom].
- (2) A person falls within this subsection if—
- that person is for the time being required to be detained in a prison, a hospital or any other institution either—
    - by virtue of 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
    - by virtue of any provisions of the law of such a country or territory which are similar to any of the provisions of this Act; and
  - except in a case where a transit request is made in the circumstances described in section 6D (1), that person is present in a country or territory outside the British Islands.
- (3) The relevant Minister may issue a transit order where—
- international arrangements apply to any of the Channel Islands or the Isle of Man which provide for the transfer between that island and a country or

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- territory outside the British Islands of persons to whom subsection (4) applies; and
- (b) the relevant Minister has received a request from the appropriate authority of that island for the transit of a person to whom subsection (4) applies through a part of [<sup>F95</sup>the United Kingdom].
- (4) A person falls within this subsection if—
- (a) that person is for the time being required to be detained in a prison, a hospital or any other institution either—
- (i) by virtue of an order made in the course of the exercise of its criminal jurisdiction by a court or tribunal in the island from which the transit request is made; or
- (ii) by virtue of any provisions of the law of that island which are similar to any of the provisions of this Act; and
- (b) except in a case where a transit request is made in the circumstances described in section 6D(1), that person is present in that island.
- (5) Terms used in subsection (2)(a) or (4)(a) have the same meaning as in section 1(7).
- (6) In this section and sections 6B, 6C and 6D “transit order” means an order issued by the relevant Minister, in respect of a person who has been the subject of a request within subsection (1)(b) or (3)(b), which authorises the detention of that person in any part of [<sup>F96</sup>the United Kingdom] at any time when that person is in transit.
- (7) In subsection (6) “detention” includes detention while the person is being taken from one place to another place within [<sup>F97</sup>the United Kingdom].
- (8) A person may be detained pursuant to a transit order only for as long as is reasonable and necessary to allow the transit to take place.
- (9) In this section and section 6B “relevant Minister” means—
- (a) the Scottish Ministers, in a case where it is proposed that the person who is the subject of a request under subsection (1)(b) or (3)(b) will, whilst in transit—
- (i) be present only in Scotland, or
- (ii) arrive in Scotland before being taken to another part of [<sup>F98</sup>the United Kingdom];
- [<sup>F99</sup>(aa) the Department of Justice in Northern Ireland, in a case where it is proposed that the person who is the subject of a request under subsection (1)(b) or (3)(b) will, whilst in transit—
- (i) be present only in Northern Ireland, or
- (ii) arrive in Northern Ireland before being taken to another part of the United Kingdom;]
- (b) the Secretary of State, in any other case.
- (10) For the purposes of this section and sections 6B and 6C a person who is the subject of a transit order is “in transit” at any time during the period beginning with the arrival of that person in [<sup>F100</sup>the United Kingdom] and ending with the removal of that person from [<sup>F100</sup>the United Kingdom] .]

#### Textual Amendments

**F93** Ss. 6A-6D inserted (E.W.S.) (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 131\(1\), 151\(1\)](#); S.I. 2012/2906, art. 2(f)



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- F94** Words in s. 6A(1)(b) substituted (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), regs. 1(b), **114(3)(a)**
- F95** Words in s. 6A(3)(b) substituted (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), regs. 1(b), **114(3)(a)**
- F96** Words in s. 6A(6) substituted (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), regs. 1(b), **114(3)(b)**
- F97** Words in s. 6A(7) substituted (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), regs. 1(b), **114(3)(c)**
- F98** Words in s. 6A(9)(a)(ii) substituted (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), regs. 1(b), **114(3)(d)(i)**
- F99** S. 6A(9)(aa) inserted (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), regs. 1(b), **114(3)(d)(ii)**
- F100** Words in s. 6A(10) substituted (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), regs. 1(b), **114(3)(e)**

**[<sup>F93</sup>6B Transit: supplementary**

- (1) A person who is the subject of a transit order is deemed to be in the legal custody of the relevant Minister at any time when that person is in transit.
- (2) A constable may for the purposes of a transit order detain a person who is the subject of that order.
- (3) The relevant Minister may, from time to time, designate any person as a person who is for the time being authorised for the purposes of a transit order to detain a person under the order.
- (4) A person authorised under subsection (3) has all the powers, authority, protection and privileges of a constable in any part of [<sup>F101</sup>the United Kingdom] in which the person who is the subject of the transit order is for the time being.
- (5) If a person who is the subject of a transit order escapes or is unlawfully at large, that person may be arrested without warrant by a constable.
- (6) A constable may search a person who is the subject of a transit order, and any item in the possession of that person, for any item which that person might use—
  - (a) to cause physical injury to that person or to any other person; or
  - (b) to assist that person to escape from detention.
- (7) The power conferred by subsection (6) does not authorise a constable to require a person to remove any clothing other than an outer coat, jacket, headgear or gloves.
- (8) The power conferred by subsection (6) includes power to use reasonable force where necessary.
- (9) A constable searching a person in the exercise of the power conferred by subsection (6) may seize any item found if the constable has reasonable grounds for believing that the person searched might use the item—
  - (a) to cause physical injury to that person or to any other person; or
  - (b) to assist that person to escape from detention.
- (10) Any item seized from a person under subsection (9) may be retained while that person is in transit.
- (11) In this section “constable” means—

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- (a) any person who is a constable in any part of [<sup>F102</sup>the United Kingdom] or who has, under any enactment (including subsection (4) above), the powers of a constable in any part of [<sup>F102</sup>the United Kingdom] , or
  - (b) any person who is a prison officer within the meaning of section 117(1) of the Criminal Justice and Public Order Act 1994.
- (12) A person who is a constable by virtue of subsection (11)(a) has, for the purposes of section 6A, this section and section 6C, all the powers, authority, protection and privileges of a constable in any part of Great Britain in which a person who is the subject of a transit order is for the time being.]

#### Textual Amendments

**F93** Ss. 6A-6D inserted (E.W.S.) (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 131(1)**, 151(1); S.I. 2012/2906, art. 2(f)

**F101** Words in s. 6B(4) substituted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\)](#), regs. 1(b), **114(4)**

**F102** Words in s. 6B(11)(a) substituted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\)](#), regs. 1(b), **114(4)**

### [<sup>F93</sup>[<sup>F103</sup>**6**Transit through different parts of the United Kingdom

- (1) Where—
  - (a) a transit order is issued by the Minister for one part of the United Kingdom (“jurisdiction A”), and
  - (b) it is proposed that the person who is the subject of the order will whilst in transit be taken to another part of the United Kingdom (“jurisdiction B”),
 the Minister for jurisdiction A must notify the Minister for jurisdiction B.
- (2) Notification need not be given where the Minister for jurisdiction B has agreed in writing to the transit order.
- (3) Unless the Minister for jurisdiction B agrees in writing to the transit order, the order authorises the detention of the person subject to it in jurisdiction A only.
- (4) But where the person escapes or is unlawfully at large, the order also authorises—
  - (a) the arrest of the person under section 6B(5) in a part of the United Kingdom other than jurisdiction A, and
  - (b) the detention of the person in that part by a constable (within the meaning of that section) for the purpose of taking the person to jurisdiction A.
- (5) For the purposes of this section—
  - (a) the Minister for England and Wales, is the Secretary of State,
  - (b) the Minister for Scotland is the Scottish Ministers, and
  - (c) the Minister for Northern Ireland is the Department of Justice in Northern Ireland.]]

#### Textual Amendments

**F93** Ss. 6A-6D inserted (E.W.S.) (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 131(1)**, 151(1); S.I. 2012/2906, art. 2(f)

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**F103** S. 6C substituted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\)](#), regs. 1(b), **114(5)**

## **[<sup>F93</sup>6D Transit: unscheduled arrivals**

- (1) This section applies where—
  - (a) a person is being transferred between two countries or territories outside the United Kingdom in accordance with international arrangements between those two countries or territories providing for the transfer of persons within section 6A(2)(a) or (4)(a),
  - (b) the United Kingdom is a party to international arrangements of the kind mentioned in section 6A(1)(a) with at least one of those countries or territories such that the country or territory can make a request under section 6A(1)(b), and
  - (c) the person makes an unscheduled arrival in [<sup>F104</sup>the United Kingdom].
- (2) A constable may detain a person to whom subsection (1) applies until the expiry of the period of 72 hours beginning with the person's arrival in [<sup>F105</sup>the United Kingdom] or until a transit order is issued under section 6A in respect of that person, whichever is the sooner.
- (3) In this section “constable” means any person who is a constable in any part of [<sup>F106</sup>the United Kingdom] or who has, under any enactment (including section 6B(4) above), the powers of a constable in any part of [<sup>F106</sup>the United Kingdom].
- (4) A person who is a constable by virtue of subsection (3) has for the purposes of this section all the powers, authority, protection and privileges of a constable in the part of [<sup>F107</sup>the United Kingdom] in which the person mentioned in subsection (2) is for the time being.]

### **Textual Amendments**

- F93** Ss. 6A-6D inserted (E.W.S.) (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 131(1)**, 151(1); S.I. 2012/2906, art. 2(f)
- F104** Words in s. 6D(1)(c) substituted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\)](#), regs. 1(b), **114(6)**
- F105** Words in s. 6D(2) substituted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\)](#), regs. 1(b), **114(6)**
- F106** Words in s. 6D(3) substituted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\)](#), regs. 1(b), **114(6)**
- F107** Words in s. 6D(4) substituted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\)](#), regs. 1(b), **114(6)**

## **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 [<sup>F108</sup>relevant Minister], 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

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person to the United Kingdom; and for this purpose the [<sup>F108</sup>relevant Minister] 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 [<sup>F108</sup>relevant Minister] 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 [<sup>F108</sup>relevant 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 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.

[<sup>F109</sup>(3A) In subsections (2) and (3) above, “relevant Minister” means—

- (a) the Scottish Ministers where the transfer is to Scotland; <sup>F110</sup> ...
- [ <sup>F111</sup>(aa) the Department of Justice in Northern Ireland where the transfer is to Northern Ireland; and]
- (b) the Secretary of State in any other case.]

- (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.

[<sup>F112</sup>(5A) The Scottish Ministers shall pay any sums received by them by virtue of subsection (2) above into the Scottish Consolidated Fund.]

#### Textual Amendments

- F108** Words in s. 7(2)(3) substituted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 75(8)(a)**
- F109** S. 7(3A) inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 75(8)(b)**
- F110** Word in s. 7(3A)(a) omitted (12.4.2010) by virtue of The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 8 para. 12(a)** (with arts. 28-31)
- F111** S. 7(3A)(aa) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 8 para. 12(b)** (with arts. 28-31)
- F112** S. 7(5A) inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 75(8)(c)**

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

- C10** Ss. 1-8: certain functions made exercisable in or as regards Scotland (30.6.1999) by S.I. 1999/1748, arts. 4(1), 8(1), **Sch. 2 para. 1(1)-(10)**

## 8 Interpretation and certificates.

- (1) In this Act, except in so far as the context otherwise requires—

[<sup>F113</sup>“enactment” includes an enactment comprised in, or in an instrument under, an Act of the Scottish Parliament;]

<sup>F114</sup> ...

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“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<sup>[F115]</sup>; and

“the relevant person” has the meaning given by section 4A(5)(b).]

- (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.

<sup>[F116]</sup>(2A) In this Act—

- (a) “international arrangements” includes any arrangements between the United Kingdom and a British overseas territory, and
- (b) references to a country or territory being a party to international arrangements include references to the country or territory being required to comply with provisions of a Framework Decision of the Council of the European Union (and references to international arrangements are to be construed accordingly).]

- (3) In any proceedings, the certificate of the <sup>[F117]</sup>relevant Minister]—

- (a) that a particular country or territory is a party to any such international arrangements as are mentioned in section 1(1)(a) <sup>[F118]</sup> or 4A(5)(a) above,
- (b) that the appropriate authority of a country or territory which is <sup>[F119]</sup>a party to such international arrangements as are mentioned in section 1(1)(a) has agreed to the transfer of a particular person in accordance with any such arrangements,

<sup>[F120]</sup>(ba) that the appropriate authority of a country or territory which is a party to such international arrangements as are mentioned in section 4A(5)(a) has agreed to the transfer of responsibility for the detention and release of a particular person in accordance with those 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.

<sup>[F121]</sup>(4) In subsection (3) above, “relevant Minister” means—

- (a) the Scottish Ministers where the proceedings relate to a transfer which they have the responsibility under this Act to make or consider making; <sup>F122</sup> ...

<sup>F123</sup>(aa) [ the Department of Justice in Northern Ireland where the proceedings relate to a transfer which it has the responsibility under this Act to make or consider making; and]

- (b) the Secretary of State in any other case.]

#### Textual Amendments

**F113** Words in s. 8(1) inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\), ss. 96\(3\), 153\(7\)](#); S.I. 2008/1586, art. 2(1), Sch. 1 para. 40

**F114** Words in s. 8(1) omitted (3.12.2014) by virtue of [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\)](#), regs. 1(b), **114(7)(a)**

**F115** Words in s. 8(1) inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), **Sch. 26 para. 18(2)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)

**F116** S. 8(2A) inserted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\)](#), regs. 1(b), **114(7)(b)**

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- F117** Words in s. 8(3) substituted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. 1 para. 75(9)(a)**
- F118** Words in s. 8(3)(a) inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 18(3)(a)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F119** Words in s. 8(3)(b) substituted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 18(3)(b)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F120** S. 8(3)(ba) inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 26 para. 18(3)(c)**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(g)
- F121** S. 8(4) inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. 1 para. 75(9)(b)**
- F122** Word in s. 8(4)(a) omitted (12.4.2010) by virtue of The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 8 para. 13(a)** (with arts. 28-31)
- F123** S. 8(4)(aa) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 8 para. 13(b)** (with arts. 28-31)

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

- C11** Ss. 1-8: certain functions made exercisable in or as regards Scotland (30.6.1999) by S.I. 1999/1748, arts. 4(1), 8(1), **Sch. 2 para. 1(10)**

[<sup>F124</sup>**8A Northern Ireland: national security**

- (1) The Secretary of State may, by virtue of this subsection, make an agreement under section 1(1)(b) or 4A(5)(b) if—
  - (a) the agreement is one that could be made by the Department of Justice in Northern Ireland by virtue of section 1(9)(aa) or 4A(10)(aa), and
  - (b) the Secretary of State’s decision to make the agreement is arrived at (wholly or partly) on the basis of protected information.
- (2) Subject to subsection (3), if the Secretary of State makes an agreement by virtue of subsection (1) in any case, in this Act references to the relevant Minister are to be read, for that case, as references to the Secretary of State (and the definitions of “relevant Minister” are to be read accordingly).
- (3) In the case of an agreement under section 4A(5)(b), subsection (2) does not apply to—
  - (a) the references in sections 4A(1) and 4B(1);
  - (b) the last two references in section 4A(5);
  - (c) the second reference in section 4A(6);
  - (d) the first reference in section 4C(1);
  - (e) the reference in paragraph 9 of the Schedule.
- (4) The Secretary of State may notify the Department of Justice that no agreement is to be made under section 1(1)(b) or 4A(5)(b) in relation to a particular person without the Secretary of State’s agreement; and the Department may not make such an agreement in relation to that person without the Secretary of State’s agreement.
- (5) But the Secretary of State may give a notification or refuse his agreement only if his decision to do so is arrived at (wholly or partly) on the basis of protected information.
- (6) In this section “protected information” means information the disclosure of which may, in the opinion of the Secretary of State, be against the interests of national security.]

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**Textual Amendments**

**F124** S. 8A inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 8 para. 14** (with arts. 28-31)

**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) <sup>F125</sup>... This Act extends to Northern Ireland.

<sup>F126</sup>(3A) .....

- (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.

**Textual Amendments**

**F125** Words in s. 9(3) omitted (3.12.2014) by virtue of [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\)](#), regs. 1(b), **114(8)(a)**

**F126** S. 9(3A) omitted (3.12.2014) by virtue of [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\)](#), regs. 1(b), **114(8)(b)**

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

**C12** Power of appointment conferred by s. 9(2) fully exercised: 15.4.1985 appointed by [S.I. 1985/550](#)

**C13** S. 9(4) extended (31.7.1998) by [1998 c. 37, s. 121\(12\)](#)

**C14** S. 9(4) modified (8.5.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), **ss. 152(8)**, 153(1)(g)

**C15** S. 9(4) extended (1.5.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 151(2)(c)**, **153(1)**

**Changes to legislation:**

There are currently no known outstanding effects for the Repatriation of Prisoners Act 1984.