

1986 No. 2226

PRISONERS

The Repatriation of Prisoners (Overseas Territories) Order 1986

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Made

16th December 1986

Coming into Operation

1st February 1987

At the Court at Buckingham Palace, the 16th day of December 1986

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 9(4) of the Repatriation of Prisoners Act 1984, or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1.

This Order may be cited as the Repatriation of Prisoners (Overseas Territories) Order 1986 and shall come into operation on 1st February 1987.

2.—

(1) The provisions of sections 1 to 9 of the Repatriation of Prisoners Act 1984, modified and adapted as in Schedule 1 hereto, shall extend to the Territories specified in Schedule 2 hereto.

(2) For the purpose of construing the said Act as so extended as part of the law of any Territory to which it extends “the Territory” means that Territory, including its territorial waters.

G.I. de Deney,
Clerk of the Privy Council.

SCHEDULE 1**SECTIONS 1 TO 9 OF THE REPATRIATION OF PRISONERS ACT 1984 AS MODIFIED
AND ADAPTED****Article 2****1.— Issue of Warrant for Transfer.**

- (1) Subject to the following provisions of this section, where—
- (a) international arrangements apply to the Territory which provide for the transfer between the Territory and a country or territory outside the Territory of persons to whom subsection (7) below applies, and
 - (b) the Governor and the appropriate authority of that country or territory have each agreed to the transfer under those arrangements of a particular person (in this Act referred to as “the prisoner”), and
 - (c) the prisoner has consented to being transferred in accordance with those arrangements,
- the Governor shall issue a warrant providing for the transfer of the prisoner into or out of the Territory.
- (2) The Governor shall not issue a warrant under this Act, and, if he has issued one, shall revoke it, in any case where after the duty under subsection (1) above has arisen and before the transfer in question takes place circumstances arise, or are brought to the Governor's attention, which in his opinion make it inappropriate that the transfer should take place.
- (3) The Governor shall not issue a warrant under this Act providing for the transfer of any person into the Territory unless—
- (a) that person is a British citizen or a [British overseas territories citizen]¹ or a British National (Overseas);
 - (b) the transfer appears to the Governor to be appropriate having regard to any close ties which that person has with the Territory; or
 - (c) it appears to the Governor that the transfer is such a transfer for the purpose of the temporary return of the prisoner to the Territory as may be provided for by virtue of section 4(1)(b) below.
- (4) The Governor shall not issue a warrant under this Act, other than one superseding an earlier warrant, unless he is satisfied that all reasonable steps have been taken to inform the prisoner in writing in his own language—
- (a) of the substance, so far as relevant to the prisoner's case, of the international arrangements in accordance with which it is proposed to transfer him,
 - (b) of the effect in relation to the prisoner of the warrant which it is proposed to issue in respect of him under this Act.
 - (c) in the case of a transfer into the Territory, of the effect in relation to the prisoner of the law relation 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),

¹ words substituted by British Overseas Territories Act 2002 c. 8 s. 2(3)

(d) in the case of a transfer out of the Territory, 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 Governor under section 6 of this Act;

and, the Governor shall not issue a warrant superseding an earlier warrant under this Act unless the requirements of this subsection were fulfilled in relation to the earlier warrant.

(5) The Governor shall not issue a warrant under this Act unless he is satisfied that the consent given for the purposes of subsection (1)(c) above was given in a manner authorised by the international arrangements in accordance with which the prisoner is to be transferred and was so given either—

(a) by the prisoner himself; or

(b) in circumstances where it appears to the Governor 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 Governor to be an appropriate person to have acted on the prisoner's behalf.

(6) A consent given for the purpose of subsection (1)(c) above shall not be capable of being withdrawn after a warrant has been issued in respect of the prisoner; and, accordingly, a purported withdrawal of that consent after that time shall not affect the validity of the warrant, or of any provision which by virtue of section 6 below subsequently supersedes provisions of that warrant, or of any direction given in relation to the prisoner under section 2(3) below.

(7) This subsection applies to a person if he is for the time being required to be detained in a prison, a hospital or any other institution either—

(a) by virtue of an order made in the course of the exercise by a court or tribunal in the Territory, or in any country or territory outside the Territory, of its criminal jurisdiction; or

(b) under the provisions of this Act or any similar provisions of the law of the Territory, or of the law of any country or territory outside the Territory.

(8) In subsection (7)(b) above the reference to provisions similar to the provisions of this Act shall be construed as a reference to any provisions which have effect with respect to the transfer between different countries and territories (or different parts of a country or territory) of persons who are required to be detained in prisons, hospitals or other institutions by virtue of orders made in the course of the exercise by courts and tribunals of their criminal jurisdiction.

2.— Transfer out of the Territory.

(1) The effect of a warrant providing for the transfer of the prisoner out of the Territory shall be to authorise—

(a) the taking of the prisoner to any place in the Territory and his delivery, at a place of departure from the Territory, into the custody of a person representing the appropriate authority of the country or territory to which the prisoner is to be transferred; and

(b) the removal of the prisoner by the person to whom he is so delivered to a place outside the Territory.

(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 Territory so as to apply to him if he is again in the Territory at any time when under that order he is to be, or may be, detained.

- (3) If, at any time after the removal of the prisoner from the Territory, it appears to the Governor appropriate to do so in order that effect may be given to the international arrangements in accordance with which the prisoner was transferred, the Governor may give a direction varying the order referred to in subsection (2) above or providing for that order to cease to have effect.
- (4) The power by direction under subsection (3) above to vary the order referred to in subsection (2) above shall include power by direction—
- (a) to provide for how any period during which the prisoner is, by virtue of a warrant under this Act, out of the Territory is to be treated for the purposes of that order; and
 - (b) to provide for the prisoner to be treated as having been released on licence.
- (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 Territory if no restriction order is in force in respect of him at that time; and
 - (b) if at that time a restriction order is in force in respect of him, as soon after his removal as the restriction order ceases to have effect.
- (6) In subsection (5) above—
- “hospital order” means any order or direction made under an enactment applying in the Territory and having the same effect as an order made under Section 37 of the Mental Health Act 1983; and
- “restriction order” means any order or direction made under an enactment applying in the Territory and having the same effect as an order made under section 41 of the said Act of 1983.
- (7) References in this section to the order by virtue of which the prisoner is required to be detained at the time a warrant under this Act is issued in respect of him include references to any order by virtue of which he is required to be detained after the order by virtue of which he is required to be detained at that time ceases to have effect.

3.— Transfer into the Territory.

- (1) The effect of a warrant providing for the transfer of the prisoner into the Territory shall be to authorise—
- (a) the bringing of the prisoner into the Territory from a place outside the Territory;
 - (b) the taking of the prisoner to such place in the Territory, 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 the Territory in accordance with such provisions as may be contained in the warrant, being provisions appearing to the Governor to be appropriate for giving effect to the international arrangements in accordance with which the prisoner is transferred.
- (2) Subject to section 4(2) to (4) below, a provision shall not be contained by virtue of subsection (1)(c) above in a warrant under this Act unless it satisfies the following two conditions, that is to say—
- (a) it is a provision with respect to the detention of a person in a prison, a hospital or any other institution; and

- (b) it is a provision which at the time the warrant is issued may be contained in an order made either—
- (i) in the course of the exercise of its criminal jurisdiction by a court in the Territory; 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 sub section (1) above what provisions are appropriate for giving effect to the international arrangements mentioned in that paragraph, the Governor 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 Territory commits an offence corresponding to that in respect of which the prisoner is required to be detained in the country or territory from which he is to be transferred; or
 - (b) are framed without reference to the length—
 - (i) of the period during which the prisoner is, but for the transfer, required to be detained in that country or territory; and
 - (ii) of so much of that period as will have been, or be treated as having been, served by the prisoner when the said provisions take effect.
- (4) Subject to subsection (6) below, a provision contained by virtue of subsection (1)(c) above in a warrant under this Act shall for all purposes have the same effect as the same provision contained in an order made as mentioned in sub-paragraph (i) or, as the case may be, sub-paragraph (ii) of subsection (2)(b) above.
- (5) A provision contained by virtue of subsection (1)(c) above in a warrant under this Act shall take effect with the delivery of the prisoner to the place specified in the warrant for the purposes of subsection (1)(b) above.
- (6) Subsection (4) above shall not confer any right of appeal on the prisoner against provisions contained by virtue of subsection (1)(c) above in a warrant under this Act.
- (8) For the purposes of determining whether at any particular time any such order as is mentioned in subsection (2)(b) above could have been made as so mentioned, there shall be disregarded both—
- (a) any requirement that certain conditions must be satisfied before the order is made; and
 - (b) any restriction on the minimum period in respect of which the order may be made.

4.— Temporary return.

- (1) A single warrant under this Act may provide for the transfer of the prisoner both out of and into (or into and out of) the Territory if it appears to the Governor that the transfers are to be for the purpose of the temporary return of the prisoner either—
- (a) from the Territory to a country or territory outside the Territory from which he has previously been transferred into the Territory under this Act or any other enactment; or
 - (b) to the Territory from a country or territory outside the Territory to which he has previously been transferred from the Territory under this Act.
- (2) The provisions contained by virtue of section 3(1)(c) above in a warrant under this Act issued for the purpose of the temporary return of the prisoner to a country or territory outside the Territory may, where the prisoner is required when that warrant is issued to be detained in accordance with

provisions so contained in an earlier warrant under this Act, require the prisoner to continue, after his return to the Territory, to be detained in accordance with those earlier provisions.

(3) A warrant issued under this Act containing, with respect to provisions contained in an earlier warrant, any such requirement as is referred to in subsection (2) above, shall provide that any period during which the prisoner is out of the Territory 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 arrangement in question) as a period during which the prisoner is detained under the provisions contained in the earlier warrant.

(4) The provisions contained by virtue of section 3(1)(c) above in a warrant under this Act issued for the purpose of the temporary return of the prisoner to the Territory 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.

5.— Operation of warrant and retaking prisoners.

(1) Where a warrant has been issued under this Act the following provisions of this section shall have effect for the purposes of the warrant, except (without prejudice to section 3(4) above or any enactment contained otherwise than in this Act) in relation to any time when the prisoner is required to be detained in accordance with provisions contained in the warrant by virtue of section 3(1)(c) above.

(2) The prisoner shall be deemed to be in the legal custody of the Governor at any time when, being in the Territory or on board a British ship, a British aircraft or a British hovercraft, he is being taken under the warrant to or from any place, or being kept in custody under the warrant.

(3) The Governor 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, whether he is inside or outside the Territory, have all the powers, authority, protection and privileges of a constable in the Territory.

(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 7 of the Tokyo Convention Act 1967 as extended to the Territories by the Tokyo Convention Act (Overseas Territories) Order 1968, or one of Her Majesty's aircraft;

“British hovercraft” means a British-controlled hovercraft within the meaning of the said section 7 as if it were applied in relation to hovercraft, or one of Her Majesty's hovercraft; and

“British ship” means a British ship within the meaning of the Merchant Shipping Act 1894, or one of Her Majesty's ships;

and in this subsection references to Her Majesty's aircraft, hovercraft or ships are references to the aircraft, hovercraft or, as the case may be, ships which belong to, or are exclusively employed in the service of, Her Majesty in right of the government of the Territory.

(7) In subsection (5) above “constable”, in relation to the Territory, means any person who is a constable or other police officer in the Territory or any person who, at the place in question has,

under any enactment (including subsection (4) above), the powers of a constable or other police officer in the Territory.

6.— Revocation of warrants.

(1) Subject to section 1(4) above, if at any time it appears to the Governor appropriate, in order that effect may be given to any such arrangements as are mentioned in section 1(1)(a) above or in a case falling within section 1(2) above, for a warrant under this Act to be revoked or varied, he may, as the case may require—

- (a) revoke that warrant; or
- (b) revoke that warrant and issue a new warrant under this Act containing provision superseding some or all of the provisions of the previous warrant.

(2) Subject to subsection (3)(c) below, the provision that may be contained in a new warrant issued by virtue of subsection (1)(b) above shall be any provision that could have been contained in the previous warrant.

(3) A new warrant issued by virtue of subsection (1)(b) above may provide—

- (a) that a provision contained in it is to be treated as having taken effect when the provisions which that provision supersedes took effect;
- (b) that things done under or for the purposes of the superseded provisions are, accordingly, to be treated as having been done under or for the purposes of the provision contained in the new warrant; and
- (c) that an enactment in force at the time the new warrant is issued is, for the purposes of subsection (2) above or this subsection, to be treated as having been in force when the superseded provisions took effect.

(4) The powers conferred by this section shall be exercisable notwithstanding any defect in the warrant which is revoked.

7.— Expenses.

(2) Subject to subsections (3) and (4) below, it shall be the duty of the Governor, in the case of the transfer of a person into the Territory under this Act, to secure the payment to him by that person, or from some other source, of the amount of any expenses incurred by him in connection with the conveyance of that person to the Territory; and for this purpose the Governor shall have the same power as in any other case where he assists the return of a person to the Territory to require a person to give an undertaking to pay the Governor 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 Governor that it would be unreasonable for him to exercise any of the powers conferred by that subsection either because of the exceptional circumstances of the case or because the means of the prisoner are insufficient to meet the expenses and their recovery, whether immediately or at some future time, from the prisoner or from any other source is impracticable.

(4) The expenses mentioned in subsections (2) and (3) above shall not include—

- (a) any expenses of providing an escort for a person transferred into the Territory under this Act; or
- (b) any expenses of the conveyance of such a person beyond the place at which he first arrives in the Territory.

8.— Interpretation and Certificates.

- (1) In this Act, except in so far as the context otherwise requires—
 “Governor”, in relation to any Territory, means the officer for the time being administering the Government of that Territory or any person whom the Governor may by order designate to perform such of the Governor's functions under this Act as may be specified in such order;
 “international arrangements” includes any arrangements between the Territory and the United Kingdom or between the Territory and another colony;
 “order” includes any sentence, direction, warrant or other means of giving effect to the decision of a court or tribunal; and
 “the prisoner” has the meaning given by section 1(1)(b) above.
- (2) In this Act a reference to criminal jurisdiction, in relation to a court or tribunal in a country or territory outside the Territory, includes a reference to any jurisdiction which would be a criminal jurisdiction but for the age or incapacity of the persons in respect of whom it is exercised.
- (3) In any proceedings, the certificate of the Governor—
 (a) that a particular country or territory is a party to any such international arrangements as are mentioned in section 1(1)(a) above or that such international arrangements apply to a particular country or territory.
 (b) that the appropriate authority of any country or territory has agreed to the transfer of a particular person in accordance with any such arrangements, or
 (c) that, for the purposes of any provision of this Act, a particular person is or represents the appropriate authority of any country or territory,
 shall be conclusive of the matter certified.

9.— Commencement and Extent.

- (2) This Act shall come into force on such day as the Governor may by order appoint.

SCHEDULE 2

Article 2

Anguilla
 British Indian Ocean Territory
 Cayman Islands
 Falkland Islands
 Gibraltar
 Montserrat
 Pitcairn, Henderson, Ducie and Oeno Islands
 St Helena
 St Helena Dependencies
 Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus
 [Hong Kong]²

² entry added by Repatriation of Prisoners (Overseas Territories) (Amendment) Order 1987/1828 art. 2(b)

EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends the provisions of the Repatriation of Prisoners Act 1984, subject to exceptions, adaptations and modifications, to the Territories specified in Schedule 2 hereto.