

CHAPTER 168B

REPATRIATION OF PRISONERS

2002-18

This Act came into operation on 28th October, 2002.

Amended by:

2005-16

2007-34

Law Revision Orders

The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:

2002

2007

Guide to symbols in historical notes:

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument

CHAPTER 168B

**REPATRIATION OF PRISONERS
2002-18**

Arrangement of Sections

1. Short title
2. Interpretation
3. Issue of warrant for transfer out of Barbados
4. Issue of warrant for transfer into Barbados
5. Consent
6. Procedure for transfer out of Barbados
7. Effect of transfer out of Barbados
8. Effect of transfer into Barbados
9. Operation of warrants
10. Revision of judgement
11. Costs
12. Variation or revocation of warrants
13. Prerogative of mercy preserved

- 14. States with International agreements
- 15. Regulations

FIRST SCHEDULE

***STATES WITH WHICH BARBADOS HAS SIGNED AN INTERNATIONAL
AGREEMENT FOR THE TRANSFER OF PRISONERS***

SECOND SCHEDULE

**BARBADOS****REPATRIATION OF PRISONERS
2002-18**

An Act to make provision for the transfer of certain prisoners to the country of which they are nationals for the completion of their sentence in accordance with an Agreement to that effect, and for related matters.

[Commencement: 28th October, 2002]

Short title

1. This Act may be cited as the *Repatriation of Prisoners Act*.

Interpretation

2. In this Act,
“appropriate authority” means a person who is authorised by the receiving state to receive the prisoner at the port of entry on behalf of the receiving state;
“escort officer” means the prison officer, police officer or member of the Defence Force specified in the warrant issued under section 3 as the escort officer for the prisoner;
“international agreement” means an international agreement that provides for the transfer of prisoners between Barbados and a receiving state;

“national” means a citizen of Barbados or a person who is entitled to citizenship in accordance with the laws of Barbados;

“prisoner” means a person who has been sentenced by a court to be detained in a prison, a hospital or any other institution;

“receiving state” means a state listed in the *First Schedule*, to which a prisoner may be transferred to serve his sentence or a part thereof by virtue of the existence of an international agreement;

“sentencing state” means a state listed in the *First Schedule* from which a prisoner may be transferred to Barbados by virtue of the existence of an international agreement;

“Superintendent” means the Superintendent of Prisons;

“warrant” means a document issued by the Attorney-General giving instructions to the Superintendent to make arrangements for the transport of a prisoner to whom this Act applies to a receiving state specified in the warrant, in the manner outlined under this Act.

Issue of warrant for transfer out of Barbados

3.(1) Subject to subsection (2), where

- (a) the Attorney-General is satisfied that Barbados is a party to an international agreement with a receiving state;
- (b) the Attorney-General and the appropriate authority of the receiving state have agreed in writing to the transfer of a prisoner in accordance with the provisions of the international agreement; and
- (c) the prisoner has consented to being transferred to the receiving state,

the Attorney-General shall issue a warrant in the Form 1 set out in the *Second Schedule* to the Superintendent instructing that the prisoner be transferred out of Barbados to the receiving state specified in the warrant.

- (2) No warrant shall be issued under subsection (1) unless
- (a) all appeal procedures in respect of the prisoner have been completed, the sentence is final and no procedures for review of sentence, including a review by the Governor-General under rule 42 of the *Prison Rules, 1974*, are pending at the proposed date for the issue of the warrant;
[1974/271]
 - (b) at the time of the receipt of the request for the transfer to the receiving state, the prisoner has at least 6 months of his sentence left to serve;
 - (c) the prisoner himself consents to being transferred or, where,
 - (i) by reason of physical or mental incapacity, or
 - (ii) by virtue of being a minor,
 the prisoner is unable to consent, the legal representative of the prisoner consents to the transfer on behalf of the prisoner; and
 - (d) the offence for which the sentence has been imposed constitutes an offence in the receiving state.

Issue of warrant for transfer into Barbados

4. Where a request has been made to the Attorney-General for the transfer of a prisoner to Barbados from a sentencing state, the Attorney-General shall ensure that

- (a) the prisoner in respect of whom the request is made is a national of Barbados or a person who is registered as a permanent resident within the meaning of the *Immigration Act, Cap. 190* at the date of the request;
- (b) all the requirements set out
 - (i) in paragraphs (a) to (c) of section 3(1); and
 - (ii) in paragraphs (a) to (d) of section 3(2)

have been met;

[2005-16]

(c) the offence for which the sentence has been imposed constitutes an offence in Barbados; and

[2005-16]

(d) the request for detention of the prisoner in Barbados, if approved, is forwarded to the Superintendent in accordance with the provisions contained in the warrant set out in the Form 2 of the *Second Schedule* and in accordance with the international agreement.

[2005-16]

Consent

5.(1) Where a request has been made in accordance with section 4, the prisoner shall be informed in writing in his own language

(a) of the substance, so far as is relevant to the prisoner's case, of the international agreement relating to the proposed transfer of the prisoner to the receiving state;

(b) in the case of a transfer out of Barbados, of the law in relation to the offence committed;

[2005-16]

(c) of the powers of the Attorney-General under section 3;

[2005-16]

(d) that the receiving state has agreed to the transfer of that prisoner to the receiving state; and

[2005-16]

(e) that the medical and social reports in respect of that prisoner are to be forwarded to the receiving state.

[2005-16]

(2) Where a prisoner has received the written information referred to in subsection (1), the prisoner may give his written consent to be transferred to the

receiving state in the Form 4 set out in the *Second Schedule* and in accordance with paragraph (c) of section 3(2).

(3) Where a prisoner gives his consent in accordance with subsection (2), that consent shall not be withdrawn after a warrant has been issued in respect of the prisoner; and any purported withdrawal of that consent after the issue of the warrant shall not affect the validity of the warrant.

[2005-16]

Procedure for transfer out of Barbados

6.(1) Where a prisoner gives his consent to be transferred to a receiving state and both the Attorney-General and the receiving state agree to the transfer, the Superintendent shall forward to the Attorney-General, for submission to that receiving state, the following details in respect of that prisoner:

- (a) the name, date and place of birth of the prisoner;
- (b) the offence committed and the statement of facts upon which the sentence was based;
- (c) the nature, duration and date of commencement of the sentence of the prisoner;
- (d) a statement indicating how much of the sentence has already been served, including information of
 - (i) any detention on remand;
 - (ii) the grant of remission of the sentence for good conduct or other cause; and
 - (iii) any other facts relevant to the enforcement of the sentence;
- (e) a copy of the judgment certified by the Registrar of the Supreme Court and the law on which it is based;

- (f) a medical and social report on the prisoner, including any information on medical treatment and recommendations for further medical treatment in the receiving state; and
 - (g) a copy of the written consent given by the prisoner.
- (2) Where the prisoner has given his consent to be transferred to the receiving state, the prisoner shall be informed of any action taken by the sentencing state or the receiving state under subsection (1) as well as any decision taken by either state on the request by the prisoner for the transfer.
- (3) Upon a request by the receiving state for documentary proof of the matters set out in subsection (1), the Attorney-General may furnish the receiving state with the relevant documents.

Effect of transfer out of Barbados

- 7.(1) A warrant issued under section 3 shall have the effect of authorising the taking of the prisoner to whom the warrant relates to a place of departure from Barbados into the custody of a person who is the appropriate authority of the receiving state.
- (2) The prisoner referred to in subsection (1) shall be deemed to be in the legal custody of the Government of Barbados at any time while being transported to the appropriate authority of the receiving state, and shall be accompanied by an escort officer, who shall have all the power, authority and protection accorded to a member of the Police Force while in Barbados.
- (3) For the purposes of this Act and notwithstanding the provisions of Part III of the *Criminal Procedure Act*, Cap. 127, where a prisoner referred to in subsection (1) has been placed into the custody of the appropriate authority of the receiving state, the enforcement of the sentence of that prisoner in Barbados has the effect of being suspended; and the Government of Barbados shall not enforce the sentence where the receiving state considers enforcement to have been completed.

Effect of transfer into Barbados

8.(1) A prisoner who is transferred to Barbados shall be deemed to be lawfully confined in the prison or other institution within Barbados and shall be subject to the rules and regulations applicable to all prisoners within the prison or other institution.

(2) Where it is proposed that a prisoner be transferred into Barbados from a sentencing state but the sentence imposed by that state is incompatible with that prescribed by the laws of Barbados for a similar offence, the Attorney-General may, after considering the sentence, seek an order of the High Court to have that sentence adapted to a sentence prescribed by the laws of Barbados for a similar offence; and the Court shall, subject to subsection (3), so adapt the sentence if the Court considers it fit to do so.

[2005-16]

(3) No order made by the High Court under subsection (2) shall by its nature or duration aggravate the sentence imposed in the sentencing state nor exceed the maximum prescribed by the laws of Barbados.

(4) The decision of the Attorney-General to seek an order under subsection (2) shall be communicated to the sentencing state prior to the transfer of the prisoner into Barbados.

(5) Where the High Court adapts the sentence in accordance with subsection (2), the Court, in addition to the requirement referred to in subsection (3),

- (a) shall be bound by the findings as to the facts as they appear explicitly or implicitly from the judgement of the court of the sentencing state;
- (b) shall not convert a sanction involving deprivation of liberty into a pecuniary sanction;
- (c) shall deduct the full period of deprivation of liberty served by the sentenced person.

(6) Where a prisoner has been transferred by a sentencing state into Barbados to serve the remainder of his sentence in Barbados, the Attorney-General shall furnish the sentencing state with

- (a) details of the date on which the enforcement of the sentence is computed; and
- (b) details of any escape in the event that the prisoner escapes from custody prior to the completion of the sentence.

Operation of warrants

9.(1) Where in accordance with a warrant issued under section 3 a prisoner is taken on board a ship or aircraft or to or from any place, that prisoner shall be deemed to be in the legal custody of the Government of Barbados until the prisoner is handed over to the appropriate authority of the receiving state in accordance with this Act or the international agreement.

(2) The Attorney-General may at any time designate any additional escort officers as the circumstances may require, and those persons shall be authorised for the purposes of the warrant to take the prisoner to or from any place pursuant to the warrant or to keep the prisoner in custody pursuant to the warrant.

(3) Where a prisoner who is being transferred to a receiving state escapes legal custody before the transfer is effected pursuant to subsection (4) and is unlawfully at large, that prisoner may be arrested without warrant by a member of the Police Force and taken to any police station.

(4) The Government of Barbados shall be deemed to have relinquished custody of a prisoner at the time at which that prisoner is handed over to the appropriate authority of the receiving state.

[2005-16]

[2005-16]

Revision of judgement

10. Where the judgement of a court in Barbados in relation to a prisoner who has consented to be transferred to a receiving state under this Act has been revised, modified, or overturned or the judgement in any other way reduces, commutes or terminates the sentence, the Attorney-General shall give notice of this occurrence to the receiving state; and the information given under section 6 shall be varied accordingly.

[2005-16]

Costs

11. All costs incurred in the transfer of prisoners out of Barbados shall be borne by the receiving state except those incurred exclusively in Barbados, which shall be defrayed out of moneys voted for that purpose by Parliament.

Variation or revocation of warrants

12.(1) Where it appears to the Attorney-General at any time that the circumstances surrounding the issue of a warrant have changed after the duty to issue has arisen under section 3 and, as a result of the change, the transfer becomes inappropriate, the Attorney-General may, where

- (a) the warrant has not been issued, not issue the warrant; or
- (b) the warrant has been issued, revoke the warrant in the Form 3 set out in the *Second Schedule*.

(2) The Attorney-General may also vary that warrant to give effect to the international agreement.

(3) Where the warrant is to be varied, the Attorney-General may issue a new warrant under this Act containing a provision superseding some or all of the provisions of the previous warrant.

Prerogative of mercy preserved

13. Nothing in this Act shall be deemed in any way to affect the exercise by the Governor-General of his prerogative of mercy under section 78 of the *Constitution*.

States with International agreements

14.(1) The states listed in the *First Schedule* are those with which Barbados has signed an international agreement for the transfer of prisoners.

(2) The Attorney-General may by order amend the *First* or the *Second Schedule*.

Regulations

15. The Attorney-General may make regulations

- (a) prescribing matters necessary or convenient for carrying out or giving effect to this Act;
- (b) providing the manner in which notices and other documents referred to in this Act may be given or served; and
- (c) generally to give effect to this Act.

FIRST SCHEDULE

(Sections 2, 14)

***STATES WITH WHICH BARBADOS HAS SIGNED AN INTERNATIONAL
AGREEMENT FOR THE TRANSFER OF PRISONERS***

1. United Kingdom
2. Canada

SECOND SCHEDULE









