

Transfer of Sentenced Persons Act 2002

Principal Act

Act. No. 2002-13

Commencement

19.12.2002

Assent

16.12.2002

ARRANGEMENT OF SECTIONS

Section

1. Title.
2. Interpretation.
3. Designation of states and territories.
4. Supply of information to sentenced person.
5. Application for transfer out of Gibraltar.
6. Issue of warrants for transfer of sentenced persons outside Gibraltar.
7. Request for transfer into Gibraltar.
8. Issue of warrants for bringing of persons into Gibraltar.
9. Operation of warrants under sections 6 and 8 and retaking of sentenced persons.
10. Revocation and variation of warrants.
11. Applications for transfer into or out of Gibraltar.
12. Arrest of fugitive sentenced persons from other states.
13. Power to make rules.
14. Communications.

AN ACT TO GIVE LEGAL EFFECT TO THE COUNCIL OF EUROPE CONVENTION ON THE TRANSFER OF SENTENCED PERSONS DONE AT STRASBOURG ON THE 21ST DAY OF MARCH, 1983, AS SUPPLEMENTED BY THE AGREEMENT ON THE APPLICATION AMONG THE MEMBER STATES OF THE EUROPEAN COMMUNITIES OF THE COUNCIL OF EUROPE CONVENTION ON THE TRANSFER OF SENTENCED PERSONS DONE AT BRUSSELS ON THE 25TH DAY OF MAY, 1987

Title.

1. This Act may be cited as the Transfer of Sentenced Persons Act 2002.

Interpretation.

- 2.(1) In this Act–

“administering state”, in relation to a sentenced person, means the Convention state to which the person has been transferred under Section 6 of this Act or in relation to which an application under Section 5 of this Act has been made by or on behalf of the person;

“Convention” means the Council of Europe Convention on the Transfer of Sentenced Persons done at Strasbourg on the 21st day of March, 1983, as supplemented by the Agreement on the Application among the Member States of the European Communities of the Council of Europe Convention on the Transfer of Sentenced Persons done at Brussels on the 25th day of May, 1987;

“Convention state” means a state (including the territories, if any, thereof) to which the Convention applies;

“order” includes any sentence, direction, warrant or other means of giving effect to the decision of a court or tribunal;

“Schengen state” means a state (including the territories, if any, thereof) to which Chapter 5 of the Schengen Convention applies;

“sentence” means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a limited or unlimited period of time on account of the commission of an offence;

“sentenced person” means a person on whom a sentence has been imposed in the territory of a Convention state;

“sentencing state”, in relation to a sentenced person, means the Convention state in which the sentence concerned was imposed on the person.

(2) In this Act a reference to an offence, in relation to the doing of an act or the making of an omission in a Convention country other than Gibraltar, includes a reference to the doing or making by a person of an act or omission which would constitute an offence but for the age or incapacity of the person.

Designation of states and territories.

3.(1) Where any international arrangements providing for the transfer between Gibraltar and a state or territory which is not subject to the Convention, the Government may designate that this Act shall give effect to those arrangements as if the state or territory concerned were a Convention state.

(2) Where there are international arrangements extended to Gibraltar and applying to a state or territory that is not a subject to Article 68 of the Schengen Convention, and such arrangements provide for each to arrest a fugitive person sentenced in the other's jurisdiction and implement such sentence, the Government may designate that this Act shall give effect to those arrangements as if the state or territory were a Schengen state.

(3) A designation under this Act shall be made by notice published in the Gazette.

Supply of information to sentenced person.

4. A person on whom a sentence has been imposed in Gibraltar and to whom the provisions of this Act concerning a transfer out of Gibraltar may apply shall be informed, in a language which he understands, as soon as may be after the commencement of the sentence, of the substance of this Act.

Application for transfer out of Gibraltar.

5.(1) A person on whom a sentence has been imposed in Gibraltar who wishes to be transferred out of Gibraltar to another Convention state, in order to serve the sentence or the balance of the sentence so imposed, may apply in writing to the Government for such a transfer.

(2) Where a person is, by virtue of the person's age or physical or mental condition, incapable of making an application under subsection (1) of this section, a legal representative of the person or any other person considered by the Government or the administering state to be an appropriate person for the purpose may make the application on the person's behalf.

(3) Subject to subsection (4) of this section, the Government may grant an application under subsection (1) of this section, if the Government is satisfied that the following requirements have been fulfilled:

- (a) that the sentenced person concerned is, for the purposes of the Convention, regarded by the administering state as a national of that state;

- (b) that the order under which the sentence concerned was imposed on the sentenced person is final;
- (c) that, at the time of the receipt of the application, the sentenced person had at least 6 months of the sentence concerned to serve or the sentence was of indeterminate length;
- (d) that the sentenced person or, in a case where the Government or the administering state considers it necessary because of the age or physical or mental condition of the sentenced person, the legal representative of the sentenced person or any other person considered by the Government or the administering state to be an appropriate person for the purpose, consents in writing to the transfer;
- (e) that the acts or omissions constituting the offence concerned would, if done or made in the administering state, constitute an offence under the law of that state; and
- (f) that the administering state agrees to the transfer.

(4) If the Government considers that exceptional circumstances exist which would warrant a transfer specified in subsection (1) of this section in a case where the sentenced person has less than 6 months of the sentence to serve, the requirement referred to in paragraph (c) of subsection (3) of this section shall not apply.

(5) The Government may not grant an application under subsection (1) of this section unless the Government is satisfied that all reasonable steps have been taken to inform the sentenced person concerned in writing in his or her own language—

- (a) of the substance, so far as relevant to the person's case, of the international arrangements in accordance with which it is proposed to transfer him or her,
- (b) of the effect in relation to the person of the warrant which it is proposed to issue in respect of him or her under section 6 of this Act,
- (c) of the effect in relation to the person 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
- (d) of the powers of the Government under section 10 of this Act.

(6) The grant of any application under this section and any subsequent transfer of enforcement shall not affect any right the prisoner may have to appeal against the relevant conviction or sentence.

Issue of warrants for transfer of sentenced persons outside Gibraltar.

6.(1) The Government may, on the grant of an application under section 5 of this Act, issue a warrant for the transfer of the sentenced person concerned out of Gibraltar into the administering state concerned.

(2) A warrant issued under subsection (1) of this section shall authorise—

(a) the taking of the sentenced person to a place in any part of Gibraltar and his delivery at a place of departure from Gibraltar into the custody of a person authorised by the administering state to receive the person, for conveyance to the administering state concerned, and the keeping of the person in custody until the delivery is effected, and

(b) the removal of the sentenced person, by the person to whom he is so delivered, from Gibraltar.

(3) Where a warrant has been issued in respect of a sentenced person under this section, the person shall be deemed to be in legal custody at any time when he is being taken under the warrant to or from any place or being kept in custody under the warrant and, if the person escapes or is unlawfully at large, he shall be liable to be retaken in the same manner as any person who escapes from lawful custody.

(4) Subject to subsection (5) of this section, the order by virtue of which a sentenced person is required to be detained at the time a warrant is issued in respect of him under this section shall continue to have effect after his removal from Gibraltar so as to apply to him if he is again in Gibraltar at any time when under that order he is to be or may be detained.

(5) The Government may, if at any time after the removal of a sentenced person from Gibraltar it considers it appropriate in order to give effect to the Convention, direct that the relevant order referred to in subsection (6) of this section be varied or cease to have effect.

(6) In this section a reference to an order by virtue of which a sentenced person is required to be detained at the time a warrant is issued in respect of him under this section includes a reference to an 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.

Request for transfer into Gibraltar.

7.(1) A sentencing state may request the Government in writing to consent to the transfer into Gibraltar of a sentenced person on whom a sentence has been imposed in that sentencing state in order that he may serve the sentence or the balance of the sentence in Gibraltar.

(2) Without prejudice to subsection (1) of this section, a request for transfer into Gibraltar to serve the sentence or the balance of the sentence imposed in a sentencing state may be made directly to the Government by or on behalf of a sentenced person.

(3) Subject to subsection (4) of this section, the Government may consent to a request under subsection (1) or subsection (2) of this section if the Government is satisfied that the following requirements have been fulfilled:

- (a) that the sentenced person concerned is a Gibraltar believer or is a United Kingdom national for the purposes of the Convention, and, further, a national of another state shall be regarded as a Gibraltar believer for this purpose where the Government considers the transfer of the national appropriate having regard to any close ties which the national has with Gibraltar;
- (b) that the order under which the sentence concerned was imposed on the sentenced person is final;
- (c) that, at the time of the receipt of the request for the transfer concerned, the sentenced person had at least 6 months of the sentence concerned to serve or the sentence was of indeterminate length;
- (d) that the sentenced person or, in a case where the Government or the sentencing state considers it necessary because of the age or physical or mental condition of the sentenced person, the legal representative of the sentenced person or any other person considered by the Government or the sentencing state to be an appropriate person for the purpose, consents in writing to the transfer;
- (e) that the acts or omissions constituting the offence concerned would, if done or made in, or on the territory of, Gibraltar constitute an offence under the law of Gibraltar; and
- (f) that the sentencing state agrees to the transfer.

(4) If the Government considers that exceptional circumstances exist which would warrant a transfer specified in subsection (1) or subsection (2) of this section in a case where the sentenced person has less than 6 months of the sentence to serve, the requirement referred to in paragraph (c) of subsection (3) of this section shall not apply.

(5) The Government may not consent to a request under subsection (1) or subsection (2) of this section, unless the Government is satisfied that all reasonable steps have been taken to inform the sentenced person concerned in writing in his or her own language—

- (a) of the substance, so far as relevant to the person's case, of the international arrangements in accordance with which it is proposed to transfer him or her,

- (b) of the effect in relation to the person of any warrant which may be issued in respect of him or her under section 8 of this Act,
 - (c) of the effect in relation to the person of the law relating to his or her detention under such a warrant, and
 - (d) of the powers of the Government under section 10 of this Act.
- (6) A certificate purporting to be signed by the Government or by a person duly authorised by the Government, to authorise it and to certify that—
- (a) as respects the proposed transfer into Gibraltar of a sentenced person following a request under subsection (1) of this section, the Government is satisfied that the requirements specified in paragraphs (a), (b), (d), (e) and (f) and, where applicable, (c) of subsection (3) of this section have been fulfilled, and
 - (b) the Government has given his or her consent to the transfer under this section,

shall, without proof of the signature of the person purporting to sign the certificate or that the person was the Government or a person authorised to sign it, be evidence, unless the contrary is shown, of the matters stated in the certificate.

Issue of warrants for bringing of persons into Gibraltar.

8.(1) Where the Government consents to a request for a transfer under section 7 of this Act, the Government shall apply to the Supreme Court for the issue of a warrant authorising the bringing of the sentenced person concerned into Gibraltar from a place outside Gibraltar and the taking of the person to, and his detention in custody at, such place or places in Gibraltar as may be specified in the warrant.

(2) Where an application is made to the Supreme Court under subsection (1) of this section that court shall, if it is satisfied that the requirements specified in paragraphs (a), (b), (d), (e) and, where applicable, (c) of section 7(3) of this Act have been fulfilled and that the Government consents to the transfer concerned, issue a warrant authorising the bringing of the sentenced person into Gibraltar and the taking of the person to, and his detention in custody at, such place or places in Gibraltar as are specified in the warrant.

(3) The Supreme Court may specify, in a warrant under subsection (2) of this section, any place or places to which the court would have jurisdiction to commit the sentenced person concerned if the sentence in respect of which the person is being detained by the sentencing state was imposed by the court at the time of the issue of the warrant.

(4) Subject to subsections (5) to (7) of this section, the effect of a warrant under this section shall be to authorise the continued enforcement by Gibraltar of the sentence concerned imposed by the sentencing state concerned in its legal nature and duration, with due regard to

any remission of sentence accrued in the sentencing state, but such a warrant shall otherwise have the same force and effect as a warrant imposing a sentence following conviction by that court.

- (5)
- (a) On an application to the Supreme Court under subsection (1) of this section, if the sentence concerned imposed by the sentencing state concerned is by its legal nature incompatible with the law of Gibraltar, the Court may adapt the legal nature of the sentence to that of a sentence prescribed by the law of Gibraltar for an offence similar to the offence for which the sentence was imposed.
 - (b) The Government may, in its absolute discretion if it thinks it appropriate to do so, include in an application to the Supreme Court under subsection (1) of this section an application that the Court adapt the duration of the sentence concerned imposed by the sentencing state concerned to that of a sentence prescribed by the law of Gibraltar for an offence similar to the offence for which the sentence was imposed and, if the Government does so and the sentence concerned imposed by the sentencing state concerned is by its duration incompatible with the law of Gibraltar, the Court may adapt the duration of that sentence as aforesaid.
- (6)
- (a) The legal nature of a sentence adapted under paragraph (a) of subsection (5) of this section shall, as far as practicable, correspond to the legal nature of the sentence concerned imposed by the sentencing state concerned and shall not, in any event, either—
 - (i) aggravate it, or
 - (ii) exceed the maximum penalty prescribed by the law of Gibraltar for a similar offence.
 - (b) The duration of a sentence adapted under paragraph (b) of subsection (5) of this section shall, as far as practicable, correspond to the duration of the sentence concerned imposed by the sentencing state concerned and shall not, in any event, either—
 - (i) aggravate it, or
 - (ii) exceed the maximum penalty prescribed by the law of Gibraltar for a similar offence.
- (7) A person transferred into Gibraltar under this Act to serve a sentence or the balance of a sentence imposed on him by another sentencing state may not appeal in Gibraltar against the conviction in respect of which the sentence was so imposed.

(8) Enforcement of the sentence specified in a warrant under this section shall cease where Gibraltar is notified by the sentencing state of any decision or measure, other than a decision or measure in respect of remission, as a result of which the sentence ceases to be enforceable in the sentencing state.

(9) In this section, a reference to the legal nature of a sentence does not include a reference to the duration of such sentence

Operation of warrants under sections 6 and 8 and retaking of sentenced persons.

9.(1) Where a warrant has been issued in respect of a sentenced person under sections 6 and 8 of this Act, the effect of that warrant under this section shall be to authorise—

- (a) the taking of the prisoner to a place in Gibraltar and his delivery at a place of departure from Gibraltar into the custody of a person representing the appropriate authority of the country or territory to which the prisoner is to be transferred;
- (b) the bringing of the prisoner back to Gibraltar and his transfer in custody to the place where he is liable to be detained under the sentence to which he is subject; and
- (c) such detention as is required for the purposes of subsections (a) and (b) above.

(2) Where a warrant has been issued in respect of a prisoner under this section he shall be deemed to be in legal custody at any time when he is being taken under the warrant to or from any place or being kept in custody under the warrant.

(3) The Government may designate any person as a person who is for the time being authorised to take the sentenced person concerned to or from any place under the warrant or to keep him 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 him in custody shall have all the powers, authority, protection and privileges of a constable in Gibraltar, including at such times he is outside Gibraltar and executing 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 issued under this section.

Revocation and variation of warrants.

10.(1) If at any time it appears to the Government appropriate, in order that effect may be given to the provisions of the Convention, that a warrant under this Act for the transfer of a person in or out of Gibraltar should be revoked or varied, the Government may—

- (a) in the case of a warrant under section 6 of this Act—
 - (i) revoke the warrant, or
 - (ii) vary one or more of the provisions of the warrant; and
- (b) in the case of a warrant under section 8 of this Act—
 - (i) apply to the Supreme Court for an order revoking the warrant, or
 - (ii) apply to the Supreme Court for an order varying one or more of the provisions of the warrant.

(2) On an application under paragraph (b) of subsection (1) of this section, the Supreme Court may make an order referred to in subparagraph (i) or (ii) of that paragraph if it considers it appropriate to do so in order that effect may be given to the provisions of the Convention.

Applications for transfer into or out of Gibraltar.

11. Where the Government decides not to grant an application under section 5(1) of this Act or consent to an application under subsection (1) or (2) of section 7 of this Act, the Government shall notify the applicant or the requesting state, as the case may be, of such decision and such notification shall, where practicable and where the interests of justice do not preclude so doing, include a statement specifying the grounds for such decision.

Arrest of fugitive sentenced persons from other states.

12.(1) This section applies where—

- (a) a person being a Gibraltar resident, or a British citizen of any categorisation and normally resident in Gibraltar, is subject to a custodial sentence or detention order in a Schengen state; and
- (b) that person has returned to Gibraltar and is avoiding the enforcement of that sentence or detention order.

(2) The sentencing state in relation to a person to which subsection (1) applies can request the Government that Gibraltar takes over the enforcement of the sentence.

(3) The Government may grant a request under subsection (2) if it is satisfied that, had the person been in the custody of the sentencing state, all of the criteria for the transfer of the person to Gibraltar under section 7(3) of this Act are satisfied other than his consent.

(4) Where the Government consents to a request under this section, the Government shall apply for a warrant under section 8 of this Act with respect to that Act, and in addition to such matters as might ordinarily be included in a warrant under that section, such warrant shall make provision for the person's arrest.

(5) Without prejudice to sub-sections (6) to (8), subsequent to the arrest of a person pursuant to this section, the provisions of this Act shall take effect as if the person had been transferred with his consent from the sentencing state to Gibraltar.

(6) Where a request is made under this section, the Government may if requested by the sentencing state apply to the Supreme Court for a warrant allowing for the arrest and detention of the person concerned prior to a decision being made as to whether to accept the request.

(7) The Supreme Court may grant or refuse an application under subsection (6), and may attach such conditions as it thinks fit to any order it makes, saving that it shall make provision for the person concerned to be brought before the court at the first available time and thereafter at regular intervals in order to make such representations as he sees fit.

(8) Without prejudice to his right to make applications for habeas corpus, any person detained under this section may at all hearings before the Supreme Court, prior to any decision by the Government to accept transfer of the enforcement of the relevant sentence, apply for bail, and the provisions of sections 55 to 63 of the Criminal Procedure Act shall apply as if the person had been refused bail by an inferior court.

(9) No person other than a constable of Gibraltar shall be directed to arrest any sentenced person pursuant to this section.

Power to make rules.

13. The Chief Justice shall have the power to make such rules as he thinks fit for the conduct of all court proceedings in relation to this Act.

Communications.

14. Communications with the Government under this Act shall be addressed to the Chief Secretary of the Government of Gibraltar.