

2017 No. 983

PRISONERS

The Repatriation of Prisoners (Overseas Territories) Order 2017

Made - - - - *11th October 2017*

Coming into force - - *13th November 2017*

At the Court at Buckingham Palace, the 11th day of October 2017

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 9(4) of the Repatriation of Prisoners Act 1984(a), is pleased by and with the advice of Her Privy Council to order as follows:

Citation and commencement

1. This Order may be cited as the Repatriation of Prisoners (Overseas Territories) Order 2017 and comes into force on 13th November 2017.

Revocation

2. The Repatriation of Prisoners (Overseas Territories) Order 1986(b) is revoked.

Extension of the Repatriation of Prisoners Act 1984 to the territories

3. The Repatriation of Prisoners Act 1984 is extended, with the adaptations and modifications specified in Schedule 1 to this Order, to the territories specified in Schedule 2 to this Order.

Richard Tilbrook
Clerk of the Privy Council

(a) 1984 c. 47.

(b) S.I. 1986/2226 as amended by SI 1987/1828.

Adaptations and Modifications to the Provisions of the Repatriation of Prisoners Act 1984 as extended to the territories in Schedule 2

1. In this Schedule, “the territory” means a territory listed in Schedule 2 to this Order.
2. The Repatriation of Prisoners Act 1984 is adapted and modified as follows.
- 3.—(1) Unless there is a more specific modification, a reference to the “British Islands” or “Great Britain” is a reference to “the territory”.
 - (2) Except for in section 8 (interpretation and certificates), a reference to “the United Kingdom” is a reference to “the territory”.
 - (3) In the application of this Order to any territory, the expression “territory” means that territory.
 - (4) A reference to a “British citizen” includes a reference to a British overseas territories citizen and a British National (Overseas).
 - (5) A reference to “the relevant Minister” or “the Secretary of State” is a reference to “the Governor of the territory”.
 - (6) A reference to a “constable” is a reference—
 - (a) in each instance, to a person in the territory who has, under any enactment, the powers equivalent to those of a police officer in the United Kingdom; and
 - (b) in section 6B, to a person in the territory who has, under any enactment, the powers equivalent to those of a prison officer in the United Kingdom.
 - (7) A reference to the “issuing authority” is a reference to the “Governor”.
4. In section 1(a) (issue of warrant for transfer)—
 - (a) in subsection (1)(a), for “the United Kingdom is a party to international arrangements providing for”, substitute “international arrangements apply to the territory which provide for”;
 - (b) in subsection (7A), omit “in the United Kingdom”;
 - (c) omit subsection (9).
5. In section 2(b) (transfer out of the United Kingdom)—
 - (a) omit subsection (3A);
 - (b) for subsection (4)(b) substitute—

“(b) to provide for the prisoner to be treated as having been released on supervision or licence.”;

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- (a) Subsections 1(1), (2), (3), (4) and (5) were amended by article 4 of, and paragraphs 75(1) and (2)(a) of Part 1 of Schedule 2 to, SI 1999/1820. Subsections 1(1)(c) and (5) were amended by subsections 44(1), (2) and (3) of the Police and Justice Act 2006 (c. 48). Subsections 1(2), (3), (4), (5), (6), (7) and (8) were amended by section 148 of, and paragraphs 9, 11(1), (2), (3)(a) and (b), (4), (5), (6), (7)(a), (b) and (c) of Part 2 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4). Subsection 1(7A) was inserted by section 378(1) of, and paragraph 98 of Schedule 16 to, the Armed Forces Act 2006 (c. 52).
 - (b) Subsections 2(1) and (1A) were amended by section 93 of the Criminal Justice and Immigration Act 2008. Subsection 2(3) was amended by article 4 of, and paragraphs 75(1) and (3)(a) of Part 1 of Schedule 2 to, SI 1999/1820. Subsections 2(4)(a) and (7) were amended by section 148 of, and paragraphs 9, 12(1), (3)(a) and (4) of Part 2 of Schedule 26 to, the Criminal Justice and Immigration Act 2008.

(c) for subsection (6) substitute—

“(6) In subsection (5)—

“hospital order” means an order or direction made under an enactment applying in the territory and having the equivalent effect to an order or direction made under section 37 of the Mental Health Act 1983(a); and

“restriction order” means an order made under an enactment applying in the Territory and having the equivalent effect to an order made under section 41 of that Act.”.

6. In section 3(b) (transfer into the United Kingdom), omit subsections (7) and (9).

7. In section 4(c) (temporary return)—

(a) in subsection (4) omit “; and the Schedule to this Act shall not apply in relation to the provisions so contained in such a warrant”;

(b) omit subsections (5) to (7).

8. In section 4A(d) (issue of warrant transferring responsibility for detention and release of offender), omit subsection (10).

9. In section 4B(e) (transfer of responsibility from the United Kingdom)—

(a) in subsection (1) omit “(as defined in section 4A(10))”; and

(b) omit subsection (4).

10. In section 4C(f) (transfer of responsibility to the United Kingdom)—

(a) in subsection (1) omit “(as defined in section 4A(10))”; and

(b) in subsection (4) omit “and Part 2 of the Schedule to this Act”; and

(c) omit subsection (7).

11. In section 4D(g) (arrest and detention with a view to establishing whether a person falls within section 4A(3) etc)—

(a) in subsection (1) omit “or the Scottish Ministers or the Department of Justice in Northern Ireland”;

(b) in subsection (2) for “the authority” substitute “the Governor”.

12. In section 4E(h) (arrest and detention with a view to determining whether to issue a warrant under section 4A)—

(a) in subsections (1) and (6), omit “or the Scottish Ministers or the Department of Justice in Northern Ireland”;

(b) in subsection (2) for “that authority” substitute “the Governor”.

(a) 1983 c. 20.

(b) Subsections 3(1), (2), (4) and (6) were amended by section 148 of, and paragraphs 9, 13(1), (2) and (3) and Part 2 of Schedule 26 to, the Criminal Justice and Immigration Act 2008. Subsections 3(1) and (3) were amended by article 4 of, and paragraphs 75(1) and (4) of Part 1 of Schedule 2 to, SI 1999/1820. Subsections 3(1), (2), (4) and (6) were amended by section 148 of, and paragraphs 9, 13(1), (2) and (3) and Part 2 of Schedule 26 to, the Criminal Justice and Immigration Act 2008. Subsections 3(1) and (3) were amended by article 4 of, and paragraphs 75(1) and (4) of Part 1 of Schedule 2 to, SI 1999/1820. Section 3A was inserted by section 130 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(c) Subsections 4(1), (2) and (3) were amended by section 148 of, and paragraphs 9, 14(1), (2)(a), (b), (c), (3)(a), (b), (4)(a), (b) and (5) of Part 2 of Schedule 26 to, the Criminal Justice and Immigration Act 2008. Subsection 4(1) was amended by article 4 of, and paragraphs 75(1) and 5(a) of Part 1 of Schedule 2 to, SI 1999/1820.

(d) Section 4A was inserted by section 94 of the Criminal Justice and Immigration Act 2008. Subsection 4A(5) was amended by article 6(5) of, and paragraphs 1 and 5(a) of Schedule 8 to, SI 2010/976.

(e) Section 4B was inserted by section 94 of the Criminal Justice and Immigration Act 2008.

(f) Section 4C was inserted by sections 94 and 95 of the Criminal Justice and Immigration Act 2008.

(g) Section 4D was inserted by section 95 of the Criminal Justice and Immigration Act 2008. Subsection (1) was amended by article 6(5) of, and paragraphs 1 and 7 of Schedule 8 to, SI 2010/976.

(h) Section 4E was inserted by section 95 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Subsections (1) and (6) were amended by article 6(5) of, and paragraphs 1, 8(a) and (b) of Schedule 8 to, SI 2010/976.

- 13.** In section 4F(a) (sections 4D and 4E: supplementary provisions)—
- (a) in subsection (2) omit “or the Scottish Ministers or the Department of Justice in Northern Ireland”;
 - (b) for subsection (3) substitute—
 - “(3) The appropriate judge is a member of the judiciary who is designated for those purposes by the head of the judiciary in the Territory after consulting with—
 - (a) the Minister responsible for justice in the Territory; or
 - (b) if there is no such Minister, the Governor of the Territory.”; and
 - (c) in subsection (4) omit “(a) or (c)”.
- 14.** In section 5(b) (operation of warrant and retaking prisoners)—
- (a) in subsection (6)—
 - (i) in the definition of “British aircraft” for “section 92 of the Civil Aviation Act 1982 (application of criminal law to aircraft)(c)” substitute “paragraph 7 of Schedule 1 to the Tokyo Convention Act 1967 (Overseas Territories) Order 1968(d)”; and
 - (ii) in the definition of “British hovercraft” for “section 92 as applied in relation to hovercraft by virtue of provision made under the Hovercraft Act 1968(e)” substitute “paragraph 7 as if it were applied in relation to hovercraft”.
 - (b) omit subsections (7) and (8);
 - (c) in subsection (9) for “(8)” substitute “(6)”; and
 - (d) in subsection (10) omit paragraphs (d) and (e).
- 15.** In section 6(f) (revocation etc of warrants), omit subsection (5).
- 16.** In section 6A(g) (transit)—
- (a) in subsection (1)(a), for “the United Kingdom is a party to international arrangements providing for”, substitute “international arrangements apply to the territory which provide for”;
 - (b) omit subsections (3), (4) and (9);
 - (c) in subsection (5) omit “or (4)(a)”;
 - (d) in subsection (6) omit “,6C”; and
 - (e) in subsection (10) for “sections 6B and 6C” substitute “section 6B”.
- 17.** In section 6B(h) (transit: supplementary)—
- (a) omit subsection (11); and
 - (b) in subsection (12)—

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- (a) Section 4F was inserted by section 95 of the Criminal Justice and Immigration Act 2008. Subsection (2) was amended by article 6(5) of, and paragraphs 1 and 9 of Schedule 8 to, SI 2010/976.
 - (b) Subsection 5(1) was amended by section 148 of, and paragraphs 9, 16(1) and (2)(a) of Part 2 of Schedule 26 to, the Criminal Justice and Immigration Act 2008. Subsections 5(1), (9) and (10) were inserted by section 148 of, and paragraphs 9, 16(1), (2)(b) and (3) of Part 2 of Schedule 26 to, the Criminal Justice and Immigration Act 2008. Subsections 5(2) and (3) were amended by article 4 of, and paragraphs 75(1) and 6(a) of Part 1 of Schedule 2 to, SI 1999/1820. Subsection 5(6) was amended by section 314(2) of, and paragraph 73 of Schedule 13 to, the Merchant Shipping Act 1995 (c. 21). Subsections 5(10)(c)(ii) and (e) were amended by article 6(5) of, and paragraphs 1, 10(1) and (3) of Schedule 8 to, SI 2010/976.
 - (c) 1982 c.16.
 - (d) S.I. 1968/1864 as amended by S.I. 2011/2980.
 - (e) 1968 c. 59.
 - (f) Subsection 6(1) was amended by article 4 of, and paragraphs 75(1) and 7(a) of Part 1 of Schedule 2 to, SI 1999/1820. Subsections 6(1), (1A), (2) and (3) were amended by section 148 of, and paragraphs 9, 17(1), (2)(a), (b), (3) and (4) of Part 2 of Schedule 26 to, the Criminal Justice and Immigration Act 2008.
 - (g) Section 6A was inserted by section 131(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
 - (h) Section 6B was inserted by section 131(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

- (i) for “A person who is a constable by virtue of subsection 11(a)” substitute “A person who has, under any enactment, the powers equivalent to those of a police officer in the United Kingdom”;
- (ii) for “, this section and section 6C” substitute “and this section”.

18. Omit section 6C(a) (transit through different parts of the United Kingdom).

19. In section 6D(b) (transit: unscheduled arrivals)—

- (a) in subsection (1)(a) omit “or (4)(a)”; and
- (b) omit subsections (3) and (4).

20. In section 7(c) (expenses), omit subsections (1), (3A), (5) and (5A).

21. In section 8(d) (interpretation and certificates)—

- (a) in subsection (1) omit the definition of enactment;
- (b) in subsection (2A)(a) after “British overseas territory” insert “and any arrangements between British overseas territories”; and
- (c) omit subsection (4).

22. Omit section 8A (Northern Ireland: national security).

23. In section 9(e) (short title, commencement and extent), omit subsections (2) and (3).

24. Omit the Schedule (operation of certain enactments in relation to the prisoner).

SCHEDULE 2

Article 3

Territories

Anguilla

British Indian Ocean Territory

Cayman Islands

Falkland Islands

Montserrat

Pitcairn, Henderson, Ducie and Oeno Islands

St Helena, Ascension and Tristan da Cunha

Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus

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- (a) Section 6C was inserted by section 131(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
 - (b) Section 6D was inserted by section 131(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
 - (c) Subsections (2) and (3) were amended by article 4 of, and paragraphs 75(1) and 8(a) of Part 1 of Schedule 2 to, SI 1999/1820.
 - (d) Subsection 8(1) was amended by section 149 of, and Part 6 of Schedule 28 to, by section 148(1) of, and paragraphs 9, 18(1) and (2) of Part 2 of Schedule 26 to, and by section 96(3) of, the Criminal Justice and Immigration Act 2008. Subsection 8(3) was amended by article 4 of, and paragraphs 75(1) and 9(a) of Part 1 of Schedule 2 to, SI 1999/1820 and by and paragraphs 9, 18(1), (3)(a), (b) and (c) of Part 2 of Schedule 26 to, the Criminal Justice and Immigration Act 2008.
 - (e) Subsection 9(3) was amended by section 131(2)(a) of the Legal Aid, Sentencing, and Punishment of Offenders Act 2012. Subsection 9(3A) was inserted by section 131(2)(b) of that Act.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends the provisions of the Repatriation of Prisoners Act 1984 (c. 47), subject to the adaptations and modifications listed in Schedule 1 to the Order, to the territories specified in Schedule 2. The Repatriation of Prisoners Act 1984 authorises transfers of prisoners between the United Kingdom and a country or territory outside the British Isles where both are parties to an international agreement that allows for prison transfers between those jurisdictions. The effect of the adaptations and modifications is to ensure the Act applies to the territories specified in Schedule 2 in a manner similar to the manner in which the Act applies in the United Kingdom.

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