

## **COMMONWEALTH OF DOMINICA**

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**COMMONWEALTH OF DOMINICA**

ACT No. 3 OF 2009

*I assent*

***N. J. O. Liverpool***  
*President*

23<sup>rd</sup> March, 2009

AN ACT TO FACILITATE THE TRANSFER BETWEEN  
THE COMMONWEALTH OF DOMINICA AND  
OTHER COUNTRIES OF PERSONS DETAINED IN  
PRISONS AND OTHER INSTITUTIONS BY VIRTUE  
OF ORDERS MADE BY COURTS IN EXERCISE OF  
THEIR CRIMINAL JURISDICTION.

(Gazetted 2<sup>nd</sup> April, 2009)

BE IT ENACTED by the Parliament of the Commonwealth of  
Dominica as follows:

**PART I****PRELIMINARY**

1. (1) This Act may be cited as the-  
**REPATRIATION OF PRISONERS ACT, 2009.**

Short title and  
commencement.

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(2). This Act shall come into force on such date as the Minister may, by Order published in the *Gazette*, appoint.

Interpretation .

2. (1) In this Act, unless the context otherwise requires -

“international agreement” means an agreement, to which Dominica is a party, providing for the transfer between Dominica and another country to whom this Act applies.

“judgment” means a decision or order of a court imposing a sentence;

“Minister” means the Minister responsible for Legal Affairs;

“national” means-

(a) in relation to Dominica, a citizen of Dominica; or

(b) in relation to any other country, a citizen of that country or any person whose transfer the Government of that country considers appropriate having regard to any close ties which the person has with that country;

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

“Party” means a party to an international agreement for the transfer of prisoners;

“prisoner” means a person who is required to be detained in a prison, hospital or other institution in the sentencing State by virtue of an order made by a court in the course of its criminal jurisdiction;

“receiving State” means the State to which the prisoner may be, or has been, transferred in order to serve his sentence;

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“sentence” means any punishment or measure involving deprivation of liberty ordered by a court for a limited or unlimited period of time in the course of the exercise of its criminal jurisdiction;

“sentencing State” means the State in which the sentence was imposed on the prisoner who may be, or has been, transferred.

(2) In this Act, a reference to the receiving State or the sentencing State is a reference to Dominica or to a country which is a party to an international agreement, as the case may be.

**3.** (1) This Act shall apply where there is in existence an international agreement to which Dominica is a Party. Application.

(2) The Minister shall, by Order in the *Gazette*, publish every international agreement and, with effect from the date of coming into force of any such agreement as the Minister may specify in the Order, this Act shall have effect in relation to the transfer of prisoners into or out of Dominica, subject to such exceptions, adaptations or modifications as may be specified in the Order.

(3) This Act applies to the transfer of prisoners serving sentences imposed either before or after its coming into operation.

## PART II

### GENERAL PRINCIPLES, CONDITIONS AND PROCEDURE FOR TRANSFER

**4.** (1) A prisoner sentenced in the territory of one Party may be transferred to the territory of the other Party, in order to serve the sentence imposed on him and for that purpose, he may express in writing his interest to the sentencing State or the receiving State in being transferred under this Act. Purpose of transfer.

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(2) The transfer may be requested by either the sentencing State or the receiving State.

Conditions for transfer.

**5.** (1) A prisoner may be transferred under this Act only if the following conditions are met -

- (a) the prisoner is a national of the receiving State;
- (b) all appeal procedures have been completed and the sentence is final with no extraordinary review procedures pending at the time of invoking the provisions of this Act;
- (c) at the time of receipt of the request for the transfer the prisoner still has at least six months of the sentence to serve;
- (d) the prisoner himself consents to the transfer, or where one of the States considers in view of his age or his physical or mental condition that it is necessary, his legal representative consents on his behalf;
- (e) that act or omission on account of which the sentence was imposed constitutes a criminal offence according to the law of the receiving State or would constitute a criminal offence if committed on its territory; and
- (f) the sentencing and receiving States agree to the transfer.

(2) The receiving State and the sentencing State retain absolute discretion to refuse the transfer of the prisoner.

Procedures for transfer.

**6.** (1) A prisoner to whom this Act applies shall be informed by the sentencing State of the substance of this Act and the international agreement relevant to his transfer.

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(2) If the sentencing State is prepared, in principle, to approve a prisoner's request for transfer, it shall provide the receiving State with the following information -

- (a) the name, date and place of birth of the prisoner;
- (b) the nature, duration and date of commencement of the sentence imposed;
- (c) a statement of the facts upon which the sentence was based;
- (d) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission or any other factor relevant to the enforcement of the sentence;
- (e) a certified copy of the judgment and the law on which it was based;
- (f) a medical or social report, or both, on the prisoner, information about his medical treatment in the sentencing State and any recommendation for his further medical treatment in the receiving State;
- (g) a written statement to the effect that the prisoner has given consent to the transfer.

(3) If the receiving State, having considered the information which the sentencing State has supplied, is willing to consent to the prisoner's transfer, it shall furnish the sentencing State with the following-

- (a) a statement indicating that the prisoner is a national of that State;
- (b) a copy of the relevant law of the receiving State which provides that the act or omission on account of which the sentence has been imposed in the sentencing State constitutes a criminal offence according to the law of the receiving State, or

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would constitute a criminal offence if committed on its territory;

(c) a statement of the effect, in relation to the prisoner, of any law or regulation relating to that person's detention in the receiving State after that person's transfer, including a statement, if applicable, of the effect of subsection (3) of section 13 upon that person's transfer.

(4) Transfer of the prisoner from the custody of the authorities of the sentencing State into the custody of the authorities of the receiving State shall take place on the territory of the sentencing State.

(5) The prisoner shall be informed in writing of any measure taken by the sentencing State or by the receiving State in relation to compliance with this section as well as any decision, taken by either of the Parties, as regards the request for transfer.

Communication of requests and replies.

**7.** Requests for transfer and replies between the requesting State and the receiving State shall be made in writing through diplomatic channels by the competent authority of each State.

Consent.

**8.** (1) The sentencing State shall ensure that the person required to give consent to the transfer in accordance with subsection (1) (d) of section 5 does so voluntarily and with full knowledge of the legal consequences thereof; and the procedure for giving such consent shall be governed by the law of the sentencing State.

(2) The sentencing State shall afford an opportunity to the receiving State to verify, through a consul or other official agreed upon with the receiving State, that the consent is given in accordance with the conditions set out in subsection (1).



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**PART III  
WARRANTS**

**9.** (1) Subject to this Act and the Regulations made thereunder, the Minister may issue a warrant providing for the transfer of a prisoner into or out of Dominica.

Issue and effect of  
warrant for transfer.

(2) The effect of a warrant providing for the transfer of the prisoner out of Dominica shall be to authorise -

- (a) the taking of the prisoner to any place in any part of Dominica and his delivery, at a place of departure from Dominica, into the custody of the proper authority of the Government of the receiving State; and
- (b) the removal of the prisoner by the person to whom he is so delivered to a place in the territory of another Party.

(3) The effect of a warrant providing for the removal of the prisoner into Dominica shall be to authorise -

- (a) the bringing of the prisoner into Dominica;
- (b) the taking of the prisoner to such place in any part of Dominica, being a place at which effect may be given to the provisions of the warrant by virtue of paragraph (c), as may be specified in the warrant; and
- (c) the detention of the prisoner in any part of Dominica in accordance with provisions of the warrant.

(4) The Minister shall not issue a warrant and, if he has issued one, shall revoke it in any case where, before the transfer takes place, circumstances arise or are brought to his attention, which in his opinion make it inappropriate that the transfer should take place.

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(5) A consent given under subsection (1) (d) of section 5 for transfer of a prisoner shall not be capable of being withdrawn after a warrant has been issued in respect of the prisoner; and a purported withdrawal of that consent after that time shall not affect the validity of the warrant or any variation of the terms of the warrant which the Minister considers appropriate for giving effect to the transfer.

Continuing effect of detention Order.

**10.** The order of detention by virtue of which a prisoner is detained at the time a warrant for his transfer out of Dominica is issued shall continue to have effect during and after his removal from Dominica and may be enforced against him if he is again in Dominica at any time when under that order he is to be, or may be, detained.

Operation of warrant and retaking of prisoner.

**11.** (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 in relation to any time when the prisoner is required to be detained while in Dominica.

(2) The prisoner shall be deemed to be in the legal custody of the proper authority at any time when, being in Dominica or on board a vessel or an aircraft, he is being taken under the warrant to or from any place or being kept in custody under the warrant.

(3) A police officer or a prison officer, or any other person who is authorised by the Minister in writing for the purposes of the warrant, may take the prisoner to or from any place under the warrant or keep the prisoner in custody under the warrant.

(4) A prison officer or any other person authorised by the Minister under subsection (3) shall have all the powers, authority, protection and privileges of a police officer in Dominica while in Dominica.

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(5) If the prisoner escapes or is unlawfully at large, a police officer or any other person referred to in subsection (3) may arrest him without a warrant and take him to any place to which he may be taken under the warrant.

#### PART IV MISCELLANEOUS

**12.** (1) The taking into charge of the prisoner by the authorities of the receiving State shall have the effect of suspending the enforcement of the sentence in the sentencing State.

Effect of transfer for sentencing State.

(2) The sentencing State may no longer enforce the sentence if the receiving State considers enforcement of the sentence to have been completed.

**13.** (1) A prisoner who has been transferred under this Act shall not be arrested, put on trial or sentenced by the receiving State for the same offence for which he was sentenced in the sentencing State.

Procedure for enforcement of sentence.

(2) The continued enforcement of the sentence after transfer shall be governed by the law of the receiving State and that State alone shall be competent to take all appropriate decisions.

(3) The receiving State shall be bound by the legal nature and duration of the sentence as determined by the sentencing State.

(4) Notwithstanding subsection (3), if the sentence is by nature or duration incompatible with the law of the receiving State, that State may, with the agreement of the sentencing State prior to the transfer, adapt the sanction to the punishment or measure prescribed by its own law for a similar offence but it shall not aggravate, by its nature or duration, the sanction imposed in the sentencing State.

Pardon, amnesty,  
commutation.

**14.** Either Party may grant pardon, amnesty or commutation of sentence in accordance with its Constitution or other law.

Review of judgement.

**15.** (1) The sentencing State alone shall have the right to decide on any application for review of the judgment.

(2) If the sentencing State revises, modifies, or overturns the judgment pursuant to subsection (1) or otherwise reduces, commutes or terminates the sentence, the receiving State shall, upon being notified of the decision, give effect thereto in accordance with that decision.

Transit.

**16.** If either Party enters into arrangements for the transfer of prisoners with any third State, the other Party shall co-operate in facilitating the transit through its territory of prisoners being transferred pursuant to such arrangements, excepting that it may refuse to grant transit to any prisoner who is one of its own nationals and the Party intending to make such a transfer shall give advance notice to the other Party of such transit.

Costs.

**17.** (1) Any costs incurred in the application of this Act shall be borne by the receiving State, except costs incurred exclusively in the territory of the sentencing State.

(2) Notwithstanding subsection (1), the receiving State may, seek to recover all or part of the cost of transfer from the sentenced person or from some other source.

Regulations.

**18.** The Minister may make Regulations for carrying out the purposes of this Act and the Regulations may provide for -

- (a) the information to be given to a prisoner relating to the prisoner's transfer into or out of Dominica or in connection with his detention after the transfer;
- (b) the recovery, from a prisoner transferred into Dominica or from other sources, of expenses incurred in connection with the conveyance of the prisoner to Dominica;

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(c) the forms of warrants and other documents which may be prescribed under this Act.

Passed in the House of Assembly this 2<sup>nd</sup> day of March, 2009.

**DEIRDRE D. JULES (MRS)**  
*(Acting) Clerk of the House of Assembly*

**DOMINICA**

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