



ANALYSIS

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1994, No. 17

An Act for the carrying into effect of arrangements made for the transfer of offenders convicted in other countries of criminal offences, and for the enforcement in the Cook Islands of sentences upon them, and for the return of foreign offenders to other countries

(7 September 1994)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same as follows:

1. Short Title - This Act may be cited as the Transfer of Offenders Act 1994.

2. Interpretation - In this Act, unless the context otherwise requires -

"Cabinet" means the Cabinet of Ministers of the Cook Islands;

"convicted" includes a finding of guilt;

"foreign offender" means an offender who is a citizen of a prescribed country or a person who has, or who claims to have, close ties with a prescribed country;

"imprisonment" includes detention;

"Minister" means the Minister of Justice;

"offender" means a person, irrespective of age, who is -

- (a) a Cook Islander or a person having the status of a permanent resident of the Cook Islands; or

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(b) a person who, in the opinion of the Minister, has close ties with the Cook Islands, who is ordinarily resident in the Cook Islands and who has been convicted in a prescribed country of an offence by a court of competent jurisdiction and upon whom sentence has been imposed in a prescribed country in consequence thereof;

"prescribed" means prescribed by regulations made under section 14;

"prescribed country" means a country prescribed by Order in Executive Council, with which arrangements have been made for the transfer of offenders or for the enforcement of sentences;

"sentence" includes imprisonment, and supervision while at liberty on parole or on probation;

"transferred" means transferred from a prescribed country to the Cook Islands.

3. Request for transfer and signification of agreement - (1) Where the Minister is informed by the responsible authority of a prescribed country that an offender has applied for transfer to the Cook Islands, and that country has agreed to such transfer, the Minister shall cause the said authority to be advised whether the Government of the Cook Islands agrees or does not agree to such transfer; and if both Governments agree to such transfer the Minister shall subject to this Act, initiate such procedure to effect the transfer as shall be agreed upon between the responsible authority of the prescribed country and the Minister.

(2) The agreement of the Government of the Cook Islands to the transfer of an offender from a prescribed country, and to the enforcement of a sentence imposed upon him in a prescribed country, shall not be given unless -

(a) the following information and documents have been sent from the responsible authority of the sentencing country to the Minister -

- (i) the name, date and place of birth of the offender;
- (ii) the address, if known, of the offender in the Cook Islands;
- (iii) a certified copy of the judgement and a copy or account of the law on which it is based;
- (iv) a statement of the facts on which the conviction and sentence were based;
- (v) the nature, duration, and date of commencement of the sentence;
- (vi) where appropriate, any medical or social reports on the offender, including information about his treatment in the sentencing country and any recommendation for his further treatment;
- (vii) any other information which the Minister may specify as being required in all cases to enable him to consider the possibility of transfer and to enable him to inform the offender and the prescribed country of the full consequences of transfer for the offender; and

(b) Cabinet has concurred with a recommendation of the Minister that the prisoner be transferred.

4. Transferred offenders - A transferred offender shall be dealt with, and the sentence imposed upon him shall be enforced, in accordance with the provisions of this Act.

5. Effect of transfer - (1) When an offender is transferred to the Cook Islands the conviction and sentence recorded by the Court in the prescribed country shall, subject to subsection (3), be deemed for all purposes to be a conviction recorded and a sentence imposed by a Court of competent jurisdiction in the Cook Islands.

(2) On the transfer of an offender to the Cook Islands, any document transmitted by the responsible authority of the prescribed country from which the offender is transferred, being a document in which the conviction of, and the sentence imposed upon the offender is set out, shall, if that document purports to be signed by a judicial officer or authority, or by the person in charge of any penal institution in that country, be accepted as evidence of the facts stated therein unless the contrary is proved, without proof of the signature or the official character of the person by whom it purports to be signed; and thereafter any such document shall be treated as a like document signed in respect of a person convicted and sentenced in the Cook Islands, and shall, subject to the provisions of this Act, have effect according to the tenor thereof.

(3) The conviction of, and the sentence imposed upon an offender transferred to the Cook Islands pursuant to this Act shall not be subject to any appeal or to any form of review in the Cook Islands.

6. Prisoner to be detained in prison - A transferred offender who has been sentenced to a term of imprisonment shall be detained in prison or in such other institution in the Cook Islands as the Minister may direct.

7. Juvenile offenders - (1) A transferred offender sentenced to a term of imprisonment who would, if he had been convicted in the Cook Islands, have been treated by reason of his age as a juvenile and sentenced accordingly, shall be dealt with as his age dictates, in accordance with subsection (2).

(2) An offender to whom subsection (1) applies shall be produced before the High Court or other Court or tribunal having jurisdiction to try the offence which the offender has been convicted, and that Court or tribunal shall sentence him on the basis of the conviction by the Court in the prescribed country and with regard to the nature of the offence, and to any observations made by the convicting Court in passing sentence, as if the offender has been convicted of that offence by the Court or tribunal having jurisdiction in the matter in the Cook Islands.

8. Remission - (1) A transferred offender sentenced to a term of imprisonment shall -

- (a) be credited with any remission of that term to which he had become entitled at the date of his transfer in accordance with the law in that behalf in force in the prescribed country; and
- (b) be eligible to earn remission as if he had been sentenced to a term of imprisonment of the same length by a Court in the Cook Islands.

(2) Any remission of imprisonment referred to in subsection (1)(a) shall be liable according to law to forfeiture for a disciplinary offence as if it were remission earned by virtue of subsection (1)(b).

9. Parole - (1) The Criminal Justice Act 1967 and the Parole Board established thereby shall respectively apply to, and have jurisdiction over, a transferred offender as if he had been convicted and sentenced to a term of imprisonment of the same length by a Court in the Cook Islands.

(2) A transferred offender serving a term of imprisonment who is not at the date of his transfer on parole, shall become eligible for parole on the date on which he would have become eligible for parole if he had been convicted and sentenced in the Cook Islands.

(3) If a transferred offender has before his transfer been released on parole in the prescribed country in which he was convicted and sentenced and that parole was subsequently revoked, then the time spent on parole shall count towards the completion of his sentence in the Cook Islands.

(4) A transferred offender who is, at the date of his transfer, on parole in the prescribed country in which he was convicted and sentenced, shall be deemed for all purposes to have been convicted and sentenced in the Cook Islands and to have been released on parole by the Parole Board, notwithstanding that a person actually so convicted and sentenced might not otherwise be eligible for parole in the Cook Islands.

(5) A breach in the Cook Islands of any condition on which parole was granted in a prescribed country shall render the offender liable to the same consequences as if he had been released on parole by the Parole Board on condition, and he had broken that condition.

10. Pardon - Where the prerogative of mercy has been exercised in a prescribed country in respect of a transferred offender on whom the sentence is being enforced in the Cook Islands, that offender shall no longer be detained in prison or otherwise, or be subject to parole or to supervision on probation by reason only of the sentence imposed for the offence for which pardon has been granted.

11. Persons of unsound mind - (1) If a person who is ordinarily resident in the Cook Islands has been charged with an offence and has been detained with or without conviction by order of a Court in a prescribed country because he has been found to be incapable by reason of mental illness to stand trial or to be for the same reason incapable in law of being convicted of that offence, that person may be transferred at the request of the Government of that country, notified by the responsible authority of that country, and with the agreement of the Government of the Cook Islands, to the Cook Islands.

(2) A person transferred by virtue of subsection (1) shall be detained in prison or in such institution as the Minister may direct, and he shall be deemed for all purposes to be a person ordered to be detained pursuant to Part XXI of the Cook Islands Act 1915 by a Court in the Cook Islands in like circumstances.

12. Offenders in lawful custody during transfer - An offender shall, while he is being transferred, be deemed to be in the lawful custody of the person duly authorised to conduct him, and to be subject to the same restraint, and in the event of misbehavior, to the same punishment as if he were in prison in the Cook Islands and as if the person conducting him were a prison officer; and if the offender escapes or attempts to escape from such custody the offender and any person aiding or attempting to aid him in such escape shall be liable on conviction to the same penalty as if such escape or attempt to escape were an escape or an attempt to escape from such a prison.

13. Transfer of offenders from the Cook Islands - A foreign offender may request transfer to a prescribed country by applying to the Minister and if his transfer is agreed to by the Minister acting with the concurrence of Cabinet, and by the Government of that country, the offender may be conveyed to that country and delivered to the authority designated by that Government.

14. Regulations - (1) The Queen's Representative may by Order in Executive Council, make regulations for the carrying into effect of this Act.

(2) Without limiting the generality of subsection (1), the Queen's Representative may by Order in Executive Council prescribe the name of any country with which arrangements have been made for the transfer of offenders, and may in like manner revoke any such Order if such arrangements are revoked or cancelled.

This Act is administered by the Justice Department.