

**Second Session Fourth Parliament Republic of Trinidad  
and Tobago**

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**REPUBLIC OF TRINIDAD AND TOBAGO**

**Act No. 12 of 1993**

[L.S.]

**AN ACT to provide for the transfer between the Republic of Trinidad and Tobago and other countries of persons convicted of criminal offences and for the enforcement of sentences passed upon them, and for purposes incidental thereto and in connection therewith.**

*[Assented to 1st June, 1993]*

Enactment	ENACTED by the Parliament of Trinidad and Tobago as follows:—
Short title	1. This Act may be cited as the Transfer of Prisoners Act, 1993.
Interpretation	2. In this Act— “agreement” includes a treaty which has been entered into with the Government of a non-Commonwealth country; “the Convention” means the Convention on the Transfer of Sentenced Persons adopted in Strasbourg, France on 23rd March, 1983 by the Committee of Ministers of the Council of Europe; “convicted” includes a finding of guilt; “declared country” means a country so declared in accordance with section 3; “foreign offender” means a citizen of a declared country who is serving a sentence of imprisonment in Trinidad and Tobago; “imprisonment” includes detention; “Minister” means the Minister to whom is assigned responsibility for the administration of prisons; “offender” means a person, irrespective of age who being either— (a) a citizen of Trinidad and Tobago; or (b) a person whose transfer appears to the Minister to be appropriate having regard to any close ties that person may have with Trinidad and Tobago, has been convicted of an offence by a court of competent jurisdiction in a declared country and upon whom a sentence has been imposed as a consequence thereof;

- “prisoner” includes both a foreign offender as well as an offender;
- “sentence” means a term of imprisonment or the deprivation of liberty;
- “the Scheme” means the Scheme for the Transfer of Convicted Offenders within the Commonwealth as agreed by Law Ministers at their 1986 Meeting in Harare, Zimbabwe;
- “transfer” means transfer from a declared country to Trinidad and Tobago or from Trinidad and Tobago to a declared country.

3. (1) Where an agreement has been entered into between Trinidad and Tobago and a Commonwealth country or a non-Commonwealth country, as the case may be, for the transfer of prisoners or for the enforcement of sentences, the Minister may by Order, subject to negative resolution of Parliament, declare that country to be a country to which this Act applies; and any such Order may provide that this Act applies in relation to that country subject to such exceptions, adaptations, modifications or other provisions as may be specified in the Order, and where any such Order so provides, this Act shall apply in relation to that country subject to such exceptions, adaptations, modifications or other provisions.

Order declaring country to be one to which Act applies

(2) Where a Commonwealth country notifies the Commonwealth Secretary-General that it has enacted legislation to give effect to the Scheme, that notification shall, subject to subsection (1), be deemed to be an agreement between Trinidad and Tobago and that country.

(3) The accession by Trinidad and Tobago to the Convention pursuant to paragraph 1 of Article 19 of the Convention shall, subject to subsection (1), be deemed to be an agreement between Trinidad and Tobago and each of those States who have become parties to the Convention.

(4) For the purposes of any Order made under subsection (1), any territory for the external relations of which a declared country is responsible may be treated as a part of that country or, if the government of that country so requests, as a separate country.

(5) Any Order made other than by virtue of the Convention or the Scheme shall contain the text of the agreement entered into between the Government and that country and shall not remain in force for any longer period than the agreement.

Request for transfer  
of offender to  
Trinidad and Tobago  
and issue of warrant

4. (1) Where the Minister is informed by the responsible authority of a declared country that an offender has applied for a transfer to Trinidad and Tobago and that the Government of that country has agreed to such transfer, or where the Government of that country requests such transfer and the offender consents thereto, the Minister shall cause the said authority to be advised whether the Government agrees or does not agree to such transfer, and if the Government agrees to such transfer, the Minister shall, subject to subsection (2), issue a warrant in the prescribed form authorizing such transfer.

(2) The Minister shall not issue his warrant where less than six months of the sentence remains to be served, save in exceptional circumstances.

(3) A warrant issued under subsection (1), shall, subject to this Act, authorize—

- (a) the bringing of the offender from the declared country into Trinidad and Tobago;
- (b) the taking of the offender by a duly authorized person to such place of detention as may be designated in the warrant; and

- (c) the detention of the offender in accordance with such provisions as may be contained in the warrant, being provisions appearing to the Minister to be appropriate for giving effect to the arrangements in accordance with which the offender is transferred.

(4) Subject to section 13(1), the Minister shall not issue a warrant for the transfer of an offender from a declared country and for the enforcement of a sentence imposed upon him in that country unless—

- (a) the offender has applied for or consented to in the prescribed form, such transfer, and the form has been delivered to the Minister; or
- (b) in the circumstances where it appears to the Minister that the offender is by reason of his physical or mental condition or his youth incapable of acting for himself, a person appearing to the Minister to be the appropriate person to apply or consent on behalf of the offender has made the application for or consented to the transfer of the offender.

(5) The following information shall accompany the prescribed form where an offender has applied for a transfer or where a transfer has been applied for on his behalf or where the Government of a declared country has requested his transfer:

- (a) the name, the place and date of birth, or if the date of birth is not known, the approximate age, of the offender;
- (b) the offender's address if any in Trinidad and Tobago;
- (c) a certified copy of the judgment together with a copy or statement of the relevant law upon which it is based;

- (d) a statement of the facts and circumstances upon which the conviction and sentence were based;
- (e) the nature of the sentence, its date of commencement, and its duration;
- (f) wherever appropriate, any medical or other report pertaining to the offender including a report of his treatment in the declared country together with any recommendation for further treatment in Trinidad and Tobago;
- (g) any other information which the Minister may require to enable him to consider the possibility of a transfer.

(6) Where the Government agrees to the transfer of an offender to Trinidad and Tobago, the Minister shall, before he issues his warrant under subsection (1), cause the offender and the Government of the declared country to be informed of the consequences of such transfer under the Act.

Revocation of  
warrant

5. (1) If at any time, it appears appropriate to the Minister, in order that effect may be given to any agreement entered into with a Commonwealth country or a non-Commonwealth country for a warrant issued under this Act to be revoked or varied, he may as the case may require—

- (a) revoke the warrant; or
- (b) revoke the warrant and issue a new warrant under this Act containing provisions superseding some or all of the provisions of the previous warrant.

(2) A warrant issued in accordance with subsection (1)(b) shall not contain any provision inconsistent with this Act, but may provide that—

- (a) a provision contained in it is to be treated as having taken effect when the provisions which that provision supersedes took effect;

(b) things done under or for the purpose of the superseded provisions are to be treated as having been done under or for the purpose of the provisions contained in the new warrant.

(3) The powers conferred by this section shall be exercisable notwithstanding any defect in the warrant which is revoked.

6. (1) A transferred offender shall be dealt with, and the sentence imposed upon him shall be enforced, in accordance with the provisions of this Act. Effect of transfer

(2) Where an offender is transferred to Trinidad and Tobago, the conviction and sentence recorded by the court in the declared country from which he was transferred 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 Trinidad and Tobago.

(3) Subject to subsection (4), the conviction of and the sentence imposed upon a transferred offender shall not be subject to any appeal or to any form of review in Trinidad and Tobago.

(4) Where the sentence imposed upon a transferred offender exceeds that for which upon conviction in Trinidad and Tobago of the same or kindred offence he would have been liable, he may apply by way of petition to a judge of the High Court for a variation of the sentence to accord with the laws of Trinidad and Tobago, and the judge shall hear such application and grant such relief as he considers appropriate having regard to all the circumstances.

7. (1) Any document required by or under this Act to be certified or signed by the responsible authority of the declared country from which an offender is transferred, shall, if that document purports to be certified or signed by a judicial officer or authority or by the person in charge of any penal institution in the country in which Document to be  
accepted without  
proof of signature

the offender was detained and without proof of the signature or the official character of the person by whom it purports to be certified or signed, be accepted as evidence of the facts stated therein unless the contrary is proved.

(2) Such a document, when accepted, shall be treated as though it was duly certified or signed in relation to a person convicted and sentenced in Trinidad and Tobago, and shall, subject to this Act, have effect according to the terms thereof.

Transferred offender  
to be detained in  
prison

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

Young offenders

9. (1) A transferred offender sentenced to a term of imprisonment who would, if he had been convicted in Trinidad and Tobago, have been treated by reason of his age as a young offender within the meaning of the Young Offenders Detention Act and sentenced accordingly, shall be dealt with as his age dictates, in accordance with subsection (2).

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(2) An offender to whom subsection (1) applies shall pursuant to a warrant in the prescribed form under the hand of the Minister be produced before the court having jurisdiction to try an offence of a similar nature to that of which he has been convicted, and that court shall sentence him—

- (a) on the basis of the conviction by the court in the declared country;
- (b) with regard to the nature of the offence;
- (c) with regard to any observations made by the convicting court in passing sentence; and
- (d) in accordance with the Young Offenders Detention Act.

10. (1) A transferred offender sentenced to a term of <sup>Remission</sup> 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 declared country; and
- (b) thereafter be eligible to earn remission of that term as if he had been sentenced to a term of imprisonment of the same length by a court in Trinidad and Tobago.

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

11. A transferred offender shall, on release from <sup>Aftercare</sup> prison, be subject to the like compulsory supervision, if any, as if he had been sentenced to a term of imprisonment of the same length by a court in Trinidad and Tobago as a person sentenced to such a term by that court would have been so subject.

12. (1) If a transferred offender has, before his <sup>Pardon, parole</sup> transfer, been released on parole in the declared country in which he was convicted and sentenced and that parole was subsequently revoked, the time spent on parole shall count towards the completion of his sentence in Trinidad and Tobago.

(2) A transferred offender who is, at the date of his transfer, on parole in the declared country in which he was convicted and sentenced, shall upon his transfer to Trinidad and Tobago be treated as a person on parole, notwithstanding that such an offender might not be eligible for parole under the laws of Trinidad and Tobago.

(3) A breach of any condition of parole or of a conditional pardon shall render the offender liable to the same consequences as if he had been granted a respite or had been conditionally pardoned in accordance with the laws of Trinidad and Tobago.

Persons of  
unsound mind

13. (1) If a person who is a citizen of Trinidad and Tobago, having been charged with an offence in a declared country, has been ordered by a court of that country to be detained because he has been found to be insane and unfit to stand his trial, or has been found guilty of the offence but was insane at the time of the commission of the offence, that person may be transferred to Trinidad and Tobago at the request of the Government of that country, upon notification by the responsible authority of that country and with the consent of the Minister, whereupon section 4(4) shall not apply to such person.

(2) Sections 6(2) and 7 shall apply in relation to a person to whom this section applies as if he were transferred under this Act other than under this section.

Offenders in  
lawful custody  
during transfer

14. (1) While an offender is being transferred to Trinidad and Tobago under this Act, he shall be deemed to be in lawful custody of the person duly authorized to conduct him.

(2) If a person who is deemed to be in lawful custody escapes from such custody, he may be arrested in any part of Trinidad and Tobago in like manner as a person escaping from custody under a warrant issued for his arrest in that part.

(3) An offender who escapes or attempts to escape from such custody, and any person aiding or attempting to aid him in such escape is liable on summary conviction to a fine not exceeding one thousand dollars.

15. (1) Where an agreement between the Government and a declared country has been entered into for the transfer of foreign offenders under this Act, the Minister shall cause all such offenders to be informed in his own language of the contents of the agreement and any amendment thereto for the transfer of offenders.

Transfer of  
offenders from  
Trinidad and  
Tobago

(2) A foreign offender may apply in the prescribed manner to the Minister to be transferred to a declared country, and if his transfer is agreed upon between the Government and the government of that country, the Minister shall authorize such transfer by a warrant in the prescribed form under his hand.

(3) A warrant issued under subsection (2) shall authorize—

- (a) the taking of the offender from his place of detention to a place of departure in Trinidad and Tobago, and his delivery at that place into the custody of a person representing the appropriate authority of the country to which the offender is to be transferred;
- (b) the removal of the offender by the person to whom he is so delivered to the appropriate authority in the country to which he is to be transferred.

(4) The provisions of section 14 shall apply *mutatis mutandis* to a foreign offender in respect of whom a warrant has been issued under subsection (2).

16. (1) Where an offender is serving a sentence in Trinidad and Tobago consequent upon his transfer under this Act, and the declared country from which he had been transferred has exercised the power of pardon or any other power which renders the sentence no longer enforceable in that country, or the sentence has been completed, the offender shall no longer be subject to incarceration by reason only of that sentence.

Termination of  
sentence

(2) Where a foreign offender is serving a sentence in a declared country consequent upon his transfer from Trinidad and Tobago under this Act, and the power of pardon or any other power which renders the sentence no longer enforceable in Trinidad and Tobago has been exercised, or the sentence has been completed, the Minister shall forthwith inform the government of the declared country that the foreign offender is no longer subject to incarceration by reason only of that sentence.

Cost of transfer  
of offenders

17. (1) Subject to subsection (2), the cost of the transfer of prisoners under this Act shall be met by the Government and the government of the declared country in such proportion as may be agreed upon either generally or in respect to any particular case.

(2) Subject to subsection (3), in the case of a transfer of an offender to Trinidad and Tobago the expenses of such transfer shall be borne by such offender or by someone on his behalf, and for this purpose the Minister shall have the power to require a person with or without a surety to give an undertaking to pay the whole or part of the expenses to the Minister, such expenses to be regarded as a civil debt owing to the State.

(3) Subsection (2) shall not apply where in any case it appears to the Minister that it would be unreasonable for him to exercise any of the powers conferred by that subsection either because of the exceptional circumstances of the case or because the means of such offender are insufficient to meet the expenses and their recovery, whether immediately or at some future time, from such offender or from any other source is impracticable.

(4) All monies received by the Minister under this section shall be paid into the Consolidated Fund.

18. This Act shall apply in the case of all prisoners <sup>Application of Act</sup> who are already serving sentences of imprisonment on the date when its provisions are extended under section 3 to apply to the country of which such offenders are citizens.

19. (1) The Minister may make Regulations— <sup>Regulations</sup>

- (a) prescribing the form of any Order or warrant required to be issued by the Minister under this Act;
- (b) prescribing the form and manner in which a foreign offender may apply to the Minister for transfer to a declared country; and
- (c) generally for carrying into effect the purposes of this Act.

(2) Regulations made under subsection (1) are subject to negative resolution of Parliament.

Passed in the Senate this 2nd day of March, 1993.

R. CUMBERBATCH  
*Acting Clerk of the Senate*

Passed in the House of Representatives this 7th day of May, 1993.

N. COX  
*Acting Clerk of the House*

House of Representatives amendments agreed to by the Senate this 11th day of May, 1993.

R. CUMBERBATCH  
*Acting Clerk of the Senate*