

INTERNATIONAL TRANSFER OF PRISONERS BILL 2012

ARRANGEMENT OF CLAUSES

PART I

PRELIMINARY

Clause

1. Short title and commencement
2. Application
3. Interpretation
4. Order of the Minister

PART II

TRANSFER

5. Eligibility for transfer from Malaysia
6. Eligibility for transfer to Malaysia
7. Conditions for transfer

PART III

TRANSFER FROM MALAYSIA

8. Preliminary consideration for application for transfer from Malaysia
9. Application for transfer from Malaysia
10. Warrant for transfer from Malaysia

PART IV

TRANSFER TO MALAYSIA

11. Application for transfer to Malaysia
12. Warrant for transfer to Malaysia
13. Registration of warrant or order issued in the prescribed foreign State

PART V

VARIATION AND REVOCATION OF WARRANT

Clause

14. Variation of warrant for transfer
15. Revocation of warrant for transfer

PART VI

ENFORCEMENT OF PUNISHMENT

16. Enforcement of punishment
17. Period spent in custody in connection with the sentence of imprisonment or order of confinement in a prison

PART VII

GENERAL

18. Pardon, commutation, *etc.* of sentence
19. Costs
20. Delegation
21. Regulations

A BILL

i n t i t u l e d

An Act to provide for the transfer of prisoners to and from Malaysia, and for matters connected therewith.

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ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the International Transfer of Prisoners Act 2012.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Application

2. This Act is applicable to prisoners sentenced by the courts established by or under Part IX of the Federal Constitution or section 3 of the Subordinate Courts Act 1948 [*Act 92*], or by the courts of the prescribed foreign State with similar jurisdiction.

Interpretation

3. In this Act, unless the context otherwise requires—

“prisoner” means a person who is serving a sentence of imprisonment or under confinement in a prison pursuant to an order made upon a finding of guilt, including—

(a) a prisoner released on parole; and

(b) such person under the age of eighteen years;

“Commissioner General of Prison” means the Commissioner General of Prison appointed under subsection 10(1) of the Prison Act 1995 [*Act 537*];

“Minister” means the Minister charged with the responsibility for prisons and prisoners;

“prescribed foreign State” means a foreign State declared by the Minister, by an order made under section 4, as a prescribed foreign State;

“appropriate authority” means a person or authority in any prescribed foreign State whom the Minister is satisfied is authorized under the law of that prescribed foreign State as being the authority responsible for administering the transfer of prisoners to and from such State.

Order of the Minister

4. (1) The Minister may, by order to be published in the *Gazette*, declare a foreign State to be a prescribed foreign State if there is in force a treaty or other agreement between Malaysia and that foreign State, under which that foreign State has agreed to provide for the transfer of prisoners to and from Malaysia.

(2) An order under this section may provide that the provisions of this Act shall apply to the foreign State subject to such restrictions, limitations, exceptions, modifications, adaptations, conditions or qualifications as are specified in the order, and in that event the provisions of this Act shall apply accordingly.

(3) An order made under this section shall be conclusive evidence that the treaty or other agreement referred to in the order complies with this Act, and that this Act applies to the prescribed foreign State referred to in the order.

(4) The validity of the order made under this section shall not be questioned in any legal proceedings.

(5) The Minister may by a subsequent order vary or revoke any order previously made under this section.

PART II

TRANSFER

Eligibility for transfer from Malaysia

5. (1) A prisoner is eligible for transfer from Malaysia to a prescribed foreign State if the prisoner is a citizen of that State or has community ties with that State.

(2) For the purpose of this section, a prisoner has community ties with a prescribed foreign State if—

- (a) the prisoner's principal place of residence immediately before being sentenced to imprisonment in Malaysia was in the prescribed foreign State;
- (b) the prisoner's parent, grandparent or child has a principal place of residence in the prescribed foreign State; or
- (c) the prisoner is married to anyone whose principal place of residence is in the prescribed foreign State.

Eligibility for transfer to Malaysia

6. A prisoner is eligible for transfer to Malaysia from a prescribed foreign State under this Act if the prisoner is a citizen of Malaysia.

Conditions for transfer

7. (1) The conditions for transfer of a prisoner to or from Malaysia are fulfilled if—

- (a) the sentence of imprisonment of or the order made upon the finding of guilt imposing a term of imprisonment on the prisoner is not subject to appeal to any court or tribunal;
- (b) the acts or omissions constituting the offence on account of which the prisoner is serving the sentence in the sentencing State would, if the acts or omissions had occurred in the State to which transfer is sought, also have constituted an offence in that State unless the Minister and the appropriate authority agree otherwise;
- (c) at the time the application for the transfer is made at least six months of the prisoner's sentence remains to be served, irrespective of whether the prisoner has been released on parole or otherwise, provided that the Minister and the appropriate authority may determine a shorter period;
- (d) the Minister and the appropriate authority have given their consent to the transfer;
- (e) the consent of the prisoner has been obtained, if such consent is required by the treaty or other agreement between Malaysia and the prescribed foreign State, or any other treaty or agreement to which Malaysia or the prescribed foreign State is a party to; and
- (f) any other requirements agreed to between Malaysia and the prescribed foreign State are satisfied including conditions provided in or made under any treaty or agreement between Malaysia and the prescribed foreign State.

(2) For the transfer of a prisoner to or from Malaysia, the Minister may refuse the application for transfer or may not grant his consent to the transfer if—

- (a) the prisoner has been sentenced to death;
- (b) such transfer would affect the sovereignty, security, public order or other essential public interest of Malaysia;
- (c) such transfer of the prisoner would impose an excessive burden on the resources of Malaysia; or
- (d) such transfer would require steps to be taken that would be contrary to any written law.

PART III

TRANSFER FROM MALAYSIA

Preliminary consideration for application for transfer from Malaysia

8. (1) Where the Minister intends to apply for a transfer of prisoner to a prescribed foreign State—

- (a) the Minister shall inform such prescribed foreign State of Malaysia's intention to apply for transfer of the prisoner to the prescribed foreign State; and
- (b) the Minister shall request such prescribed foreign State to indicate its provisional views on the application, including the method by which it is likely that the sentence of imprisonment would be enforced by the prescribed foreign State if, following a formal application for transfer, the prescribed foreign State consents to the transfer.

(2) For the purposes of subsection (1), the Minister may provide the prescribed foreign State with—

- (a) details of any request for extradition of the prisoner that has been made under the Extradition Act 1992 [*Act 479*] or of any expression of interest in extradition made by another State or of any State that, in the opinion of the Minister, may wish to extradite the prisoner; or

- (b) any other information the Minister considers may assist the prescribed foreign State in giving its provisional views on the proposed transfer.

Application for transfer from Malaysia

9. (1) An application for transfer of a prisoner from Malaysia may be made—

- (a) by the Minister to the appropriate authority of the prescribed foreign State; or
- (b) by the appropriate authority of the prescribed foreign State to the Minister.

(2) The application for transfer under subsection (1) shall be made in writing.

(3) Every application for transfer under this section shall be accompanied by—

- (a) such documents as may be agreed by Malaysia and the prescribed foreign State for that purpose; and
- (b) any other documents or information which may be considered relevant to the application and that may appropriately be provided.

(4) The Minister may notify the prisoner or the prisoner's representative of the arrangement for transfer.

Warrant for transfer from Malaysia

10. (1) The Minister may, if a prisoner is eligible for transfer under subsection 5(1) and the transfer conditions under section 7 are fulfilled, issue a warrant for transfer in the form as prescribed by the Minister authorizing the transfer of the prisoner from Malaysia to the prescribed foreign State.

(2) The Minister shall cause a copy of the warrant for transfer from Malaysia to be served on the Commissioner General of Prison.

(3) When issuing a warrant for transfer from Malaysia, the Minister shall have regard as to whether or not the prisoner is the subject of any extradition request.

(4) A warrant for transfer from Malaysia shall be deemed to be sufficient authority for the Commissioner General of Prison to deliver such prisoner to any appropriate authority to receive such prisoner.

(5) A warrant for transfer from Malaysia authorizes the prisoner from Malaysia to continue serving the sentence of imprisonment or the order of confinement in a prison in the prescribed foreign State in accordance with the treaty or other agreement between Malaysia and the prescribed foreign State.

(6) If the prisoner is released on parole, the warrant for transfer from Malaysia—

(a) shall specify any approval, authorization, permission or variation to the parole or other order that has been made under the laws of Malaysia; and

(b) shall specify any procedure for the transfer of the prisoner to the prescribed foreign State that has been agreed upon with the prescribed foreign State and the necessary authorizations and directions.

(7) The effect of the issuance of a warrant for transfer from Malaysia is to suspend enforcement of the sentence of imprisonment or the order of confinement in a person in Malaysia.

PART IV

TRANSFER TO MALAYSIA

Application for transfer to Malaysia

11. (1) An application for transfer of a prisoner to Malaysia may be made—

(a) by the Minister to the appropriate authority of the prescribed foreign State; or

(b) by the appropriate authority of the prescribed foreign State to the Minister.

(2) An application for transfer under subsection (1) shall be made in writing.

(3) Every application for transfer under this section shall be accompanied by—

- (a) such documents as may be agreed by Malaysia and the prescribed foreign State for that purpose; and
- (b) any other documents or information which may be considered relevant to the application and that may appropriately be provided.

Warrant for transfer to Malaysia

12. (1) The Minister may, if a prisoner is eligible for transfer under section 6 and the transfer conditions under section 7 are fulfilled, issue a warrant for transfer in the form as prescribed by the Minister authorizing the transfer of the prisoner from the prescribed foreign State to Malaysia.

(2) A warrant for transfer to Malaysia authorizes the transfer of the prisoner from the prescribed foreign State to Malaysia to continue serving the sentence of imprisonment or the order of confinement in a prison in accordance with the treaty or other agreement between Malaysia and the prescribed foreign State.

(3) If the prisoner has been released on parole, the warrant for transfer to Malaysia shall specify any procedure for such transfer that has been agreed upon with the prescribed foreign State and the necessary authorizations and directions.

(4) The Commissioner General of Prison shall have the authority to confine such prisoner in prison for the period specified in the warrant for transfer to Malaysia.

Registration of warrant or order issued in the prescribed foreign State

13. Where, under the provisions of any law in force in the prescribed foreign State, a court or a tribunal has issued a warrant for the execution of a sentence of imprisonment or an order made upon a finding of guilt imposing a term of imprisonment, on a

prisoner, a Sessions Court Judge in Malaysia shall register the warrant or order, and the warrant or order may then be executed on that prisoner as if the warrant or order was lawfully issued under the laws of Malaysia.

PART V

VARIATION AND REVOCATION OF WARRANT

Variation of warrant for transfer

14. The Minister may, by a subsequent warrant for transfer, vary any warrant for transfer previously issued under subsection 10(1) or 12(1).

Revocation of warrant for transfer

15. The Minister may, at any time before the prisoner concerned is transferred, revoke the warrant for his transfer issued under subsection 10(1) or 12(1) if—

- (a) the Minister considers it to be inappropriate to proceed with the prisoner's transfer;
- (b) the prescribed foreign State withdraws consent to the transfer; or
- (c) the prisoner, if required to give consent by the treaty or other agreement between Malaysia and the prescribed foreign State, or any other treaty or agreement to which Malaysia or the prescribed foreign State is a party to, withdraws such consent.

PART VI

ENFORCEMENT OF PUNISHMENT

Enforcement of punishment

16. The enforcement of the sentence of imprisonment or order of confinement in a prison imposed upon any prisoner who is transferred to Malaysia shall be governed by the laws of Malaysia.

Period spent in custody in connection with the sentence of imprisonment or order of confinement in a prison

17. Any period of the sentence of imprisonment or order of confinement in a prison served or deemed to have been served in the prescribed foreign State by the prisoner shall be reckoned as period served by the prisoner in Malaysia.

PART VII**GENERAL****Pardon, commutation, *etc.* of sentence**

18. (1) In relation to a transfer of prisoner to Malaysia, this Act shall not restrict the power of the prescribed foreign State to grant pardon, respite or reprieve in respect of the offence committed or remission, suspension or commutation of the sentence, to the prisoner, in accordance with the laws of such prescribed foreign State.

(2) Where the prescribed foreign State has notified the Minister of a decision to grant a pardon, respite or reprieve in respect of the offence committed or a remission, suspension or commutation of the sentence, to a prisoner, the Minister shall give effect to such decision.

(3) In relation to a transfer of prisoner from Malaysia, this Act shall not restrict the power to grant pardon, respite or reprieve in respect of the offence committed or remission, suspension or commutation of the sentence, to the prisoner, in accordance with the laws of Malaysia.

Costs

19. The Minister may recover costs and expenses incurred in transferring a prisoner.

Delegation

20. (1) The Minister may, as he deems fit, delegate to a fit and proper person any of his powers under this Act except the power of delegation under this section.

(2) A delegation under this section shall not preclude the Minister himself from exercising at any time any of the powers so delegated.

Regulations

21. The Minister may make such regulations as may be necessary or expedient for giving full effect to the provisions of this Act.

EXPLANATORY STATEMENT

This proposed International Transfer of Prisoners Act 2012 (“the proposed Act”) seeks to provide for the transfer of prisoners to and from Malaysia, and for matters connected therewith.

2. *Clause 1* contains the short title and empowers the Minister to appoint a date of coming into operation of the proposed Act.

3. *Clause 2* seeks to state the application of the proposed Act.

4. *Clause 3* contains the definitions of words and expressions used in the proposed Act.

5. *Clause 4* seeks to empower the Minister to make an order to declare a foreign State as a prescribed foreign State.

6. *Clause 5* states the eligibility of a prisoner for transfer from Malaysia if the said prisoner is a citizen of or has community ties with the prescribed foreign State.

7. *Clause 6* states the eligibility of a prisoner for transfer to Malaysia if the said prisoner is a citizen of Malaysia.

8. *Clause 7* contains provisions on the conditions for transfer of prisoners to and from Malaysia and the power of the Minister to refuse the application for the said transfer.

9. *Clause 8* contains provisions on preliminary consideration relating to an application for transfer of a prisoner from Malaysia to a prescribed foreign State.
10. *Clause 9* contains provisions on application for transfer of a prisoner from Malaysia to a prescribed foreign State.
11. *Clause 10* sets out the procedure for the issuance of a warrant for transfer of a prisoner from Malaysia.
12. *Clause 11* contains provisions on application for transfer of a prisoner to Malaysia from a prescribed foreign State.
13. *Clause 12* sets out the procedure for the issuance of a warrant for transfer of a prisoner to Malaysia.
14. *Clause 13* contains provisions for the registration of a warrant or order issued in a prescribed foreign State for the purpose of enforcement in Malaysia.
15. *Clause 14* empowers the Minister to vary any warrant for transfer issued under subsection 10(1) or 12(1) of the proposed Act.
16. *Clause 15* empowers the Minister to revoke any warrant for transfer issued under subsection 10(1) or 12(1) of the proposed Act if the Minister is satisfied that the consent of the prescribed foreign State has been withdrawn or if it is inappropriate to transfer the prisoner or if there is a requirement for the prisoner to give consent, such consent has been withdrawn.
17. *Clause 16* provides that the enforcement of a sentence of imprisonment or an order of confinement in a prison of any prisoner transferred to Malaysia shall be governed by the laws of Malaysia.
18. *Clause 17* states that the period of the sentence of imprisonment or order of confinement in a prison served by the prisoner in the prescribed foreign State shall be reckoned as period served in Malaysia.
19. *Clause 18* provides that the proposed Act does not restrict the power of the prescribed foreign State to grant pardon, respite or reprieve in respect of the offence committed or a remission, suspension or commutation of the sentence, to the prisoner after being transferred to Malaysia and vice versa.
20. *Clause 19* empowers the Minister to recover costs and expenses incurred in transferring a prisoner.
21. *Clause 20* empowers the Minister to delegate any of his powers under the proposed Act to fit and proper persons.

22. *Clause 21* empowers the Minister to make such regulations as may be necessary or expedient for giving full effect to the provisions of the proposed Act.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

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