

CHAPTER 7:14

TRANSFER OF OFFENDERS ACT

Act 14/1990, 6/2005 (s. 34), 5/2014 (s. 33).

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SCHEDULE

Specified countries.

AN ACT to provide for the transfer to prison in their countries of origin of persons convicted within Zimbabwe; to provide for a like transfer of persons convicted outside Zimbabwe; and to provide for matters connected therewith or incidental thereto.

[Date of commencement: 19th October, 1990.]

1 Short title

This Act may be cited as the Transfer of Offenders Act [*Chapter 7:14*].

2 Interpretation

(1) In this Act—

“appropriate authority” means the person responsible under an enactment of a specified country for administering the transfer of offenders to and from that specified country, and includes the lawful delegate of such person;

“foreign offender” means any person who—

- (a) is not a citizen of Zimbabwe; and
- (b) is a citizen of or ordinarily resident in a specified country or has close ties to a specified country; and
- (c) is convicted and sentenced in Zimbabwe to—
 - (i) an effective term of imprisonment of which the unexpired portion at the time that an application in terms of section *twelve* is made is not less than six months; or
 - (ii) an indeterminate period of imprisonment;

and includes a foreign offender released on licence from such sentence;

“imprisonment” includes—

- (a) placement of a juvenile in a training institute or reform school in terms of section 351 of the Criminal Procedure and Evidence Act [*Chapter 9:07*];
- (b) detention at the pleasure of the President in an institution in terms of section 28 of the Mental Health Act [*Chapter 15:06*];
- (c) any form of restraint of liberty analogous to paragraph (a) or (b) that applies in a specified country;

“judgment” means the final judgment of a court or tribunal in terms of which an offender or foreign offender is convicted and sentenced;

“juvenile” means under the age of eighteen years;

“mentally disordered or defective” shall have the meaning assigned to that term in section 2 of the Mental Health Act [*Chapter 15:06*];

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“offender” means any person who—

- (a) is a citizen or permanent resident of Zimbabwe, or has close ties to Zimbabwe;
- (b) is convicted and sentenced in a specified country to—
 - (i) an effective term of imprisonment of which the unexpired portion at the time that an application in terms of section *four* is made is not less than six months; or
 - (ii) an indeterminate period of imprisonment;

and includes an offender released on licence from such sentence;

“release on licence” means a release in terms of Part XX of the Prisons Act [*Chapter 7:11*], or any analogous system of conditional release from imprisonment operating in a specified country;

“specified country” means a country or territory referred to in section *three*;

“transferred offender” means an offender transferred in terms of section *five*.

(2) In determining whether or not a person has close ties with any country, the following matters shall be taken into account—

- (a) whether or not he is a citizen of that country;
- (b) whether or not he was born in that country or is descended from persons who were born in that country;
- (c) whether or not he has resided in that country, and if so for how long;
- (d) whether or not he has any relatives by birth or marriage in that country and the degree of relationship;
- (e) any cultural or religious ties he may have with that country.

3 Application of Act

(1) This Act shall apply to the transfer of offenders and foreign offenders to and from Zimbabwe and any other country or territory specified in the Schedule.

(2) The Minister may, by statutory instrument, amend the Schedule to specify any further country or territory or remove any specified country therefrom.

4 Application for and agreement to transfer of offender

(1) Where an appropriate authority agrees to give effect to the wish of an offender to be transferred to Zimbabwe in terms of this Act, it shall submit to the Minister an application by the offender in the prescribed form, together with a copy of the judgment relating to the offender certified as correct and signed by the appropriate authority.

(2) Upon receipt of an application in terms of subsection (1) the Minister shall, after consultation with the Prosecutor-General and the Director of Prisons, indicate in writing to the appropriate authority whether or not he agrees to the transfer to Zimbabwe of the applicant offender.

5 Issue of warrant

(1) If, in terms of subsection (2) of section *four*, the Minister agrees to the transfer to Zimbabwe of an offender he shall, at the time he indicates his agreement to the appropriate authority or after such further time for consultation with the appropriate authority as may be necessary, issue a warrant to the appropriate authority—

- (a) authorizing the transfer of the offender to Zimbabwe from the specified country concerned; and
- (b) confirming or specifying any arrangements for effecting the transfer of the offender.

(2) The Minister shall at the time of issuing a warrant cause a copy thereof to be served on the Director of Prisons.

6 Effect of transfer

(1) A copy of the judgment referred to in subsection (1) of section *four* shall be accepted as conclusive proof of the facts stated therein, and have effect as if it were a judgment of a court of competent jurisdiction within Zimbabwe.

(2) The conviction or sentence of an offender transferred to Zimbabwe in terms of this Act shall not be subject to any appeal or review in Zimbabwe.

7 Offender to be imprisoned

A transferred offender shall be imprisoned in Zimbabwe for the unexpired portion of his sentence of imprisonment:

Provided that the period between the issue of a warrant in respect of the offender in terms of section *five* and the date of his arrival in Zimbabwe shall count as part of his sentence of imprisonment.

8 Remission

(1) A transferred offender shall—

- (a) be credited with any remission of a sentence of imprisonment to which he had become entitled at the date of his transfer in accordance with the law relating to remission in force in the specified country from which he is transferred; and
- (b) be entitled to earn remission in terms of Part XIX of the Prisons Act [*Chapter 7:11*] in respect of the unexpired portion of his sentence that remains to be served on the date of his arrival in Zimbabwe as if he had been sentenced to a terms of imprisonment of the same length by a court in Zimbabwe.

(2) Any remission of a sentence of imprisonment referred to in paragraph (a) of subsection (1) shall be liable to forfeiture in terms of Part XV of the Prisons Act [*Chapter 7:11*] concerning the discipline of prisoners.

9 Release on licence

(1) The Prisoners Release Advisory Board and the Parole Board established respectively in terms of sections 112 and 115 of the Prisons Act [*Chapter 7:11*] shall 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 Zimbabwe.

(2) A transferred offender—

- (a) shall become eligible to be released on licence on the date on which he would have been so eligible if he had been convicted and sentenced in Zimbabwe;
- (b) whose release on licence, if any, had been revoked in the specified country in which he was convicted and sentenced, shall have the time he spent on release under licence counted towards the completion of his sentence in Zimbabwe.

(3) A transferred offender who is, at the date of his transfer, released on licence in the specified country in which he was convicted and sentenced shall be deemed for all purposes to have been convicted and sentenced in Zimbabwe and to have been released on licence in Zimbabwe, notwithstanding that such offender might not be eligible to be so released in Zimbabwe:

Provided that such licence may be cancelled in terms of subsection (2) of section 115 of the Prisons Act [*Chapter 7:11*] if the offender breaches any condition of the licence.

10 Pardons

(1) Nothing in this Act shall be so construed as to limit in any way the President's prerogative of mercy as set out in section 31I of the Constitution.

(2) Where the prerogative of mercy has been exercised in a specified country in respect of a transferred offender, any pardon granted pursuant thereto shall, to the extent to which that prerogative is exercised, have effect as if it were a pardon granted by the President to the transferred offender in terms of section 31I of the Constitution.

11 Juvenile offenders and mentally disordered or defective offenders

(1) Where an application in terms of section *four* relates to a juvenile offender—

- (a) the Minister shall inform the Minister administering the Children's Act [*Chapter 5:06*] of the application; and
- (b) subsection (2) shall apply if the Minister agrees to the transfer to Zimbabwe of the juvenile offender concerned.

[Subsection amended by Act 6 of 2005]

(2) Upon arrival in Zimbabwe, a juvenile offender shall be produced before a court having jurisdiction to try the offence of which the juvenile offender has been convicted, and that court shall sentence him on the basis of the conviction before the court in the specified country, taking into account the nature of the offence and any observations made by the convicting court in passing sentence as if the juvenile offender had been convicted of that offence in Zimbabwe.

(3) Where an application in terms of section *four* relates to a mentally disordered or defective offender—

- (a) the Minister shall inform the Minister administering the Mental Health Act [*Chapter 15:06*] of the application; and
- (b) subsection (4) shall apply if the Minister agrees to the transfer to Zimbabwe of the mentally disordered or defective person concerned.

(4) Upon arrival in Zimbabwe of the mentally disordered or defective offender, the Prosecutor-General shall make an application in terms of section 4 of the Mental Health Act [*Chapter 15:06*] for the issue of a reception order in respect of such offender.

12 Transfer of foreign offenders

(1) Where a foreign offender—

- (a) is convicted and sentenced after the 19th October, 1990, the judge or magistrate convicting and sentencing him; or
- (b) was convicted and sentenced before the 19th October, 1990, the Director of Prisons;

shall inform the foreign offender of the provisions of this section.

(2) If a foreign offender wishes to be transferred out of Zimbabwe in terms of this section to a specified country of which he is a citizen or ordinary resident or to which he has close ties, he may apply in the prescribed form provided by the Director of Prisons.

(3) The Director of Prisons shall forward any application in terms of subsection (1) to the Minister, together with such written recommendations on the application as he thinks fit, and the Minister may, after consultation with the Prosecutor-General, agree to the application.

(4) Where the Minister agrees to an application in terms of subsection (1) he shall submit to the appropriate authority of the specified country concerned—

- (a) the application or a certified copy thereof; and
- (b) a copy of the judgment relating to the offender or an adequate summary thereof as may be required by the specified country concerned, certified as correct and signed by the Registrar of the High Court or the clerk of the magistrates court which tried him, as the case may be; and
- (c) such other document or information as the appropriate authority may require for the purposes of effecting the transfer of the foreign offender.

(5) If the specified country concerned in subsection (4) agrees to the transfer of the foreign offender, the Minister shall order such transfer upon receipt by him of a warrant or other document signed by the appropriate authority authorizing the transfer and confirming or specifying any arrangements for effecting the transfer, and the Director of Prisons shall, upon being served by the Minister with such warrant or document, effect the transfer in accordance with the arrangements stated therein.

13 Applications on behalf of offenders or foreign offenders under a legal or other disability

(1) Where an application in terms of subsection (1) of section *four* relates to a juvenile offender, a mentally disordered or defective offender, or a physically disabled offender, the person legally entitled to act on behalf of the offender concerned may complete the application.

(2) This section shall apply, *mutatis mutandis*, to foreign offenders.

14 Offenders and foreign offenders in lawful custody during transfer

(1) An offender or foreign offender shall, while he is being transferred, be deemed to be in the lawful custody of the person duly authorized to conduct him, and to be subject to the same restraint and, in the event of misbehaviour, to the same punishment, as if he were in Zimbabwe or the specified country to which he is being transferred.

(2) If an offender or foreign offender escapes or attempts to escape from custody while being transferred, such offender or foreign 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 attempt to escape from such custody.

15 Regulations

The Minister may make regulations prescribing—

- (a) the form for an application in terms of sections *four* and *twelve*;
- (b) the procedure to be followed for the enforcement in Zimbabwe of a sentence imposed on an offender in a specified country;
- (c) matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.

16 Preservation of agreement with South Africa

The agreement set out in the Second Schedule to the Children's Act [*Chapter 5:06*] shall not be held to be terminated as a result of the termination of the agreement set out in the Schedule to the Prisoners Removal Act [*Chapter 20*].

[Section amended by Act 6 of 2005]

SCHEDULE (Section 3 (1))

SPECIFIED COUNTRIES

Antigua and Barbuda
Australia
The Bahamas
Bangladesh
Barbados
Belize
Bermuda
Botswana
British Virgin Islands
Brunei Darussalam

Canada
Cayman Islands
Cook Islands
Cyprus
Dominica
Fiji
Falkland Islands
The Gambia
Ghana
Gibraltar

Grenada
Guernsey
Guyana
Hong Kong
India
Isle of Man
Jamaica
Jersey
Kenya
Kiribati
Lesotho
Malawi
Malaysia
The Maldives
Malta
Mauritius
Montserrat
Nauru
New Zealand
Nigeria
Niue
Pakistan

Papua New Guinea
St. Christopher and Nevis
St. Helena
St. Lucia
St. Vincent and the Grenadines
Seychelles
Sierra Leone
Singapore
Solomon Islands
Sri Lanka
Swaziland
Tanzania
Tonga
Trinidad and Tobago
Turks and Caicos
Tuvalu
Uganda
United Kingdom
Vanuatu
Western Samoa
Zambia