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**OFFENDERS REMOVAL AND DETENTION  
ORDINANCE 2016**

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**OFFENDERS REMOVAL AND DETENTION  
ORDINANCE 2016**

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An Ordinance to make provision for the arrest, detention and removal to the Republic of Cyprus of persons who have been concerned with offences in the Republic, requests for removal from the Republic of persons who have been concerned with offences in the Areas, and related matters

**P.E. RUSHBROOK**  
**DEPUTY ADMINISTRATOR**

*10 August 2016*

**BE** it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

**PART 1**

Preliminary

**Citation**

1. This Ordinance may be cited as the Offenders Removal and Detention Ordinance 2016.

**Commencement**

- 2.—(1) Section 34 (rules of court) comes into force on the day this Ordinance is made.  
(2) The other provisions of this Ordinance are to come into force on such day or days as the Chief Officer may appoint by order made as a public instrument.

**Interpretation**

3. In this Ordinance—

“arrest warrant” means an arrest warrant issued by a court of the Republic in accordance with the Republic’s Criminal Procedure Law(a);

“authorised officer” means a police officer of the rank of Chief Inspector or above, or any other person authorised by the Administrator for the purpose of this Ordinance;

“certified warrant” means an arrest warrant certified in accordance with section 5;

“Convention rights” is to be construed in accordance with the Human Rights Ordinance 2004(b).

“discharge” (except in section 13) means that proceedings under Part 2 are discontinued;

“removal hearing” means a hearing described in section 12;

“removal offence” means an offence specified in a certified warrant;

“removal order” means an order that a person be removed to custody in the Republic made under section 11(3) (consent to removal) or 12(7) (removal hearing); and

“rules” means rules of court made under section 34.

## PART 2

### Arrest and removal to Republic

#### Application of Part 2

4.—(1) This Part applies where an authorised officer receives a copy of an arrest warrant in respect of a person who is—

- (a) alleged to have committed,
- (b) reasonably suspected of having committed, or
- (c) convicted of

a criminal offence in the Republic.

(2) But this Part does not apply where the arrest warrant has been issued pursuant to recognised criminal proceedings within the meaning of Part 2 of the Citizens of the Republic (Jurisdiction of the Courts) Ordinance 1960(c).

#### Certified warrant

5.—(1) An authorised officer may certify an arrest warrant.

(2) A certification under subsection (1) must include—

- (a) particulars of the person’s identity; and
- (b) particulars of the criminal offence—
  - (i) which the person is alleged to have committed;
  - (ii) which the person is reasonably suspected of having committed; or
  - (iii) of which the person has been convicted.

(3) Where subsection (4) applies, the authorised officer must consult the Attorney General and Legal Adviser and the Chief Constable before certifying an arrest warrant.

(4) This subsection applies where—

- (a) any part of the conduct alleged to constitute the offence specified in the arrest warrant occurred in the Areas; or

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(a) Cap 155, Laws of Cyprus, as variously amended.

(b) Ordinance 9/2004, amended by Ordinance 19/2005.

(c) Ordinance 6/1960.

- (b) there is an on-going criminal investigation or on-going criminal proceedings in the Areas in respect of another offence the person in question is alleged or reasonably suspected to have committed.

(5) A certified warrant ceases to have effect where the arrest warrant which is so certified is executed in the Republic.

(6) For the purpose of this section—

- (a) a criminal investigation is on-going if the Police Service is investigating an offence alleged or reasonably suspected to have been committed by the person, irrespective of whether the person has been interviewed about the offence or arrested;
- (b) criminal proceedings are on-going if the judgment is not final; and
- (c) the judgment is final where it is enforceable and appeal rights have been exhausted, or the time limit for an appeal has expired and no appeal has been brought.

#### **Arrest under certified warrant**

6.—(1) This section applies where an arrest warrant is certified under section 5.

(2) The certified warrant may be executed by a police officer.

(3) The certified warrant may be executed even if a copy of the certified warrant is not in the possession of the person executing it at the time of the arrest.

#### **Initial hearing: person arrested under certified warrant**

7.—(1) This section applies if a person is arrested under a certified warrant.

(2) A copy of the certified warrant must be given to the person as soon as practicable after the arrest.

(3) The person must be brought before the Resident Judge's Court as soon as practicable (the "initial hearing"), and in any event not more than 24 hours after the arrest.

(4) A person arrested under the certified warrant must be treated as continuing in legal custody until the person is brought before the court.

#### **Arrest without certified warrant**

8. A police officer may arrest a person without a certified warrant if the police officer has reasonable grounds for believing that—

- (a) an arrest warrant in respect of the person will be issued by a court of the Republic, and, that on receipt of a copy of that warrant, an authorised officer will certify it in accordance with section 5; or
- (b) an arrest warrant in respect of the person has been issued by a court of the Republic, and, that on receipt of a copy of that warrant, an authorised officer will certify it in accordance with section 5.

#### **Initial hearing: person arrested without certified warrant**

9.—(1) A person arrested under section 8 must be brought before the Resident Judge's Court as soon as practicable (the "initial hearing") and in any event not more than 24 hours after the arrest.

(2) The certified warrant must be produced to the court within 24 hours starting with the time when the person is arrested, but this is subject to any extension granted under subsection (3).

(3) On application on oath or affirmation by a police officer of the rank of inspector or above, the court may grant an extension of up to 48 hours if the court decides that subsection (2) could not reasonably be complied with within the initial 24-hour period.

(4) The court must decide whether subsection (2) could reasonably be so complied with on a balance of probabilities.

(5) If the court grants an extension under subsection (3), the court must remand the person in custody or grant bail.

(6) A copy of the certified warrant must be given to the person as soon as practicable after the person's arrest.

(7) The person must be brought to the court when the certified warrant is produced to the court.

(8) Subject to subsections (9) and (10), the court may remand the person in custody or grant bail.

(9) If subsection (2) is not complied with the court must order the person's discharge.

(10) If subsection (7) is not complied with the court must order the person's discharge unless good cause is shown for the person's absence.

(11) The person must be treated as continuing in legal custody until the person is brought before the court or is discharged under subsection (9) or (10).

(12) A person may not be re-arrested under section 8 on the basis of a belief relating to the same certified warrant.

### **Identity of person arrested**

**10.**—(1) This section applies if—

- (a) a person arrested under a certified warrant is brought before the Resident Judge's Court for an initial hearing under section 7(3); or
- (b) a person arrested under section 8 is brought before the Resident Judge's Court for an initial hearing under section 9(1), and section 9(2) is complied with in relation to the person.

(2) The court must decide whether the person is the person in respect of whom the certified warrant was issued.

(3) If the court decides the question in subsection (2) in the negative, the court must order the person's discharge.

(4) If the court decides the question in subsection (2) in the affirmative the court must proceed under section 11 (consent to removal to Republic, etc)

(5) A hearing under section 11 may proceed immediately after a hearing under this section.

(6) If the hearing under section 11 does not proceed immediately, the court must remand the person in custody or grant bail.

### **Consent to removal to Republic, etc**

**11.**—(1) If the court is required to proceed under this section the court must—

- (a) inform the person of the contents of the certified warrant;
- (b) give the person the required information about consent.

(2) The required information about consent is—

- (a) that the person may consent to removal to the custody of the Republic;
- (b) an explanation of the effect of consent and that the person will be conveyed to custody in the Republic if the person gives consent; and
- (c) that consent must be given before the court and is irrevocable.

(3) If the person consents to removal to the Republic, the court must make a removal order.

(4) If the court makes an order under subsection (3), the court must remand the person in custody or grant bail to wait for removal to the Republic.

(5) If the person does not consent to removal to the Republic, the court must proceed with a removal hearing.

(6) A removal hearing may proceed immediately after a hearing under this section.

(7) If the removal hearing does not proceed immediately, the court must remand the person in custody or grant bail.

### **Removal hearing**

**12.**—(1) If the court is required to proceed with a removal hearing under this section the court must decide whether the person's removal to the Republic is barred by reason of—

- (a) the rule against double jeopardy; or
- (b) forum.

(2) Sections 13 and 14 apply for the interpretation of subsection (1).

(3) If the court decides either of the questions in subsection (1) in the affirmative the court must order the person's discharge.

(4) If the court decides the questions in subsection (1) in the negative, the court must decide whether the person's removal would be compatible with the Convention rights.

(5) In deciding the question under subsection (4), the court must proceed on the basis that the person's removal is compatible with the Convention rights unless—

- (a) the person raises grounds that it is not; or
- (b) the court considers of its own volition that there are arguable grounds that it may not be.

(6) If the court decides the question in subsection (4) in the negative the court must order the person's discharge.

(7) If the court decides the question in subsection (4) in the affirmative the court must make a removal order, unless it appears to the court that section 15 (physical or mental condition) applies.

(8) If the court makes a removal order, the court must remand the person in custody or grant bail to await removal to the Republic.

### **Rule against double jeopardy**

**13.** A person's removal to the Republic is barred by reason of the rule against double jeopardy if (and only if) it appears that the person would be entitled to be discharged under any rule of law relating to previous acquittal or conviction on the assumption that—

- (a) the conduct constituting the removal offence constituted an offence in the Areas; and
- (b) the person was charged with the removal offence in the Areas.

### **Forum**

**14.**—(1) A person's removal to the Republic is barred by reason of forum if (and only if) it appears that—

- (a) any part of the conduct alleged to constitute the removal offence occurred in the Areas; and
- (b) in view of that and all the other circumstances, it would not be in the interests of justice for the person to be tried for the offence in the Republic.

(2) For the purposes of subsection (1)(b), the court must take into account whether the Attorney General and Legal Adviser has decided not to commence criminal proceedings against the person in respect of the conduct in question.

(3) If the Attorney General and Legal Adviser certifies that a decision about whether to commence criminal proceedings against the person in question has not yet been made, the court must adjourn the hearing pending that decision.

(4) If the court adjourns the hearing, the court must remand the person in custody or grant bail.

(5) A person's removal is not barred by reason of forum if the person is alleged to be unlawfully at large after conviction for the removal offence.

### **Physical or mental condition**

**15.**—(1) This section applies if at any time before a person is removed to the Republic it appears to the court that the condition in subsection (2) is satisfied.

(2) The condition is that the physical or mental condition of the person in respect of whom the certified warrant is issued is such that it would be unjust or oppressive to remove the person.

(3) The court must—

- (a) order the person's discharge; or
- (b) adjourn the removal hearing until it appears to the court that the condition in subsection (2) is no longer satisfied.

(4) If the court adjourns the hearing, the court must remand the person in custody or grant bail.

### **Withdrawal of warrant before removal**

**16.**—(1) If the Republic withdraws the arrest warrant before a person is removed to the Republic, an authorised officer must withdraw the certified warrant.

(2) An authorised officer may withdraw a certified warrant for any other reason before a person is removed to the Republic.

(3) The withdrawal of a certified warrant under subsection (2) must be authorised by the Chief Constable.

(4) The Senior Registrar must be informed of the withdrawal of a certified warrant as soon as practicable, and in any event within 24 hours.

(5) Where a warrant is withdrawn, the court must order the person's discharge.

### **Removal to the Republic**

**17.**—(1) The Police Service must make arrangements to remove a person to the Republic as soon as reasonably practicable after the date a removal order takes effect, and in any event no more than 3 days after that date.

(2) If subsection (1) is not complied with and the person applies to the Resident Judge's Court to be discharged, the court must discharge the person, unless reasonable cause is shown for the delay.

(3) For the purpose of this section, a removal order takes effect—

- (a) on the day it is made; or
- (b) if the defendant is serving a custodial sentence in the Areas on the day it is made, on the day the defendant is released from custody pursuant to that sentence.

### **Search warrants**

**18.**—(1) On application by a police officer of the rank of inspector or above, on oath or affirmation, a Judge may issue a search warrant to search any place, including a dwelling house, if the conditions specified in subsection (2) are satisfied.

(2) The conditions are—

- (a) there is a certified warrant in respect of a person, irrespective of whether it has been executed;
- (b) there are reasonable grounds for believing that material which is evidence of the removal offence is in, on or about the place; and
- (c) the warrant is sought in relation to the material referred to in paragraph (b).

(3) Sections 37(2) and 38 to 46 of the Criminal Procedure Ordinance 2016<sup>(a)</sup> have effect in relation to a search warrant issued under this section.

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(a) Ordinance 9/2016.

(4) Where an item is seized under a search warrant issued under this section and brought before the court in accordance with section 46 of the Criminal Procedure Ordinance 2016, the court may order that the item is delivered to a police officer of the Republic.

(5) Subsection (4) does not limit the court's powers under section 46 of the Criminal Procedure Ordinance 2016 or any other enactment or rule of law.

### **Powers of Resident Judge's Court**

**19.**—(1) In the exercise of jurisdiction under this Part, the court has the full powers of the Resident Judge's Court in the exercise of its jurisdiction in criminal proceedings, and no proceedings under this Part are to be deemed as the court exercising its civil jurisdiction.

(2) The Resident Judge's Court may remand a person arrested under a certified warrant in custody if the court is satisfied on the application of a police officer of the rank of inspector or above that there are reasonable grounds for believing that it is necessary to remand the person in custody—

- (a) to secure or preserve evidence relating to the removal offence;
- (b) to prevent the person from disappearing or from leaving the Areas or the area under the effective control of the Government of the Republic;
- (c) to prevent the person from interfering with witnesses or otherwise obstructing the course of justice, whether in relation to himself, herself or any other person; or
- (d) for some other reason the court thinks sufficient.

(3) The Criminal Procedure Ordinance 2016 has effect in so far as relevant, with such adaptations as the court directs, for determining court procedures under this Part, in particular, applications to court, time limits, review periods, the conduct of hearings and the grant of bail.

(4) Subsection (3) does not confer jurisdiction on the court hearing proceedings under this Part, which is inconsistent with this Part or with rules made under section 34.

### **Appeals**

**20.**—(1) Sections 161 and 162 (appeals against withholding or grant of bail) of the Criminal Procedure Ordinance 2016 have effect in respect of appeals against a decision of the court to withhold or grant bail with the following modifications—

- (a) references to the defendant are to be read as references to the person arrested under a certified warrant;
- (b) references to the prosecutor are to be read as references to an advocate of the office of the Attorney General and Legal Adviser.

(2) An appeal may not be brought in relation to proceedings under this Part except as provided for in this section.

### **Application of Criminal Legal Services Ordinance 2005, Police (Detainees and Volunteers) Ordinance 2007 and advocates' fees**

**21.**—(1) The Criminal Legal Services Ordinance 2005(a) and the Police (Detainees and Volunteers) Ordinance 2007(b) have effect in relation to a person arrested under this Part.

(2) Advocates' fees in respect of proceedings under this Part are determined by reference to the fees payable for criminal proceedings.

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(a) Ordinance 17/2005 as amended by Ordinances 9/2008 and 9/2016.  
(b) Ordinance 3/2007.

## **Costs**

**22.**—(1) Where the Resident Judge’s Court makes a removal order under this Part, the court may make such order as it considers reasonable with regards to the costs to be paid by the person whose removal is ordered.

(2) Where the Resident Judge’s Court orders a person’s discharge under this Part, the court may make such order as it considers reasonable for any expenses reasonably incurred by the person in proceedings under this Part.

(3) Section 172(1) (costs: improper or unreasonable acts and omissions) and 173(1) (costs against legal representatives: wasted costs) of the Criminal Procedure Ordinance 2016 have effect in respect of proceedings under this Part.

(4) An order for costs under this section must specify the amount.

(5) An order for costs under subsection (2) or (3) against a public officer must be paid from public funds.

## **PART 3**

### **Removal to the Areas**

#### **Power to request extradition to the Territory**

**23.**—(1) The Administrator may request the removal of a person to the Areas from the Republic.

(2) A request under subsection (1) must at least contain the statement referred to in subsection (3) or the statement referred to in subsection (4).

(3) The statement is one that—

- (a) the person is accused in the Areas of the commission of an offence specified in the request; and
- (b) the request is made with a view to the person’s arrest and removal to the Areas for the purpose of being prosecuted for the offence.

(4) The statement is one that—

- (a) the person has been convicted of an offence specified in the request by a court of the Areas; and
- (b) the request is made with a view to the person’s arrest and removal to the Areas for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence.

(5) The Administrator may only make a request under subsection (1) after having received advice from the Attorney General and Legal Adviser.

#### **Dealing with person for other offences**

**24.**—(1) This section applies if a person is removed to the Areas pursuant to a request under section 23.

(2) The person may be dealt with in the Areas for an offence committed before the person’s extradition only if—

- (a) the offence is one falling within subsection (3); or
- (b) the condition in subsection (4) is satisfied.

(3) The offences are—

- (a) the offence in respect of which the person is removed;
- (b) an offence disclosed by the information provided to the Republic in respect of that offence;

- (c) an offence in respect of which consent to the person being dealt with is given on behalf of the Republic.
- (4) A person is dealt with in the Areas for an offence if—
  - (a) the person is tried there for it;
  - (b) the person is detained with a view to trial there for it.

### **Remission of punishment for other offences**

**25.**—(1) This section applies if—

- (a) a person is removed to the Areas from the Republic;
- (b) before the person's removal he or she has been convicted of an offence in the Areas; and
- (c) the person has not been removed to the Areas in respect of that offence.

(2) The sentence for the offence must be treated as served but the person's conviction for the offence must be treated as a conviction for all other purposes.

### **Return of person acquitted or not tried**

**26.**—(1) This section applies if—

- (a) a person is accused in the Areas of the commission of an offence;
- (b) the person is removed to the Areas from the Republic in respect of the offence; and
- (c) the condition in subsection (2) or the condition in subsection (3) is satisfied.

(2) The condition is that—

- (a) proceedings against the person for the offence are not begun before the end of the required period, which is six months starting with the day on which the person arrives in the Areas following removal; and
- (b) before the end of the period of three months, starting immediately after the end of the required period, the person asks the Administrator to return him or her to the Republic.

(3) The condition is that—

- (a) proceedings against the person for the offence are concluded by—
  - (i) the person's acquittal of the offence in a final judgment;
  - (ii) the person's discharge without conviction;
  - (iii) the quashing of the charge; or
  - (iv) the Attorney General and Legal Adviser entering a nolle prosequi; and
- (b) before the end of the period of three months starting immediately after the date of the conclusion of proceedings the person asks the Administrator to return him or her to the Republic.

(4) The Administrator must arrange for the person to be sent back at public expense and with as little delay as possible, to the Republic.

(5) In this section, a judgment is final where it is enforceable and appeal rights have been exhausted, or the time limit for an appeal has expired and no appeal has been brought.

### **Undertaking in relation to person serving sentence**

**27.**—(1) This section applies if—

- (a) a person is accused in the Areas of the commission of an offence or has been convicted of an offence by a court of the Areas;
- (b) the Administrator makes a request for the removal of the person;
- (c) the person is serving a sentence of imprisonment or another form of detention in the Republic; and

(d) the person's removal to the Areas from the Republic in pursuance of the request is made subject to a condition that an undertaking is given by or on behalf of the Areas with regard to the person's treatment or return to the Republic (or both).

(2) The Administrator may give an undertaking to a person acting on behalf of the Republic with regard to either or both of these things—

- (a) the treatment in the Areas of the person in respect of whom the request for removal is made;
- (b) the return of that person to the Republic.

(3) The terms which may be included by the Administrator in an undertaking given under subsection (2) in relation to a person accused in the Areas of the commission of an offence include terms—

- (a) that the person be kept in custody until the conclusion of the proceedings against the person for the offence, and any other offence in respect of which the person is permitted to be dealt with in the Areas;
- (b) that the person be returned to the Republic to serve the remainder of the sentence on the conclusion of those proceedings.

(4) The terms which may be included by the Administrator in an undertaking given under subsection (2) in relation to a person who has been convicted of an offence by a court of the Areas include terms that the person be returned to the Republic to serve the remainder of the sentence after the person would otherwise be released from detention pursuant to the sentence imposed in the Areas (whether or not under early release provisions).

(5) If the person is to be returned to the Republic by virtue of an undertaking given under subsection (2), the undertaking is sufficient authority for a police officer—

- (a) to remove the person from any prison or other institution where the person is detained;
- (b) to keep the person in custody until returned;
- (c) to convey the person to the Republic.

### **Return of person in pursuance of undertaking**

**28.**—(1) This section applies if—

- (a) an undertaking is given under section 27(2) as to the return of a person to the Republic;
- (b) the person is returned to the Republic in pursuance of the undertaking; and
- (c) the person is returned to the Areas to serve the remainder of any sentence imposed in the Areas or the person otherwise returns to the Areas.

(2) Time during which the person was outside the Areas as a result of the undertaking given under section 27(2) does not count as time served by the person as part of the sentence.

(3) If the person is not entitled to be released from detention pursuant to the sentence—

- (a) the person is liable to be detained in pursuance of the sentence; and
- (b) if at large, the person must be treated as being unlawfully at large.

(4) If the person is entitled to be released from detention under early release provisions pursuant to the sentence—

- (a) if the person was released under early release provisions at the time of return to the Republic, the early release is suspended until the person's return to the Areas;
- (b) if the person was not released under early release provisions at that time, subsections (5) to (7) apply in relation to the person ("the offender").

(5) The offender is liable to be detained, on return to the Areas, in any place in which the offender could have been detained pursuant to the sentence before the time of return to the Republic.

(6) A police officer may—

- (a) take the offender into custody; and
- (b) convey the offender to the place mentioned in subsection (5).

(7) The offender must be released under early release provisions within the period of 5 days beginning when the offender is taken (or retaken) into custody under this section.

### **Return to Republic to serve sentence**

**29.**—(1) This section applies if—

- (a) a person is removed to the Areas from the Republic for the purposes of being prosecuted for an offence; and
- (b) the person's removal is made subject to a condition that an undertaking is given by or on behalf of the Areas as to the person's return to the Republic.

(2) The Administrator may give an undertaking to a person acting on behalf of the Republic as to the person's return to the Republic.

(3) The terms which may be included by the Administrator in an undertaking given under subsection (2) in relation to a person include terms that if the person is convicted of an offence and a sentence of imprisonment or another form of detention is imposed in respect of it, the person is to be returned to the Republic to serve the sentence.

(4) A person who is to be returned to the Republic by virtue of an undertaking given under subsection (2) must be returned as soon as is reasonably practicable after the sentence is imposed and any other proceedings in respect of the offence are concluded.

(5) If subsection (4) is complied with the sentence for the offence is treated as served but the person's conviction for the offence must be treated as a conviction for all other purposes.

(6) The sentence for the offence is treated as served under subsection (5) only in so far as it consists of the sentence of imprisonment or another form of detention mentioned in subsection (3).

(7) Subsection (8) applies if—

- (a) subsection (4) is not complied with; and
- (b) the person applies to the court which imposed the sentence to expedite return to the Republic.

(8) The court must order return by such date as is specified in the order unless reasonable cause is shown for the delay.

(9) If a person is to be returned by virtue of an undertaking given under subsection (2), a police officer may—

- (a) remove the person from any prison or other institution where the person is detained;
- (b) keep the person in custody until returned;
- (c) convey the person to the Republic.

### **Restriction on bail where undertaking given by Administrator**

**30.**—(1) This section applies in relation to a person if—

- (a) the Administrator has given an undertaking in connection with the person's removal to the Areas; and
- (b) the undertaking includes terms that the person be kept in custody until the conclusion of any proceedings against the person in the Areas for an offence.

(2) A court may grant bail to the person in the proceedings only if the court considers that there are exceptional circumstances which justify it.

## PART 4

### Miscellaneous

#### **Transit through the Areas**

**31.**—(1) This section applies where a person—

- (a) is charged with a criminal offence in the Republic; and
- (b) is in lawful custody in the Republic.

(2) An authorised officer may make arrangements with the authorities of the Republic to convey a person in custody through the Areas from one part of the Republic to another.

(3) The authorised officer must confirm the arrangements by written authority.

(4) A person conveyed in accordance with a written authority is in lawful custody in the Areas, but may not be detained in the Areas for longer than is reasonably necessary to effect the transit.

(5) If it is proved that an authorised officer has given written authority under subsection (3), there is a rebuttable presumption that the authorised officer has made arrangements under subsection (2).

#### **Custody in the Areas while awaiting trial in Republic**

**32.**—(1) This section applies where a person is—

- (a) reasonably suspected by an authorised officer of committing a criminal offence in the Republic; or
- (b) charged with a criminal offence in the Republic; and
  - (i) is remanded in custody by a court of the Republic to await trial; or
  - (ii) is held in lawful police custody pending appearance at a court in the Republic.

(2) An authorised officer may detain the person in the Areas until the person is brought to trial by a court of the Republic or ordered to be released by that court.

(3) The person may be held in custody in a prison, a police station or any other place approved by the Administrator.

(4) If the person is a person subject to service law or a civilian subject to service discipline, the person may be detained by a member of Her Majesty's Forces and held in custody at a service establishment.

(5) The person may be lawfully conveyed in custody to attend court following—

- (a) an order of a court of the Republic that the person attend for trial or any other matter; or
- (b) a request from the person to attend a court of the Republic to apply for bail or make any other application.

(6) In this section—

- (a) “person subject to service law” and “civilian subject to service discipline” have the meaning given in the Armed Forces Act 2006(a).
- (b) “service establishment” means any place at which a person subject to service law or a civilian subject to service discipline may be lawfully detained in accordance with the Armed Forces Act 2006.

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(a) 2006 c.52 UK Act of Parliament.

### **Transit by air or sea**

**33.**—(1) A person who is in legal custody in any place within the Akrotiri Sovereign Base Areas and who is required to be moved to the Dhekelia Sovereign Base Area (or vice versa) remains in legal custody while being moved by air or sea in an aircraft or vessel belonging to, or chartered by or on behalf of the Crown.

(2) In this section, “Crown” includes Her Majesty in right of Her Government of the United Kingdom.

## **PART 5**

### **Final**

### **Rules of court**

**34.**—(1) — The Administrator, after consulting the Presiding Judge, may make rules of court as to the practice and procedure to be followed in connection with proceedings under Part 2.

(2) Rules of court are to be made as a public instrument.

### **Repeals**

**35.** The following Ordinances are repealed—

- (a) Offenders Removal and Detention Ordinance 1960(**a**); and
- (b) Offenders Removal and Detention (Amendment) Ordinance 1961(**b**).

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(a) Ordinance 7/1960.  
(b) Ordinance 20/1961.

## **EXPLANATORY NOTE**

*(This note is not part of the Ordinance)*

### Introduction

1. This explanatory note relates to the Offenders Removal and Detention Ordinance 2016 (the “Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.
2. This note should be read in conjunction with the Ordinance. It is not, and is not meant to be, a comprehensive description of the Ordinance. So, when a section or part of a section does not seem to require any explanation or comment, none is given.

### Particular points

3. The purpose of the Ordinance is to establish a revised procedure for the arrest and removal of persons to the Republic in respect of whom an arrest warrant has been issued by a court of the Republic, and to make provision for the Administrator to request the removal of a person from the Republic of a person accused of the commission of an offence in the Areas or convicted of an offence. It repeals and re-enacts, with amendment, the Offenders Removal and Detention Ordinance 1960 (the “1960 Ordinance”).
4. Part 1 contains preliminary provisions. Part 2 sets out the procedure for the arrest and removal of persons to the Republic, Part 3 provides for a power for the Administrator to request the removal of a person from the Republic to the Areas. Part 4 re-enacts various provision from the 1960 Ordinance. Part 5 contains a power for the Administrator to make rules of court and repeals the 1960 Ordinance.

### Part 2: arrest and removal to Republic

5. Section 4 sets out the application of Part 2. This Part applies where an arrest warrant is issued by a court in the Republic in respect of a person alleged to have committed, reasonably suspected of having committed or convicted of an offence in the Republic. The Ordinance does not apply where a person has been charged with an offence in the Areas and has elected for trial in the Republic in accordance with the Citizens of the Republic (Jurisdiction of the Courts) Ordinance 1960.
6. Section 5 requires that the arrest warrant is certified by an authorised officer, defined in section 3 as being a police officer of the rank of Chief Inspector or above or any other person authorised by the Administrator.
7. A police officer may arrest a person where a certified warrant has been issued. The person must be brought to the Resident Judge’s Court as soon as practicable after arrest, and in any event within 24 hours (sections 6 and 7).
8. Section 8 provides for a power of arrest where there is not a certified warrant, but a police officer has reasonable grounds for believing that a certified warrant will be issued. The person must be brought to the Resident’s Judge’s Court as soon as practicable after arrest and in any event within 24 hours. The court has the power to extend the time for obtaining a certified warrant for up to 48 hours. If a certified warrant is not produced within 24 hours or the extension given by the court, the person must be discharged (section 9).
9. Sections 10 to 12 set out the steps which must be taken by the court before it can order a person’s removal to the Republic. Under section 10, the court must verify the person’s identity and under section 11 ask if the person consents to removal to the Republic. If the court is satisfied of the person’s identity and the person consents, the court must make a removal order.
10. If the person does not consent, the court must proceed with a removal hearing under section 12. The court is required to decide whether removal to the Republic is barred by reason of the

rule against double jeopardy or forum, or would be a breach of the Human Rights Ordinance 2004. If the court decides there is no bar and no breach of that Ordinance the court must make a removal order.

11. Sections 13 and 14 define the rules against double jeopardy and forum. In the case of forum, the court must take account of whether the Attorney General and Legal Adviser (AGLA) has decided not to take proceedings against the person. If AGLA certifies that a decision has not yet been made, the court must adjourn the hearing pending that decision.
12. Under section 15, if the court considers that removal would be oppressive or unjust on account of a person's ill health, the court must discharge the person or adjourn the removal hearing pending the person's recovery.
13. Section 16 provides for a procedure for the withdrawal of a certified warrant at any time before removal. Withdrawal may be because the Republic has withdrawn its arrest warrant or for any other reason.
14. Under section 17, a person must be removed to the Republic within 3 days of a removal order taking effect. Normally an order takes effect on the day it is made, but if the person is in custody in the Areas it takes effect on the day the person is released from custody.
15. Under section 18, a Judge may issue a search warrant where there is a certified warrant and there are reasonable grounds for believing that there is material connected with the offence on premises in the Areas. Section 19 provides that in exercise of proceedings under the Ordinance, the court has the same powers as when exercising its criminal jurisdiction. This section also sets out the test the court must apply when remanding a person in custody and applies the Criminal Procedure Ordinance 2016 to its procedures as far as is relevant.
16. Section 20 provides for a right of appeal against a decision to withhold or grant bail. No other appeal may be brought. Section 22 makes provision for orders for costs.

### Part 3: removal to Areas

17. Section 23 is a power for the Administrator to request the removal of a person from the Republic to the Areas in respect of a person accused of the commission of an offence in the Areas or convicted of committing an offence in the Areas. Section 24 limits the offences for which a person who is removed following a request may be tried or detained with a view to trial.
18. Section 25 provides for remission of punishment for offences of which the person was convicted before removal to the Areas, unless the request for removal under section 23 was for the purpose of imposing that punishment.
19. Under section 26 a person who is acquitted or who is not tried within 6 months of removal ("6-month period") must be returned to the Republic if the person so requests within 3 months of acquittal or the end of the 6-month period.
20. Section 27 applies where the Administrator requests the removal of a person imprisoned in the Republic. The Administrator may give an undertaking relating to the treatment of the person and to the return of the person to the Republic. Section 28 makes provision for the return of a person to the Republic pursuant to an undertaking.
21. Section 29 provides for the Administrator to give an undertaking that a person removed will be returned to the Republic to serve any sentence imposed by a court of the Areas. The person must be returned as soon as practicable after the sentence is imposed and other proceedings concluded.
22. Section 30 provides that if the terms of an undertaking are that a person will be kept in custody, a court may grant bail only in exceptional circumstances.

Part 4: miscellaneous

23. Sections 31 to 33 in Part 4 re-enact section 3 to 5 of the 1960 Ordinance with minor amendments. Section 31 provides that an authorised officer may make arrangements to allow a prisoner who is in custody in the Republic to be conveyed through the Areas. Section 32 makes provisions for certain persons to be kept in custody in the Areas while awaiting trial in the Republic. Section 33 makes provision for the transit of persons in the custody of the Areas by air and sea.

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